

## Ratification of the Constitution by the State of Delaware; December 7, 1787. (1)

We the Deputies of the People of the Delaware State, in Convention met, having taken into our serious consideration the [Federal Constitution](#) proposed and agreed upon by the Deputies of the United States in a General Convention held at the City of Philadelphia on the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty seven, Have approved, assented to, ratified, and confirmed, and by these Presents, Do, in virtue of the Power and Authority to us given for that purpose, for and in behalf of ourselves and our Constituents, fully, freely, and entirely approve of, assent to, ratify, and confirm the said [Constitution](#).

Done in Convention at Dover this seventh day of December in the year aforesaid, and in the year of the Independence of the United States of America the twelfth. In Testimony whereof we have hereunto subscribed our Names-

Sussex County	Kent County	New Castle County
JOHN INGRAM	NICHOLAS RIDGELEY	JA <sup>s</sup> LATIMER, President
JOHN JONES	RICHARD SMITH	JAMES BLACK
WILLIAM MOORE	GEORGE TRUITT	JN <sup>o</sup> JAMES
WILLIAM HALL	RICHARD BASSETT	GUNNING BEDFORD sen <sup>r</sup>
THOMAS LAWS	JAMES SYKES	KENSEY JOHNS
ISAAC COOPER	ALLEN MCLANE	THOMAS WATSON
WOODMAN STORKLY	DANIEL CUMMINS sen <sup>r</sup>	SOLOMON MAXWELL
JOHN LAWS	JOSEPH BARKER	NICHOLAS WAY
THOMAS EVANS	EDWARD WHITE	THOMAS DUFF
ISRAEL HOLLAND	GEORGE MANLOVE	GUNN <sup>o</sup> BEDFORD Jun <sup>r</sup>

To all whom these Presents shall come Greeting, I Thomas Collins President of the Delaware State do hereby certify, that the above instrument of writing is a true copy of the original ratification of the [Federal Constitution](#) by the Convention of the Delaware State, which original ratification is now in my possession. In Testimony whereof I have caused the seal of the Delaware State to be hereunto an'xed.

THO<sup>s</sup> COLLINS

(1) Reprinted from Documentary History of the Constitution, Vol. II (1894), PP. 25, 26

**THE**  
**DEBATES**  
**IN**  
**THE CONVENTION**  
**OF**  
**THE STATE OF PENNSYLVANIA,**  
**ON THE**  
**ADOPTION OF THE FEDERAL CONSTITUTION.**

PHILADELPHIA, TUESDAY, *November 20, 1787, P. M.*

THIS being the day recommended by the legislature for the meeting of this body, a number of gentlemen delegated thereto met, accordingly, at the state-house, and adjourned to three o'clock, P. M., to-morrow.

WEDNESDAY, *November 21, 1787.* — Sixty of the gentlemen elected to serve in the Convention met.

The returns of the elections held for the city of Philadelphia, and the several counties of this state, were read; by which it appears that the following gentlemen were returned as delegates for the Convention for the said cities and counties respectively, viz.: —

*For the city of Philadelphia,* George Latimer, Benjamin Rush, Hilary Baker, James Wilson, Thos. M'Kean.

*For Philadelphia county.* William M'Pherson, John Hunn, George Gray, Samuel Ashmead, Enoch Edwards.

*For Bucks county.* Henry Wynkoop, John Barclay, Thomas Yardly, Abraham Stout.

*For Chester county.* Thomas Ball, Anthony Wayne, William Gibbons, Richard Downing, Thomas Cheney, John Hannum.

*For Lancaster county.* Stephen Chambers, Robert Coleman, Sebastian Graff, John Hubley, Jasper Yeates, John Whitehill.

*For York county.* Henry Slagle, Thomas Campbell, Thomas Hartley David Grier, John Black, Benjamin Pedan.

*For Cumberland county.* John Harris, John Reynolds, Robert Whitehill, Jonathan Hoge.

*For Berks county.* Nicholas Lutz, John Ludwig, Abraham Lincoln, John Bishop, Joseph Heister.

*For North Hampton county.* John Arndt, Stephen Balliott, Joseph Horsefield, David Deshler.

*For Bedford county.* James Martin, Joseph Powell.

*For Northumberland county.* William Wilson, John Boyd.

*For Westmoreland county.* William Findley, John Baird, William Todd.

*For Washington county.* James Marshall, James Edgar, T. Scott, John Nevill.

*For Fayette county.* Nicholas Breeding, John Smilie.

*For Franklin county.* Richard Bard, John Allison.

*For Montgomery county.* Jonathan Roberts, John Richards, Frederick A. Muhlenberg, James Morris.

*For Dauphin county.* William Brown, Adam Orth.

*For Luzerne county.* Timothy Pickering.

*For Huntingdon county.* Benjamin Elliott.

The Convention proceeded to elect a president.

The ballots being counted, it appeared that Frederick Augustus Muhlenberg, Esq., was duly elected.

An invitation to the president and members of the Convention, from the faculty of the University of Pennsylvania, requesting their company at a commencement to be held tomorrow, was read.

Agreed to attend in a body, at ten o'clock to-morrow. Adjourned until nine o'clock, A. M.

THURSDAY, *November 22, 1787.* — Convention met, and proceeded to the University Hall, attended commencement, and returned to their chamber.

On motion of Mr. WAYNE, seconded by Mr. Whitehill,

A committee was appointed to report rules and regulations for conducting the business of the Convention.

The committee consisted of Benjamin Rush, James Wilson, George Gray, Anthony Wayne, and Robert Whitehill.

Adjourned until half-past nine o'clock to-morrow, A. M.

FRIDAY, *November 23, 1787.* — Convention met pursuant to adjournment, and proceeded to elect a secretary.

The ballots being taken, it appeared that James Campbell, Esq., was duly elected.

The committee appointed, yesterday, to bring in rules and regulations, made report, and the same being read, was by special order taken up, read by paragraphs, and agreed to as follows: —

1. When the president assumes the chair, the members shall take their seats.
2. At the opening of the Convention of each day, the minutes of the preceding day shall be read, and are then in the power of the Convention to be corrected; after which any business addressed to the chair may be proceeded to.
3. Every petition, memorial, letter, or other matter of the like kind, read in the Convention, shall be deemed as lying on the table for further consideration, unless any special order be moved thereon.
4. A motion made and seconded shall be repeated by the president. A motion shall be reduced to writing, if the president or any two members require it. A motion may be withdrawn by the member making it, before any decision is had on it.
5. No member speaking shall be interrupted but by a call to order by the president, or by a member through the president.
6. No member to be referred to, in debate, by name.
7. The president himself, or by request, may call to order any member who shall transgress the rules. If the second time, the president may refer to him by name. The Convention may then examine and censure the member's conduct, he being allowed to extenuate or justify.
8. Every member, actually attending the Convention, shall be in his place at the time to which the Convention stands adjourned, or within half an hour thereof.
9. The name of him who makes, and the name of him who seconds, a motion, shall be entered on the minutes.
10. No member shall speak more than twice on a question without leave.
11. Every member of a committee shall attend at the call of his chairman.
12. The yeas and nays may be called and entered on the minutes when any two members require it.

On motion of Mr. M'KEAN, seconded by Mr. Smilie, — *Ordered*, That the doors of the Convention be left open during the session.

On motion of Mr. M'KEAN, seconded by Mr. Smilie, —

*Ordered*, That the Constitution, as proposed by the late federal Convention, be read. It was read accordingly.

Adjourned until ten o'clock to-morrow.

SATURDAY, *November 24*, 1787, A. M. — The Convention met pursuant to adjournment.

On motion of Mr. M'KEAN, seconded by Mr. Hannum, the Constitution, as proposed by the late Convention, was read a second time, together with a letter from the secretary of Congress to the president of this state.

Adjourned until three o'clock on Monday next.

MONDAY, *November 26*, 1787, P. M. — The Convention met pursuant to adjournment.

Mr. M'KEAN. The subject now, Mr. President, comes fully and fairly before us. Our first object must be to ascertain the proper mode of proceeding to obtain a final decision.

We are without precedent to guide us; yet those forms, observed by other public bodies, so far as they are eligible, may generally be proper for us to adhere to. So far, therefore, as the rules of the legislature of Pennsylvania apply with convenience to our circumstances, I acquiesce in their adoption.

I now think it necessary, sir, to make you a motion — not that I apprehend it can be determined until a full investigation of the subject before us is had. The motion will be, sir, That this Convention do *assent to*, and *ratify*, the Constitution agreed to on the 17th of September last, by the Convention of the United States of America, held at Philadelphia.

Upon this motion being seconded, sir, the consideration of the Constitution will be necessarily drawn on. Every objection that can be suggested against the work will be listened to with attention, answered, and perhaps obviated; and finally, after a full discussion, the ground will be ascertained, on which we are to receive or reject the system now before you. I do not wish this question to be decided to-day; though perhaps it may be determined this day week. I offer you this for the sake of form, and shall hereafter trouble you with another motion, that may bring the particular parts of this Constitution before you, for a regular and satisfactory investigation.

In this motion, Mr. M'KEAN was seconded by Mr. Allison.

Mr. WILSON. The system proposed, by the late Convention, for the government of the United States, is now before you. Of that Convention I had the honor to be a member. As I am the only member of that body who has the honor to be also a member of this, it may be expected that I should prepare the way for the deliberations of this assembly, by unfolding the difficulties which the late Convention were obliged to encounter; by pointing out the end which they proposed to accomplish; and by tracing the general principles which they have adopted for the accomplishment of that end.

To form a good system of government for a single city or state, however limited as to territory, or inconsiderable as to numbers, has been thought to require the strongest efforts of human genius. With what conscious diffidence, then, must the members of the Convention have revolved in their minds the immense undertaking which was before them. Their views could not be confined to a small or a single community, but were expanded to a great number of states; several of which contain an extent of territory, and resources of population, equal to those of some of the most respectable kingdoms on the other side of the Atlantic. Nor were even these the

only objects to be comprehended within their deliberations. Numerous states yet unformed, myriads of the human race, who will inhabit regions hitherto uncultivated, were to be affected by the result of their proceedings. It was necessary, therefore, to form their calculations on a scale commensurate to a large portion of the globe.

For my own part, I have been often lost in astonishment at the vastness of the prospect before us. To open the navigation of a single river was lately thought, in Europe, an enterprise equal to imperial glory. But could the commercial scenes of the Scheldt be compared with those that, under a good government, will be exhibited on the Hudson, the Delaware, the Potomac, and the numerous other rivers, that water and are intended to enrich the dominions of the United States?

The difficulty of the business was equal to its magnitude. No small share of wisdom and address is requisite to combine and reconcile the jarring interests that prevail, or seem to prevail, in a single community. The United States contain already thirteen governments mutually independent. Those governments present to the Atlantic a front of fifteen hundred miles in extent. Their soil, their climates, their productions, their dimensions, their numbers, are different. In many instances, a difference, and even an opposition, subsists among their interests; and a difference, and even an opposition, is imagined to subsist in many more. An apparent interest produces the same attachment as a real one, and is often pursued with no less perseverance and vigor. When all these circumstances are seen, and attentively considered, will any member of this honorable body be surprised that such a diversity of things produced a proportionate diversity of sentiment? Will he be surprised that such a diversity of sentiment rendered a spirit of mutual forbearance and conciliation indispensably necessary to the success of the great work? And will he be surprised that mutual concessions and sacrifices were the consequences of mutual forbearance and conciliation? When the springs of opposition were so numerous and strong, and poured forth their waters in courses so varying, need we be surprised that the stream formed by their conjunction was impelled in a direction somewhat different from that which each of them would have taken separately?

I have reason to think that a difficulty arose in the minds of some members of the Convention from another consideration — their ideas of the temper and disposition of the people for whom the Constitution is proposed. The citizens of the United States, however different in some other respects, are well known to agree in one strongly-marked feature of their character — a warm and keen sense of freedom and independence. This sense has been heightened by the glorious result of their late struggle against all the efforts of one of the most powerful nations of Europe. It was apprehended, I believe, by some, that a people so highly spirited would ill brook the restraints of an efficient government. I confess that this consideration did not influence my conduct. I knew my constituents to be high-spirited, but I knew them also to possess sound sense. I knew that in event they would be best pleased with that system of government which would be best, to promote their freedom and happiness. I have also often revolved this subject in my mind. I have supposed one of my constituents to ask me why I gave such a vote on a particular question. I have always thought it would be a satisfactory answer to say, Because I judged, upon the best consideration I could give, that such a vote was right, I have thought that it would be a very poor compliment to my constituents to say, that, in my opinion, such a vote would have been proper, but that I supposed a contrary one would be more agreeable to those who sent me to the Convention. I could not, even in idea, expose myself to such a retort, as, upon

the last answer, might have been justly made to me — Pray, sir, what reasons have you for supposing that a right vote would displease your constituents? Is this the proper return for the high confidence they have placed in you? If they have given cause for such a surmise, it was by choosing a representative who could entertain such an opinion of them. I was under no apprehension that the good people of this state would behold with displeasure the brightness of the rays of delegated power, when it only proved the superior splendor of the luminary of which those rays were only the reflection.

A very important difficulty arose from comparing the extent of the country to be governed with the kind of government which it would be proper to establish in it. It has been an opinion, countenanced by high authority, "that the natural property of small states is to be governed as a republic; of middling ones, to be subject to a monarchy; and of large empires, to be swayed by a despotic prince; — and that the consequence is, that, in order to preserve the principles of the established government, the state must be supported in the extent it has acquired; and that the spirit of the state will alter in proportion as it extends or contracts its limits." (*Montesquieu*, b. 8, c. 20.) This opinion seems to be supported, rather than contradicted, by the history of the governments in the old world. Here, then, the difficulty appeared in full view. On one hand, the United States contain an immense extent of territory; and, according to the foregoing opinion, a despotic government is best adapted to that extent. On the other hand, it was well known, that, however the citizens of the United States might with pleasure submit to the legitimate restraints of a republican constitution, they would reject with indignation the fetters of despotism. What, then, was to be done? The idea of a confederate republic presented itself. This kind of constitution has been thought to have "all the internal advantages of a republican together with the external force of a monarchical government." (*Mont.* b. 9, c. 1, 2. *Paley*, 199, 202.)

Its description is "a convention, by which several states agree to become members of a larger one, which they intend to establish. It is a kind of assemblage of societies that constitute a *new one*, capable of increasing by means of further association." — (*Montesquieu*, b. 9, c. 1.) The *expanding* quality of such government is peculiarly fitted for the United States, the greatest part of whose territory is yet uncultivated.

But while this form of government enabled us to surmount the difficulty last mentioned, it conducted us to another, of which I am now to take notice. It left us almost without precedent or guide, and, consequently, without the benefit of that instruction which, in many cases, may be derived from the constitution, and history, and experience, of other nations. Several associations have frequently been called by the name of *confederate states*, which have not, in propriety of language, deserved it. The Swiss cantons are connected only by alliances. The United Netherlands are, indeed, an assemblage of societies; but this assemblage constitutes no *new one*, and therefore it does not correspond with the full definition of a confederate republic. The Germanic body is composed of such disproportioned and discordant materials, and its structure is so intricate and complex, that little useful knowledge can be drawn from it. Ancient history discloses, and barely discloses, to our view, some confederate republics — the Achaean league, the Lycian confederacy, and the Amphictyonic council. But the facts recorded concerning their constitutions are so few and general, and their histories are so unmarked and defective, that no satisfactory information can be collected from them concerning many particular circumstances, from an accurate discernment and comparison of which, alone, legitimate and practical

inferences can be made from one constitution to another. Besides, the situation and dimensions of those confederacies, and the state of society, manners, and habits, in them, were so different from those of the United States, that the most correct descriptions could have supplied but a very small fund of applicable remark. Thus, in forming this system, we were deprived of many advantages which the history and experience of other ages and other countries would, in other cases, have afforded us.

Permit me to add, in this place, that the science even of government itself seems yet to be almost in its state of infancy. Governments, in general, have been the result of force, of fraud, and accident. After a period of six thousand years has elapsed since the creation, the United States exhibit to the world the first instance, as far as we can learn, of a nation, unattacked by external force, unconvulsed by domestic insurrections, assembling voluntarily, deliberating fully, and deciding calmly, concerning that system of government under which they would wish that they and their posterity should live. The ancients, so enlightened on other subjects, were very uninformed with regard to this. They seem scarcely to have had any idea of any other kinds of governments than the three simple forms designed by the epithets *monarchical*, *aristocratical*, and *democratical*. I know that much and pleasing ingenuity has been exerted, in modern times, in drawing entertaining parallels between some of the ancient constitutions and some of the mixed governments that have since existed in Europe. But I much suspect that, on strict examination, the instances of resemblance will be found to be few and weak; to be suggested by the improvements which, in subsequent ages, have been made in government, and not to be drawn immediately from the ancient constitutions themselves, as they were intended and understood by those who framed them. To illustrate this, a similar observation may be made on another subject. Admiring critics have fancied that they have discovered in their favorite *Homer* the seeds of all the improvements in philosophy and in the sciences made since his time. What induces me to be of this opinion is, that *Tacitus* — the profound politician Tacitus — who lived towards the latter end of those ages which are now denominated *ancient*, who undoubtedly had studied the constitutions of all the states and kingdoms known before and in his time, and who certainly was qualified, in an uncommon degree, for understanding the full force and operation of each of them, considers, after all he had known and read, a mixed government, composed of the three simple forms, as a thing rather to be wished than expected. And he thinks that, if such a government could even be instituted, its duration could not be long. One thing is very certain — that the doctrine of representation in government was altogether unknown to the ancients. Now, the knowledge and practice of this doctrine is, in my opinion, essential to every system that can possess the qualities of freedom, wisdom, and energy.

It is worthy of remark, and the remark may, perhaps, excite some surprise, that representation of the people is not, even at this day, the sole principle of any government in Europe. Great Britain boasts — and she may well boast — of the improvement she has made in politics by the admission of representation; for the improvement is important as far as it goes; but it by no means goes far enough. Is the executive power of Great Britain founded on representation? This is not pretended. Before the revolution, many of the kings claimed to reign by divine right, and others by hereditary right; and even at the revolution, nothing further was effected or attempted than the recognition of certain parts of an original contract, (*Blackstone*, 233,) supposed, at some former remote period, to have been made between the king and the people. A contract seems to exclude, rather than to imply, delegated power. The judges of Great Britain are appointed by the

crown. The judicial authority, therefore, does not depend upon representation, even in its most remote degree. Does representation prevail in the legislative department of the British government? Even here it does not predominate, though it may serve as a check. The legislature consists of three branches — the king, the lords, and the commons. Of these, only the latter are supposed by the constitution to represent the authority of the people. This short analysis clearly shows to what a narrow corner of the British constitution the principle of representation is confined. I believe it does not extend farther, if so far, in any other government in Europe. For the American states were reserved the glory and the happiness of diffusing this vital principle throughout the constituent parts of government. Representation is the chain of communication between the people and those to whom they have committed the exercise of the powers of government. This chain may consist of one or more links, but in all cases it should be sufficiently strong and discernible.

To be left without guide or precedent was not the only difficulty in which the Convention were involved, by proposing to their constituents a plan of a confederate republic. They found themselves embarrassed with another, of peculiar delicacy and importance. I mean that of drawing a proper line between the national government and the governments of the several states. It was easy to discover a proper and satisfactory principle on the subject. Whatever object of government is confined, in its operation and effects, within the bounds of a particular state, should be considered as belonging to the government of that state; whatever object of government extends, in its operation or effects, beyond the bounds of a particular state, should be considered as belonging to the government of the United States. But though this principle be sound and satisfactory, its application to particular cases would be accompanied with much difficulty, because, in its application, room must be allowed for great discretionary latitude of construction of the principle. In order to lessen or remove the difficulty arising from discretionary construction on this subject, an enumeration of particular instances, in which the application of the principle ought to take place, has been attempted with much industry and care. It is only in mathematical science that a line can be described with mathematical precision. But I flatter myself that, upon the strictest investigation, the enumeration will be found to be safe and unexceptionable, and accurate, too, in as great a degree as accuracy can be expected in a subject of this nature. Particulars under this head will be more properly explained, when we descend to the minute view of the enumeration which is made in the proposed Constitution.

After all, it will be necessary that, on a subject so peculiarly delicate as this, much prudence, much candor, much moderation, and much liberality, should be exercised and displayed both by the federal government and by the governments of the several states. It is to be hoped that those virtues in government will be exercised and displayed, when we consider that the powers of the federal government and those of the state governments are drawn from sources equally pure. If a difference can be discovered between them, it is in favor of the federal government, because that government is founded on a representation of the *whole* Union; whereas the government of any particular state is founded only on the representation of a part, inconsiderable when compared with the whole. Is it not more reasonable to suppose that the counsels of the whole will embrace the interest of every part, than that the counsels of any part will embrace the interests of the whole?

I intend not, sir, by this description of the difficulties with which the Convention were surrounded, to magnify their skill or their merit in surmounting them, or to insinuate that any predicament in which the Convention stood should prevent the closest and most cautious scrutiny into the performance which they have exhibited to their constituents and to the world. My intention is of far other and higher aim — to evince, by the conflicts and difficulties which must arise from the many and powerful causes which I have enumerated, that it is hopeless and impracticable to form a constitution which, in every part, will be acceptable to every citizen, or even to every government, in the United States; and that all which can be expected is, to form such a constitution as, upon the whole, is the best that can possibly be obtained. Man and perfection! — a state and perfection! — an assemblage of states and perfection! Can we reasonably expect, however ardently we may wish, to behold the glorious union?

I can well recollect, though I believe I cannot convey to others, the impression which, on many occasions, was made by the difficulties which surrounded and pressed the Convention. The great undertaking sometimes seemed to be at a stand; at other times, its motion seemed to be retrograde. At the conclusion, however, of our work, many of the members expressed their astonishment at the success with which it terminated.

Having enumerated some of the difficulties which the Convention were obliged to encounter in the course of their proceedings, I shall next point out the end which they proposed to accomplish. Our wants, our talents, our affections, our passions, all tell us that we were made for a state of society. But a state of society could not be supported long or happily without some civil restraint. It is true that, in a state of nature, any one individual may act uncontrolled by others; but it is equally true that, in such a state, every other individual may act uncontrolled by him. Amidst this universal independence, the dissensions and animosities between interfering members of the society would be numerous and ungovernable. The consequence would be, that each member, in such a natural state, would enjoy less liberty, and suffer more interruption, than he would in a regulated society. Hence the universal introduction of governments of some kind or other into the social state. The liberty of every member is increased by this introduction; for each gains more by the limitation of the freedom of every other member, than he loses by the limitation of his own. The result is, that civil government is necessary to the perfection and happiness of man. In forming this government, and carrying it into execution, it is *essential* that the *interest* and *authority* of the whole community should be binding in every part of it.

The foregoing principles and conclusions are generally admitted to be just and sound with regard to the nature and formation of single governments, and the duty of submission to them. In some cases, they will apply, with much propriety and force, to states already formed. The advantages and necessity of civil government among individuals in society, are not greater or stronger than, in some situations and circumstances, are the advantages and necessity of a federal government among states. A natural and very important question now presents itself — Is such the situation, are such the circumstances, of the United States? A proper answer to this question will unfold some very interesting truths.

The United States may adopt any one of four different systems. They may become consolidated into one government, in which the separate existence of the states shall be entirely absolved. They may reject any plan of union or association, and act as separate and unconnected states.

They may form two or more confederacies. They may unite in one federal republic. Which of these systems ought to have been formed by the Convention? To support, with vigor, a single government over the whole extent of the United States, would demand a system of the most unqualified and the most unremitted despotism. Such a number of separate states, contiguous in situation, unconnected and disunited in government, would be, at one time, the prey of foreign force, foreign influence, and foreign intrigue; at another, the victims of mutual rage, rancor, and revenge. Neither of these systems found advocates in the late Convention. I presume they will not find advocates in this. Would it be proper to divide the United States into two or more confederacies? It will not be unadvisable to take a more minute survey of this subject. Some aspects under which it may be viewed are far from being, at first sight, uninviting. Two or more confederacies would be each more compact and more manageable than a single one extending over the same territory. By dividing the United States into two or more confederacies, the great collision of interests apparently or really different and contrary in the *whole extent* of their dominion, would be broken, and, in a great measure, disappear, in the several parts. But these advantages, which are discovered from certain points of view, are greatly overbalanced by inconveniences that will appear on a more accurate examination. Animosities, and perhaps wars, would arise from assigning the extent, the limits, and the rights, of the different confederacies. The expenses of governing would be multiplied by the number of federal governments. The danger resulting from foreign influence and mutual dissensions, would not, perhaps, be less great and alarming in the instance of different confederacies, than in the instance of different though more numerous unassociated states.

These observations, and many others that might be made on the subject, will be sufficient to evince that a division of the United States into a number of separate confederacies would probably be an unsatisfactory and an unsuccessful experiment. The remaining system which the American states may adopt, is a union of them under one confederate republic. It will not be necessary to employ much time, or many arguments, to show that this is the most eligible system that can be proposed. By adopting this system, the vigor and decision of a wide-spreading monarchy may be joined to the freedom and beneficence of a contracted republic. The extent of territory, the diversity of climate and soil, the number, and greatness, and connection, of lakes and rivers with which the United States are intersected and almost surrounded, — all indicate an enlarged government to be fit and advantageous for them. The principles and dispositions of their citizens indicate that, in this government, liberty shall reign triumphant. Such, indeed, have been the general opinions and wishes entertained since the era of independence. If those opinions and wishes are as well founded as they have been general, the late Convention were justified in proposing to their constituents *one* confederate republic, as the best system of a national government for the United States.

In forming this system, it was proper to give minute attention to the interest of all the parts; but there was a duty of still higher import — to feel and to show a predominating regard to the superior interests of the whole. If this great principle had not prevailed, the plan before us would never have made its appearance. The same principle that was so necessary in forming it, is equally necessary in our deliberations, whether we should reject or ratify it.

I make these observations with a design to prove and illustrate this great and important truth — that, in our decisions on the work of the late Convention, we should not limit our views and

regards to the state of Pennsylvania. The aim of the Convention was to form a system of good and efficient government, on the more extensive scale of the United States. In this, and in every other instance, the work should be judged with the same spirit with which it was performed. A principle of duty, as well as candor, demands this.

We have remarked that civil government is necessary to the perfection of society; we now remark that civil liberty is necessary to the perfection of civil government. Civil liberty is natural liberty itself, divested of only that part which, placed in the government, produces more good and happiness to the community than if it had remained in the individual. Hence it follows that civil liberty, while it resigns a part of natural liberty, retains the free and generous exercise of all the human faculties, so far as it is compatible with the public welfare.

In considering and developing the nature and end of the system before us, it is necessary to mention another kind of liberty, which has not yet, as far as I know, received a name. I shall distinguish it by the appellation of *federal liberty*. When a single government is instituted, the individuals of which it is composed surrender to it a part of their natural independence, which they before enjoyed as men, When a confederate republic is instituted, the communities of which it is composed surrender to it a part of their political independence, which they before enjoyed as states. The principles which directed, in the former case, what part of the natural liberty of the man ought to be given up, and what part ought to be retained, will give similar directions in the latter case. The states should resign to the national government that part, and that part only, of their political liberty, which, placed in that government, will produce more good to the whole than if it had remained in the several states. While they resign this part of their political liberty, they retain the free and generous exercise of all their other faculties, as states, so far as it is compatible with the welfare of the general and superintending confederacy.

Since *states*, as well as *citizens*, are represented in the Constitution before us, and form the objects on which that Constitution is proposed to operate, it was necessary to notice and define *federal* as well as *civil* liberty.

These general reflections have been made in order to introduce, with more propriety and advantage, a practical illustration of the end proposed to be accomplished by the late Convention.

It has been too well known — it has been too severely-felt — that the present Confederation is inadequate to the government, and to the exigencies, of the United States. The great struggle for Liberty in this country, should it be unsuccessful, will probably be the last one which she will have for her existence and prosperity in any part of the globe. And it must be confessed that this struggle has, in some of the stages of its progress, been attended with symptoms that foreboded no fortunate issue. To the iron hand of Tyranny, which was lifted up against her, she manifested, indeed, an intrepid superiority. She broke in pieces the fetters which were forged for her, and showed that she was unassailable by force. But she was environed with dangers of another kind, and springing from a very different source. While she kept her eye steadily fixed on the efforts of oppression, licentiousness was secretly undermining the rock on which she stood.

Need I call to your remembrance the *contrasted* scenes of which we have been witnesses? On the glorious conclusion of our conflict with Britain, what high expectations were formed concerning

us by others! What high expectations did we form concerning ourselves! Have those expectations been realized? No. What has been the cause? Did our citizens lose their perseverance and magnanimity? No. Did they become insensible of resentment and indignation at any high-handed attempt that might have been made to injure or enslave them? No. What, then, has been the cause? The truth is, we dreaded danger only on one side: this we manfully repelled. But, on another side, danger, not less formidable but more insidious, stole in upon us; and our unsuspecting tempers were not sufficiently attentive either to its approach or to its operations. Those whom foreign strength could not overpower, have well nigh become the victims of internal anarchy.

If we become a little more particular, we shall find that the foregoing representation is by no means exaggerated. When we had baffled all the menaces of foreign power, we neglected to establish among ourselves a government that would insure domestic vigor and stability. What was the consequence? The commencement of peace was the commencement of every disgrace and distress that could befall a people in a peaceful state. Devoid of *national power*, we could not prohibit the extravagance of our importations, nor could we derive a revenue from their excess. Devoid of national *importance*, we could not procure, for our exports, a tolerable sale at foreign markets. Devoid of national *credit*, we saw our public securities melt in the hands of the holders, like snow before the sun. Devoid of national *dignity*, we could not, in some instances, perform our treaties, on our part; and, in other instances, we could neither obtain nor compel the performance of them, on the part of others. Devoid of national *energy*, we could not carry into execution our own resolutions, decisions, or laws.

Shall I become more particular still? The tedious detail would disgust me. The years of languor are now over. We have felt the dishonor with which we have been covered — we have seen the destruction with which we have been threatened. We have penetrated to the causes of both, and when we have once discovered them, we have begun to search for the means of removing them. For the confirmation of these remarks, I need not appeal to an enumeration of facts. The proceedings of Congress, and of the several states, are replete with them. They all point out the weakness and insufficiency as the cause, and an *efficient* general government as the only cure, of our political distempers.

Under these impressions, and with these views, was the late Convention appointed; and under these impressions, and with these views, the late Convention met.

We now see the great end which they proposed to accomplish. It was to frame, for the consideration of their constituents, one federal and national constitution — a constitution that would produce the advantages of good, and prevent the inconveniences of bad government — a constitution whose beneficence and energy would pervade the whole Union, and bind and embrace the interests of every part — a constitution that would insure peace, freedom, and happiness, to the states and people of America.

We are now naturally led to examine the means by which they proposed to accomplish this end. This opens more particularly to our view the discussion before us. But, previously to our entering upon it, it will not be improper to state some general and leading principles of government, which will receive particular application in the course of our investigations.

There necessarily exists, in every government, a power from which there is no appeal, and which, for that reason, may be termed supreme, absolute, and uncontrollable. Where does this power reside? To this question writers on different governments will give different answers. Sir William Blackstone will tell you, that in Britain the power is lodged in the British Parliament; that the Parliament may alter the form of the government; and that its power is absolute, without control. The idea of a constitution, limiting and superintending the operations of legislative authority, seems not to have been accurately understood in Britain. There are, at least, no traces of practice conformable to such a principle. The British constitution is just what the British Parliament pleases. When the Parliament transferred legislative authority to Henry VIII., the act transferring could not, in the strict acceptation of the term, be called unconstitutional.

To control the power and conduct of the legislature, by an overruling constitution, was an improvement in the science and practice of government reserved to the American states.

Perhaps some politician, who has not considered with sufficient accuracy our political systems, would answer that, in our governments, the supreme power was vested in the constitutions. This opinion approaches a step nearer to the truth, but does not reach it. The truth is, that, in our governments, the supreme, absolute, and uncontrollable power *remains* in the people. As our constitutions are superior to our legislatures, so the people are superior to our constitutions. Indeed, the superiority, in this last instance, is much greater; for the people possess over our constitutions control in *act*, as well as right.

The consequence is, that the people may change the constitutions whenever and however they please. This is a right of which no positive institution can ever deprive them.

These important truths, sir, are far from being merely speculative. We, at this moment, speak and deliberate under their immediate and benign influence. To the operation of these truths we are to ascribe the scene, hitherto unparalleled, which America now exhibits to the world — a gentle, a peaceful, a voluntary, and a deliberate transition from one constitution of government to another. In other parts of the world, the idea of revolutions in government is, by a mournful and an indissoluble association, connected with the idea of wars, and all the calamities attendant on wars. But happy experience teaches us to view such revolutions in a very different light — to consider them only as progressive steps in improving the knowledge of government, and increasing the happiness of society and mankind.

Oft have I marked, with silent pleasure and admiration, the force and prevalence, through the United States, of the principle that the supreme power resides in the people, and that they never part with it. It may be called the *panacea* in politics. There can be no disorder in the community but may here receive a radical cure. If the error be in the legislature, it may be corrected by the constitution; if in the constitution, it may be corrected by the people. There is a remedy, therefore, for every distemper in government, if the people are not wanting to themselves; if they are wanting to themselves, there is no remedy. From their power, as we have seen, there is no appeal; of their error there is no superior principle of correction.

There are three simple species of government — monarchy, where the supreme power is in a single person; aristocracy, where the supreme power is in a select assembly, the members of

which either fill up, by election, the vacancies in their own body, or succeed to their places in it by inheritance, property, or in respect of some *personal* right or qualification; a republic or democracy, where the people at large *retain* the supreme power, and act either collectively or by representation.

Each of these species of government has its advantages and disadvantages.

The advantages of a *monarchy* are, strength, despatch, secrecy, unity of counsel. Its disadvantages are, tyranny, expense, ignorance of the situation and wants of the people, insecurity, unnecessary wars, evils attending elections or successions.

The advantages of *aristocracy* are, wisdom, arising from experience and education. Its disadvantages are, dissensions among themselves, oppression to the lower orders.

The advantages of *democracy* are, liberty, equality, cautious and salutary laws, public spirit, frugality, peace, opportunities of exciting and producing abilities of the best citizens. Its disadvantages are, dissensions, the delay and disclosure of public counsels, the imbecility of public measures, retarded by the necessity of a numerous consent.

A government may be composed of two or more of the simple forms above mentioned. Such is the British government. It would be an improper government for the United States, because it is inadequate to such an extent of territory, and because it is suited to an establishment of different orders of men. A more minute comparison between some parts of the British constitution, and some parts of the plan before us, may perhaps find a proper place in a subsequent period of our business.

What is the nature and kind of that government which has been proposed for the United States by the late Convention? In its principle, it is purely democratical. But that principle is applied in different forms, in order to obtain the advantages, and exclude the inconveniences, of the simple modes of government.

If we take an extended and accurate view of it. we shall find the streams of power running in different directions, in different dimensions, and at different heights — watering, adorning, and fertilizing, the fields and meadows through which their courses are led; hut if we trace them, we shall discover that they all originally flow from one abundant fountain.

In this Constitution, *all authority is derived from the people.*

Fit occasions will hereafter offer for particular remarks on the different parts of the plan. I have now to ask pardon of the house for detaining them so long.

WEDNESDAY, *November 28, 1787*, A. M. — Mr. WILSON. This will be a proper time for making an observation or two on what may be called the preamble to this Constitution. I had occasion, on a former day, to mention that the leading principle in the politics, and that which pervades the American constitutions, is, that the supreme power resides in the people. This Constitution, Mr. President, opens with a solemn and practical recognition of that principle: —

"We, the *people of the United States*, in order to form a more perfect union, establish justice, &c., *do* ordain and establish this Constitution for the United States of America." It is announced in *their* name — it receives its political existence from *their* authority: they ordain and establish. What is the necessary consequence? Those who ordain and establish have the power, if they think proper, to repeal and annul. A proper attention to this principle may, perhaps, give ease to the minds of some who have heard much concerning the necessity of a bill of rights.

Its establishment, I apprehend, has more force than a volume written on the subject. It renders this truth evident — that the people have a right to do what they please with regard to the government. I confess I feel a kind of pride in considering the striking difference between the foundation on which the liberties of this country are declared to stand in this Constitution, and the footing on which the liberties of England are said to be placed. The Magna Charta of England is an instrument of high value to the people of that country. But, Mr. President, from what source does that instrument derive the liberties of the inhabitants of that kingdom? Let it speak for itself. The king says, "*We have given and granted* to all archbishops, bishops, abbots, priors, earls, barons, and to all the freemen of this our realm, these liberties following, to be kept in our kingdom of England forever." When this was assumed as the leading principle of that government, it was no wonder that the people were anxious to obtain bills of rights, and to take every opportunity of enlarging and securing their liberties. But here, sir, the fee-simple remains in the people at large, and by this Constitution they do not part with it.

I am called upon to give a reason why the Convention omitted to add a bill of rights to the work before you. I confess, sir, I did think that, in point of propriety, the honorable gentleman ought first to have furnished some reasons to show such an addition to be necessary; it is natural to prove the affirmative of a proposition; and, if he had established the propriety of this addition, he might then have asked why it was not made.

I cannot say, Mr. President, what were the reasons of every member of that Convention for not adding a bill of rights. I believe the truth is, that such an idea never entered the mind of many of them. I do not recollect to have heard the subject mentioned till within about three days of the time of our rising; and even then, there was no direct motion offered for any thing of the kind. I may be mistaken in this; but as far as my memory serves me, I believe it was the case. A proposition to adopt a measure that would have supposed that we were throwing into the general government every power not expressly reserved by the people, would have been spurned at, in that house, with the greatest indignation. Even in a single government, if the powers of the people rest on the same establishment as is expressed in this Constitution, a bill of rights is by no means a necessary measure. In a government possessed of enumerated powers, such a measure would be not only unnecessary, but preposterous and dangerous. Whence comes this notion, that in the United States there is no security without a bill of rights? Have the citizens of South Carolina no security for their liberties? They have no bill of rights. Are the citizens on the eastern side of the Delaware less free, or less secured in their liberties, than those on the western side? The state of New Jersey has no bill of rights. The state of New York has no bill of rights. The states of Connecticut and Rhode Island have no bill of rights. I know not whether I have exactly enumerated the states who have not thought it necessary to add *a bill of rights* to their constitutions; but this enumeration, sir, will serve to show by experience, as well as principle, that, even in single governments, a bill of rights is not an essential or necessary measure. But in a

government consisting of enumerated powers, such as is proposed for the United States, a bill of rights would not only be unnecessary, but, in my humble judgment, highly imprudent. In all societies, there are many powers and rights which cannot be particularly enumerated. A bill of rights annexed to a constitution is *an enumeration of the powers* reserved. If we attempt an enumeration, every thing that is not enumerated is presumed to be given. The consequence is, that an imperfect enumeration would throw all implied power into the scale of the government, and the rights of the people would be rendered incomplete. On the other hand, an imperfect enumeration of the powers of government reserves all implied power to the people; and by that means the constitution becomes incomplete. But of the two, it is much safer to run the risk on the side of the constitution; for an omission in the enumeration of the powers of government is neither so dangerous nor important as an omission in the enumeration of the rights of the people.

Mr. President, as we are drawn into this subject, I beg leave to pursue its history a little farther. The doctrine and practice of declarations of rights have been borrowed from the conduct of the people of England on some remarkable occasions; but the principles and maxims, on which their government is constituted, are widely different from those of ours. I have already stated the language of Magna Charta. After repeated confirmations of that instrument, and after violations of it repeated equally often, the next step taken in this business was, when the petition of rights was presented to Charles I.

It concludes in this manner: "All of which they most humbly *pray* to be allowed, as their rights and liberties, according to the laws and statutes of this realm." (*8th Par. Hist.* 150.) One of the most material statutes of the realm was Magna Charta; so that we find they continue upon the old ground, as to the foundation on which they rest their liberties. It was not till the era of the revolution that the two houses assume a higher tone, and "*demand* and insist upon all the premises as their undoubted rights and liberties." (*Par. Deb.* 261.) But when the whole transaction is considered, we shall find that those rights and liberties are claimed only on the foundation of an original contract, supposed to have been made, at some former period, between the king and the people. (*1 Blackstone*, 233.)

But, in this Constitution, the citizens of the United States appear dispensing a part of their original power in what manner and what proportion they think fit. They never part with the whole; and they retain the right of recalling what they part with. When, therefore, they possess, as I have already mentioned, the fee-simple of authority, why should they have recourse to the minute and subordinate remedies, which can be necessary only to those who pass the fee, and reserve only a rent-charge?

To every suggestion concerning a bill of rights, the citizens of the United States may always say, WE reserve the right to do what we please.

I concur most sincerely with the honorable gentleman who was last up in one sentiment — that if our liberties will be insecure under this system of government, it will become our duty not to adopt, but to reject it. On the contrary, if it will secure the liberties of the citizens of America, — if it will not only secure their liberties, but procure them happiness, — it becomes our duty, on the other hand, to assent to and ratify it. With a view to conduct us safely and gradually to the determination of that important question, I shall beg leave to notice some of the objections that

have fallen from the honorable gentleman from Cumberland, (Whitehill.) But, before I proceed, permit me to make one general remark. Liberty has a formidable enemy on each hand; on one there is tyranny, on the other licentiousness. In order to guard against the latter, proper powers ought to be given to government: in order to guard against the former, those powers ought to be properly distributed. It has been mentioned, and attempts have been made to establish the position, that the adoption of this Constitution will necessarily be followed by the annihilation of all the state governments. If this was a necessary consequence, the objection would operate in my mind with exceeding great force. But, sir, I think the inference is rather unnatural, that a government will produce the annihilation of others, upon the very existence of which its own existence depends. Let us, sir, examine this Constitution, and mark its proportions and arrangements. It is composed of three great constituent parts — the legislative department, the executive department, and the judicial department. The legislative department is subdivided into two branches — the House of Representatives and the Senate. Can there be a House of Representatives in the general government, after the state governments are annihilated? Care is taken to express the character of the electors in such a manner, that even the popular branch of the general government cannot exist unless the governments of the states continue in existence.

How do I prove this? By the regulation that is made concerning the important subject of giving suffrage. Article 1, section 2: "And the electors in each state shall have the qualifications for electors of the most numerous branch of the state legislature." Now, sir, in order to know who are qualified to be electors of the House of Representatives, we are to inquire who are qualified to be electors of the legislature of each state. If there be no legislature in the states, there can be no electors of them: if there be no such electors, there is no criterion to know who are qualified to elect members of the House of Representatives. By this short, plain deduction, the existence of state legislatures is proved to be essential to the existence of the general government.

Let us proceed now to the second branch of the legislative department. In the system before you, the senators, sir, — those tyrants that are to devour the legislatures of the states, — are to be chosen by the state legislatures themselves. Need any thing more be said on this subject? So far is the principle of each state's retaining the power of self-preservation from being weakened or endangered by the general government, that the Convention went further, perhaps, than was strictly proper, in order to secure it; for, in this second branch of the legislature, each state, without regard to its importance, is entitled to an equal vote. And in the articles respecting amendments of this Constitution, it is provided "That no state, without its consent, shall be deprived of its equal suffrage in the Senate."

Does it appear, then, that provision for the continuance of the state governments was neglected, in framing this Constitution? On the contrary, it was a favorite object in the Convention to secure them.

The President of the United States is to be chosen by electors appointed in the different states, in such manner as the legislature shall direct. Unless there be legislatures to appoint electors, the President cannot be chosen: the idea, therefore, of the existing government of the states, is presupposed in the very mode of constituting the legislative and the executive departments of the general government. The same principle will apply to the judicial department. The judges are to be nominated by the President, and appointed by him, with the advice and consent of the Senate.

This shows that the judges cannot exist without the President and Senate. I have already shown that the President and Senate cannot exist without the existence of the state legislatures. Have I misstated any thing? Is not the evidence indisputable, that the state governments will be preserved, or that the general government must tumble amidst their ruins? It is true, indeed, sir, although it presupposes the existence of state governments, yet this Constitution does not suppose them to be the sole power to be respected.

In the Articles of Confederation, the people are unknown, but in this plan they are represented; and in one of the branches of the legislature, they are represented immediately by persons of their own choice.

I hope these observations on the nature and formation of this system are seen in their full force; many of them were so seen by some gentlemen of the late Convention. After all this, could it have been expected that assertions such as have been hazarded on this floor would have been made — "that it was the business of their deliberations to destroy the state governments; that they employed four months to accomplish this object; and that such was their intentions"? That honorable gentleman may be better qualified to judge of their intentions than themselves. I know my own; and as to those of the other members, I believe that they have been very improperly and unwarrantably represented. Intended to destroy! Where did *he* obtain his information? Let the tree be judged of by its fruit.

Mr. President, the only proof that is attempted to be drawn from the work itself, is that which has been urged from the fourth section of the first article. I will read it: "The times, places, and manner, of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators."

And is this a proof that it was intended to carry on this government after the state governments should be dissolved and abrogated? This clause is not only a proper, but necessary one. I have already shown what pains have been taken in the Convention to secure the preservation of the state governments. I hope, sir, that it was no crime to sow the seed of self-preservation in the federal government; without this clause, it would not possess self-preserving power. By this clause, the times, places, and manner of holding elections, shall be prescribed in each state, by the legislature thereof. I think it highly proper that the federal government should throw the exercise of this power into the hands of the state legislatures; but not that it should be placed there entirely without control.

If the Congress had it not in their power to make regulations, what might be the consequences? Some states might make no regulations at all on the subject. And shall the existence of the House of Representatives, the immediate representation of the people in Congress, depend upon the will and pleasure of the state governments? Another thing may possibly happen; I don't say it will; but we were obliged to guard even against possibilities, as well as probabilities. A legislature may be willing to make the necessary regulations; yet the minority of that legislature may, by absenting themselves, break up the house, and prevent the execution of the intention of the majority. I have supposed the case, that some state governments may make no regulations at all; it is possible, also, that they may make improper regulations. I have heard it surmised by the

opponents of this Constitution, that the Congress may order the election for Pennsylvania to be held at Pittsburg, and thence conclude that it would be improper for them to have the exercise of the power. But suppose, on the other hand, that the assembly should order an election to be held at Pittsburg; ought not the general government to have the power to alter such improper election of one of its own constituent parts? But there is an additional reason still that shows the necessity of this provisionary clause. The members of the Senate are elected by the state legislatures. If those legislatures possessed, uncontrolled, the power of prescribing the times, places, and manner, of electing members of the House of Representatives, the members of one branch of the general legislature would be the tenants at will of the electors of the other branch; and the general government would lie prostrate at the mercy of the legislatures of the several states.

I will ask, now, Is the inference fairly drawn, that the general government was intended to swallow up the state governments? Or was it calculated to answer such end? Or do its framers deserve such censure from honorable gentlemen? We find, on examining this paragraph, that it contains nothing more than the maxims of self-preservation, so abundantly secured by this Constitution to the individual states. Several other objections have been mentioned. I will not, at this time, enter into a discussion of them, though I may hereafter take notice of such as have any show of weight; but I thought it necessary to offer, at this time, the observations I have made, because I consider this as an important subject, and think the objection would be a strong one, if it was well founded.

FRIDAY, *November 30, 1787, A. M.* — Mr. WILSON. It is objected that the number of members in the House of Representatives is too small. This is a subject somewhat embarrassing, and the Convention who framed the article felt the embarrassment. Take either side of the question, and you are necessarily led into difficulties. A large representation, sir, draws along with it a great expense. We all know that expense is offered as an objection to this system of government; and certainly, had the representation been greater, the clamor would have been on that side, and perhaps with some degree of justice. But the expense is not the sole objection; it is the opinion of some writers, that a deliberative body ought not to consist of more than one hundred members. I think, however, that there might be safety and propriety in going beyond that number; but certainly there is some number so large that it would be improper to increase them beyond it. The British House of Commons consists of upwards of five hundred. The senate of Rome consisted, it is said, at some times, of one thousand members. This last number is certainly too great.

The Convention endeavored to steer a middle course; and, when we consider the scale on which they formed their calculation, there are strong reasons why the representation should not have been larger. On the ratio that they have fixed, of one for every thirty thousand, and according to the generally received opinion of the increase of population throughout the United States, the present number of their inhabitants will be doubled in twenty-five years, and according to that progressive proportion, and the ratio of one member for thirty thousand inhabitants, the House of Representatives will, within a single century, consist of more than six hundred members. Permit me to add a further observation on the numbers — that a large number is not so necessary in this case as in the cases of state legislatures. In them there ought to be a representation sufficient to declare the situation of every county, town, and district; and if of every individual, so much the better, because their legislative powers extend to the particular interest and convenience of each. But in the general government, its objects are enumerated, and are not confined, in their causes

or operations, to a county, or even to a single state. No one power is of such a nature as to require the minute knowledge of situations and circumstances necessary in state governments possessed of general legislative authority. These were the reasons, sir, that, I believe, had influence on the Convention, to agree to the number of thirty thousand; and when the inconveniences and conveniences, on both sides, are compared, it would be difficult to say what would be a number more unexceptionable.

SATURDAY, *December 1, 1787*, A. M. — Mr. WILSON. The secret is now disclosed, and it is discovered to be a dread, that the boasted *state sovereignties* will, under this system, be disrobed of part of their power. Before I go into the examination of this point, let me ask one important question. Upon what principle is it contended that the sovereign power resides in the state governments? The honorable gentleman has said truly, that there can be no subordinate sovereignty. Now, if there cannot, my position is, that the sovereignty resides in the people; they have not parted with it; they have only dispensed such portions of power as were conceived necessary for the public welfare. This Constitution stands upon this broad principle. I know very well, sir, that the people have hitherto been shut out of the federal government; but it is not meant that they should any longer be dispossessed of their rights. In order to recognize this leading principle, the proposed system sets out with a declaration that its existence depends upon the supreme authority of the people alone. We have heard much about a consolidated government. I wish the honorable gentleman would condescend to give us a definition of what he meant by it. I think this the more necessary, because I apprehend that the term, in the numerous times it has been used, has not always been used in the same sense. It may be said, and I believe it has been said, that a consolidated government is such as will absorb and destroy the governments of the several states. If it is taken in this view, the plan before us is not a consolidated government, as I showed on a former day, and may, if necessary, show further on some future occasion. On the other hand, if it is meant that the general government will take from the state governments their power in some particulars, it is confessed, and evident, that this will be its operation and effect.

When the principle is once settled that *the people* are the source of authority, the consequence is, that they may take from the subordinate governments powers with which they have hitherto trusted them, and place those powers in the general government, if it is thought that there they will be productive of more good. They can distribute one portion of power to the more contracted circle, called *state governments*; they can also furnish another proportion to the government of the United States. Who will undertake to say, as a state officer, that the people may not give to the general government what powers, and for what purposes, they please? How comes it, sir, that these state governments dictate to their superiors — to the majesty of the people? When I say the *majesty of the people*, I mean the thing, and not a mere compliment to them. The honorable gentleman went further, and said that the state governments were kept out of this government altogether. The truth is, — and it is a leading principle in this system, — that not the states only, but the people also, shall be here represented. And if this is a crime, I confess the general government is chargeable with it; but I have no idea that a safe system of power in the government, sufficient to manage the general interest of the United States, could be drawn from any other source, or vested in any other authority, than that of the people at large; and I consider this authority as the rock on which this structure will stand. If this principle is unfounded, the system must fall. If the honorable gentlemen, before they undertake to oppose

this principle, will show that the people have parted with their power to the state governments, then I confess I cannot support this Constitution. It is asked, Can there be *two taxing powers*? Will the people submit to two taxing powers? I think they will, when the taxes are required for the public welfare, by persons appointed immediately by their fellow-citizens.

But I believe this doctrine is a very disagreeable one to some of the state governments. All the objects that will furnish an increase of revenue are eagerly seized by them. Perhaps this will lead to the reason why a state government, when she was obliged to pay only about an eighth part of the loan-office certificates, should voluntarily undertake the payment of about one third part of them. This power of taxation will be regulated in the general government upon equitable principles. No state can have more than her just proportion to discharge; no longer will government, be obliged to assign her funds for the payment of debts she does not owe. Another objection has been taken, that the judicial powers are coextensive with the objects of the national government. As far as I can understand the idea of magistracy in every government, this seems to be a proper arrangement; the judicial department is considered as a part of the executive authority of government. Now, I have no idea that the authority should be restricted so as not to be able to perform its functions with full effect. I would not have the legislature sit to make laws which cannot be executed. It is not meant here that the laws shall be a dead letter: it is meant that they shall be carefully and duly considered before they are enacted, and that then they shall be honestly and faithfully executed. This observation naturally leads to a more particular consideration of the government before us. In order, sir, to give permanency, stability, and security to any government, I conceive it of essential importance, that its legislature should be restrained; that there should not only be what we call a *passive*, but an *active* power over it, for, of all kinds of despotism, this is the most dreadful, and the most difficult to be corrected. With how much contempt have we seen the authority of the people treated by the legislature of this state! and how often have we seen it making laws in one session, that have been repealed the next, either on account of the fluctuation of party, or their own impropriety.

This could not have been the case in a compound legislature; it is therefore proper to have efficient restraints upon the legislative body. These restraints arise from different sources. I will mention some of them. In this Constitution, they will be produced, in a very considerable degree, by a *division of the power* in the legislative body itself. Under this system, they may arise likewise from the interference of those officers who will be introduced into the executive and judicial departments. They may spring also from another source — the election by the people; and finally, under this Constitution, they may proceed from the great and last resort — from the *people* themselves. I say, under this Constitution, the legislature may be restrained, and kept within its prescribed bounds, by the interposition of the judicial department. This I hope, sir, to explain clearly and satisfactorily. I had occasion, on a former day, to state that the power of the Constitution was paramount to the power of the legislature acting under that Constitution; for it is possible that the legislature, when acting in that capacity, may transgress the bounds assigned to it, and an act may pass, in the usual *mode*, notwithstanding that transgression; but when it comes to be discussed before *the judges*, — when they consider its principles, and find it to be incompatible with the superior power of the Constitution, — it is their duty to pronounce it *void*; and judges independent, and not obliged to look to every session for a continuance of their salaries, will behave with intrepidity, and refuse to the act the sanction of judicial authority. In

the same manner, the President of the United States could shield himself, and refuse to carry into effect an act that *violates* the Constitution.

In order to secure the President from any dependence upon the legislature as to his salary, it is provided that he shall, at stated times, receive for his services a compensation that shall neither be increased nor diminished during the period for which he shall have been elected, and that he shall not receive, within that period, any other emolument from the United States, or any of them.

To secure to the judges this independence, it is ordered that they shall receive for their services a compensation which shall not be diminished during their continuance in office. The Congress may be restrained by the election of its constituent parts. If a legislature shall make a law contrary to the Constitution, or oppressive to the people, they have it in their power, every second year, in one branch, and every sixth year, in the other, to displace the men who act thus inconsistently with their duty; and if this is not sufficient, they have still a further power; they may assume into their own hands the alteration of the Constitution itself; they may revoke the lease when the conditions are broken by the tenant. But the most useful restraint upon the legislature, because it operates constantly, arises from the division of its power among two branches, and from the qualified negative of the President upon both. As this government is formed, there are two sources from which the representation is drawn, though they both ultimately flow from the people. *States* now exist, and others will come into existence; it was thought proper that they should be represented in the general government. But gentlemen will please to remember this Constitution was not framed merely for the states; it was framed for the *people* also; and the popular branch of the Congress will be the objects of their immediate choice.

The two branches will serve as checks upon each other; they have the same legislative authorities, except in one instance. Money bills must originate in the House of Representatives. The Senate can pass no law without the concurrence of the House of Representatives; nor can the House of Representatives without the concurrence of the Senate. I believe, sir, that the observation which I am now going to make will apply to mankind in every situation: they will act with more caution, and perhaps more integrity, if their proceedings are to be under the inspection and control of another, than when they are not. From this principle, the proceedings of Congress will be conducted with a degree of circumspection not common in single bodies, where nothing more is necessary to be done than to carry the business through amongst themselves, whether it be right or wrong. In compound legislatures, every object must be submitted to a distinct body, not influenced by the arguments, or warped by the prejudices, of the other; and I believe that the persons who will form the Congress will be cautious in running the risk, *with a bare majority*, of having the negative of the President put on their proceedings. As there will be more circumspection in forming the laws, so there will be more stability in the laws when made. Indeed, one is the consequence of the other; for what has been well considered, and founded in good sense, will in practice be useful and salutary, and, of consequence, will not be liable to be soon repealed. Though two bodies may not possess more wisdom or patriotism than what may be found in a single body, yet they will necessarily introduce a greater degree of precision. An indigested and inaccurate code of laws is one of the most dangerous things that can be introduced into any government. The force of this observation is well known by every gentleman who has

attended to the laws of this state. This, sir, is a very important advantage, that will arise from this division of the legislative authority.

I will proceed now to take some notice of a still further restraint upon the legislature — I mean the qualified *negative* of the President. I think this will be attended with very important advantages for the security and happiness of the people of the United States. The President, sir, will not be a stranger to our country, to our laws, or to our wishes. He will, under this Constitution, be placed in office as the President of the whole Union, and will be chosen in such a manner that he may be justly styled *the man of the people*. Being elected by the different parts of the United States, he will consider himself as not particularly interested for any one of them, but will watch over the whole with paternal care and affection. This will be the natural conduct to recommend himself to those who placed him in that high chair, and I consider it as a very important advantage, that such a man must have every law presented to him, before it can become binding on the United States. He will have before him the fullest information of our situation; he will avail himself not only of records and official communications, foreign and domestic, but he will have also the advice of the executive officers in the different departments of the general government.

If, in consequence of this information and advice, he exercise the authority given to him, the effect will not be lost. He returns his *objections*, together with the bill; and, unless *two thirds* of both branches of the legislature are now found to approve it, it does not become a law. But, even if his objections do not prevent its passing into a law, they will not be useless; they will be kept, together with the law, and, in the archives of Congress, will be valuable and practical materials, to form the minds of posterity for legislation. If it is found that the law operates inconveniently, or oppressively, the people may discover in the President's objections the source of that inconvenience or oppression. Further, sir, when objections shall have been made, it is provided, in order to secure the greatest degree of caution and responsibility, that the *votes* of both houses shall be determined by *yeas* and *nays*, and the names of the persons voting for and against the bill shall be entered in the journal of each house respectively. This much I have thought proper to say, with regard to the distribution of the legislative authority, and the restraints under which it will be exercised.

The gentleman in opposition strongly insists that the general clause at the end of the eighth section gives to Congress a power of legislating generally; but I cannot conceive by what means he will render the words susceptible of that expansion. Can the words, "The Congress shall have power to make all laws which shall be necessary and proper to carry into execution the foregoing powers," be capable of giving them general legislative power? I hope that it is not meant to give to Congress merely an illusive show of authority, to deceive themselves or constituents any longer. On the contrary, I trust it is meant that they shall have the power of carrying into effect the laws which they shall make under the powers vested in them by this Constitution. In answer to the gentleman from Fayette, (Mr. Smilie,) on the subject of the press, I beg leave to make an observation. It is very true, sir, that this Constitution says nothing with regard to that subject, nor was it necessary; because it will be found that there is given to the general government no power whatsoever concerning it; and no law, in pursuance of the Constitution, can possibly be enacted to destroy that liberty.

I heard the honorable gentleman make this general assertion, that the Congress was certainly vested with power to make such a law; but I would be glad to know by what part of this Constitution such a power is given? Until that is done, I shall not enter into a minute investigation of the matter, but shall at present satisfy myself with giving an answer to a question that has been put. It has been asked, If a law should be made to punish libels, and the judges should proceed under that law, what chance would the printer have of an acquittal? And it has been said he would drop into a den of devouring monsters!

I presume it was not in the view of the honorable gentleman to say there is no such thing as a libel, or that the writers of such ought not to be punished. The idea of the liberty of the press is not carried so far as this in any country. What is meant by the liberty of the press is, that there should be no antecedent restraint upon it; but that every author is responsible when he attacks the security or welfare of the government, or the safety, character, and property of the individual.

With regard to attacks upon the public, the mode of proceeding is by a prosecution. Now, if a libel is written, it must be within some one of the United States, or the district of Congress. With regard to that district, I hope it will take care to preserve this as well as the other rights of freemen; for, whatever district Congress may choose, the session of it cannot be completed without the consent of its inhabitants. Now, sir, if this *libel* is to be tried, it must be tried where the offence was committed; for, under this Constitution, as declared in the 2d section of the 3d article, the trial must be held in the state; therefore, on this occasion, it must be tried where it was published, if the indictment is for publishing; and it must be tried likewise by a jury of that state. Now, I would ask, is the person prosecuted in a worse situation under the general government, even if it had the power to make laws on this subject, than he is at present under the state government? It is true, there is no particular regulation made, to have the jury come from the body of the county in which the offence was committed; but there are some states in which this mode of collecting juries is contrary to their established custom, and gentlemen ought to consider that this Constitution was not meant merely for Pennsylvania. In some states, the juries are not taken from a single county. In Virginia, the sheriff, I believe, is not confined even to the inhabitants of the state, but is at liberty to take any man he pleases, and put him on the jury. In Maryland, I think, a set of jurors serve for the whole western shore, and another for the eastern shore.

I beg to make one remark on what one gentleman has said, with respect to amendments being proposed to this Constitution. To whom are the Convention to make report of such amendments? He tells you, to the present Congress. I do not wish to report to that body, the representatives only of the state governments; they may not be disposed to admit the people into a participation of their power. It has also been supposed that a wonderful unanimity subsists among those who are enemies to the proposed system. On this point I also differ from the gentleman who made the observation. I have taken every pains in my power, and read every publication I could meet with, in order to gain information; and, as far as I have been able to judge, the opposition is inconsiderable and inconsistent. Instead of agreeing in their objections, those who make them bring forward such as are diametrically opposite. On one hand, it is said that the representation in Congress is too small; on the other, it is said to be too numerous. Some think the authority of the Senate too great; some, that of the House of Representatives; and some, that of both. Others draw

their fears from the powers of the President; and, like the iron race of *Cadmus*, these opponents rise only to destroy each other.

MONDAY, *December 3*, 1787, A. M. — Mr. WILSON. Take detached parts of any system whatsoever, in the manner these gentlemen have hitherto taken this Constitution, and you will make it absurd and inconsistent with itself. I do not confine this observation to human performances alone; it will apply to divine writings. An anecdote, which I have heard, exemplifies this observation. When Sternhold and Hopkins's version *of* the Psalms was usually sung in the churches, a line was first read by the clerk, and then sung by the congregation. A sailor had stepped in, and heard the clerk read this line —

"The Lord will come, and he will not — — "

the sailor stared, and when the clerk read the next line —

"Keep silence, but speak out — — "

the sailor left the church, thinking the people were not in their senses.

This story may convey an idea of the treatment of the plan before you; for, although it contains sound sense when connected, yet, by the detached manner of considering it, it appears highly absurd.

Much fault has been found with the mode of expression used in the 1st clause of the 9th section of the 1st article. I believe I can assign a reason why that mode of expression was used, and why the term *slave* was *not* admitted in this *Constitution*; and as to the manner of laying taxes, this is not the first time that the subject has come into the view of the United States, and of the legislatures of the several states. The gentleman, (Mr. Findley) will recollect that, in the present Congress, the quota of the federal debt, and general expenses, was to be in proportion to the value of land, and other enumerated property, within states. After trying this for a number of years, it was found, on all hands, to be a mode that could not be carried into execution. Congress were satisfied of this; and, in the year 1783, recommended, in conformity with the powers they possessed under the Articles of Confederation, that the quota should be according to the number of free people, including those bound to servitude, and excluding Indians not taxed. These were the expressions used in 1783; and the fate of this recommendation was similar to all their other resolutions. It was not carried into effect, but it was adopted by no fewer than eleven out of thirteen states; and it cannot but be matter of surprise to hear gentlemen, who agreed to this very mode of expression at that time, come forward and state it as an objection on the present occasion. It was natural, sir, for the late Convention to adopt the mode after it had been agreed to by eleven states, and to use the expression which they found had been received as unexceptionable before.

With respect to the clause restricting Congress from prohibiting the *migration or importation of such persons* as any of the states now existing shall think proper to admit, prior to the year 1808, the honorable gentleman says that this clause is not only dark, but intended to grant to Congress, for that time, the power to admit the importation of *slaves*. No such thing was intended. But I

will tell you what was done, and it gives me high pleasure that so much was done. Under the present Confederation, the states may admit the importation of slaves as long as they please; but by this article, after the year 1808, the Congress will have power to prohibit such importation, notwithstanding the disposition of any state to the contrary. I consider this as laying the foundation for banishing slavery out of this country; and though the period is more distant than I could wish, yet it will produce the same kind, gradual change, which was pursued in Pennsylvania. It is with much satisfaction I view this power in the general government, whereby they may lay an interdiction on this reproachful trade: but an immediate advantage is also obtained; for a tax or duty may be imposed on such importation, not exceeding ten dollars for each person; and this, sir, operates as a partial prohibition; it was all that could be obtained. I am sorry it was no more; but from this I think there is reason to hope, that yet a few years, and it will be prohibited altogether; and in the mean time, the *new* states which are to be formed will be under *the control* of Congress in this particular, and slaves will never be introduced amongst them. The gentleman says that it is unfortunate in another point of view: it means to prohibit the introduction of white people from Europe, as this tax may deter them from coming amongst us. A little impartiality and attention will discover the care that the Convention took in selecting their language. The words are, "the migration or importation of such persons, &c., shall not be prohibited by Congress prior to the year 1808, but a tax or duty may be imposed on such importation." It is observable here that the term *migration* is dropped, when a tax or duty is mentioned, so that Congress have power to impose the tax only on those imported.

TUESDAY, *December 4*, 1787, A. M. — Mr. WILSON. I shall take this opportunity of giving an answer to the objections already urged against the Constitution; I shall then point out some of those qualities that entitle it to the attention and approbation of this Convention; and, after having done this, I shall take a fit opportunity of stating the consequences which, I apprehend, will result from rejecting it, and those which will probably result from its adoption. I have given the utmost attention to the debates, and the objections that, from time to time, have been made by the three gentlemen who speak in opposition. I have reduced them to some order, perhaps not better than that in which they were introduced. I will state them; they will be in the recollection of the house, and I will endeavor to give an answer to them: in that answer, I will interweave some remarks, that may tend to elucidate the subject.

A good deal has already been said concerning *a bill of rights*. I have stated, according to the best of my recollection, all that passed in Convention relating to that business. Since that time, I have spoken with a gentleman, who has not only his memory, but full notes that he had taken in that body, and he assures me that, upon this subject, no direct motion was ever made at all; and certainly, before we heard this so violently supported out of doors, some pains ought to have been taken to have tried its fate within; but the truth is, a bill of rights would, as I have mentioned already, have been not only unnecessary, but improper. In some governments, it may come within the gentleman's idea, when he says it can do no harm; but even in these governments, you find bills of rights do not uniformly obtain; and do those states complain who have them not? Is it a maxim in forming governments, that not only all the powers which are given, but also that all those which are reserved, should be enumerated? I apprehend that the powers given and reserved form the whole rights of the people, as men and as citizens. I consider that there are very few who understand the whole of these rights. All the political writers, from *Grotius* and *Puffendorf* down to *Vattel*, have treated on this subject; but in no one of those books,

nor in the aggregate of them all, can you find a complete enumeration of rights appertaining to the people as men and as citizens.

There are two kinds of government — that where general power is intended to be given to the legislature, and that where the powers are particularly enumerated. In the last case, the implied result is, that nothing more is intended to be given than what is so enumerated, unless it results from the nature of the government itself. On the other hand, when general legislative powers are given, then the people part with their authority, and, on the gentleman's principle of government, retain nothing. But in a government like the proposed one, there can be no necessity for a bill of rights, for, on my principle, the people never part with their power. Enumerate all the rights of men! I am sure, sir, that no gentleman in the late Convention would have attempted such a thing. I believe the honorable speakers in opposition on this floor were members of the assembly which appointed delegates to that Convention; if it had been thought proper to have sent them into that body, how luminous would the dark conclave have been! — so the gentleman has been pleased to denominate that body. Aristocrats as they were, they pretended not to define the rights of those who sent them there. We ask, repeatedly, What harm could the addition of a bill of rights do? If it can do no good, I think that a sufficient reason to refuse having any thing to do with it. But to whom are we to report this bill of rights, if we should adopt it? Have we authority from those who sent us here to make one?

It is true, we may propose as well as any other private persons; but how shall we know the sentiments of the citizens of this state and of the other states? Are we certain that any one of them will agree with our definitions and enumerations?

In the second place, we are told that there is no check upon the government but the people. It is unfortunate, sir, if their superintending authority is allowed as a check; but I apprehend that, in the very construction of this government, there are numerous checks. Besides those expressly enumerated, the two branches of the legislature are mutual checks upon each other. But this subject will be more properly discussed when we come to consider the form of the government itself; and then I mean to show the reason why the right of *habeas corpus* was secured by a particular declaration in its favor.

In the third place, we are told that there is no security for the rights of conscience. I ask the honorable gentleman, what part of this system puts it in the power of Congress to attack those rights? When there is no power to attack, it is idle to prepare the means of defence.

After having mentioned, in a cursory manner, the foregoing objections, we now arrive at the leading ones against the proposed system.

The very manner of introducing this Constitution, by the recognition of the authority of the people, is said to change the principle of the present Confederation, and to introduce a *consolidating* and absorbing government.

In this confederated republic, the sovereignty of the states, it is said, is not preserved. We are told that there cannot be two sovereign powers, and that a subordinate sovereignty is no sovereignty.

It will be worth while, Mr. President, to consider this objection at large. When I had the honor of speaking formerly on this subject, I stated, in as concise a manner as possible, the leading ideas that occurred to me, to ascertain where the supreme and sovereign power resides. It has not been, nor, I presume, will it be denied, that somewhere there is, and of necessity must be, a supreme, absolute, and uncontrollable authority. This, I believe, may justly be termed the *sovereign* power; for, from that gentleman's (Mr. Findley) account of the matter, it cannot be sovereign unless it is supreme; for, says he, a subordinate sovereignty is no sovereignty at all. I had the honor of observing, that, if the question was asked, where the supreme power resided, different answers would be given by different writers. I mentioned that Blackstone will tell you that, in Britain, it is lodged in the British Parliament; and I believe there is no writer on this subject, on the other side of the Atlantic, but supposed it to be vested in that body. I stated, further, that, if the question was asked of some politician, who had not considered the subject with sufficient accuracy, where the supreme power resided in our governments, he would answer, that it was vested in the state constitutions. This opinion approaches near the truth, but does not reach it; for the truth is, that the supreme, absolute, and uncontrollable authority *remains* with the people. I mentioned, also, that the practical recognition of this truth was reserved for the honor of this country. I recollect no constitution founded on this principle; but we have witnessed the improvement, and enjoy the happiness of seeing it carried into practice. The great and penetrating mind of *Locke* seems to be the only one that pointed towards even the theory of this great truth.

When I made the observation that some politicians would say the supreme power was lodged in our state constitutions, I did not suspect that the honorable gentleman from Westmoreland (Mr. Findley) was included in that description;

but I find myself disappointed; for I imagined his opposition would arise from another consideration. His position is, that the supreme power resides in the states, as governments; and mine is, that it *resides* in the people, as the fountain of government; that the people have not — that the people meant not — and that the people ought not — to part with it to any government whatsoever. In their hands it remains secure. They can delegate it in such proportions, to such bodies, on such terms, and under such limitations, as they think proper. I agree with the members in opposition, that there cannot be two sovereign powers on the same subject.

I consider the people of the United States as forming one great community; and I consider the people of the different states as forming communities, again, on a lesser scale. From this great division of the people into distinct communities, it will be found necessary that different proportions of legislative powers should be given to the governments, according to the nature, number, and magnitude of their objects.

Unless the people are considered in these two views, we shall never be able to understand the principle on which this system was constructed. I view the states as made *for* the people, as well as by them, and not the people as made for the states; the people, therefore, have a right, whilst enjoying (he undeniable powers of society, to form either a general government, or state governments, in what manner they please, or to accommodate them to one another, and by this means preserve them all. This, I say, is the inherent and unalienable right of the people; and as an illustration of it, I beg to read a few words from the Declaration of Independence, made by the representatives of the United States, and recognized by the whole Union.

"We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, *governments* are instituted among men, *deriving their just powers from the consent of the governed*; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and institute new government, laying its foundation on such principles, and organizing its powers in such forms, as to them shall seem most likely to effect their safety and happiness."

This is the broad basis on which our independence was placed: on the same certain and solid foundation this system is erected.

*State sovereignty*, as it is called, is far from being able to support its weight. Nothing less than the authority of the people could either support it or give it efficacy. I cannot pass over this subject without noticing the different conduct pursued by the late federal Convention, and that observed by the Convention which framed the Constitution of Pennsylvania. On that occasion you find an attempt made to deprive the people of this right, so lately and so expressly asserted in the Declaration of Independence. We are told, in the preamble to the declaration of rights, and frame of government, that *we* "do, by virtue of the authority vested in *us*, ordain, declare, and establish, the following declaration of rights and frame of government, to be the Constitution of this commonwealth, and to remain in force therein matterd, except in such articles as shall hereafter, on experience, be found to require improvement, and which shall, by the same authority of the people, fairly delegated *as this frame of government directs*." — An honorable gentleman (Mr. Chambers) was well warranted in saying that all that could be done was done, to cut off the people from the right of amending; for it cannot be amended by any other mode than that which it directs; then, any number more than one third may control any number less than two thirds.

But I return to my general reasoning. My position is, sir, that, in this country, the supreme, absolute, and uncontrollable power resides in the people at large; that they have vested certain proportions of this power in the state governments; but that the fee-simple continues, resides, and remains, with the body of the people. Under the practical influence of this great truth, we are now sitting and deliberating, and under its operation, we can sit as calmly and deliberate as coolly, in order to change a constitution, as a legislature can sit and deliberate under the power of a constitution, in order to alter or amend a law. It is true, the exercise of this power will not probably be so frequent, nor resorted to on so many occasions, in one case as in the other; but the recognition of the principle cannot fail to establish it more firmly. But, because this recognition is made in the proposed Constitution, an exception is taken to the whole of it; for we are told it is a violation of the present Confederation — *a Confederation of sovereign states*. I shall not enter into an investigation of the present Confederation, but shall just remark that its principle is not the principle of free governments. The people of the United States are not, as such, represented in the present Congress; and, considered even as the component parts of the several states, they are not represented in proportion to their numbers and importance.

In this place I cannot help remarking on the general inconsistency which appears between one part of the gentleman's objections and another. Upon the principle we have now mentioned, the honorable gentleman contended that the powers ought to flow from the states; and that all the

late Convention had to do, was to give additional powers to Congress. What is the present form of Congress? A single body, with some legislative, but little executive, and no effective judicial power. What are these additional powers that are to be given? In some cases, legislative are wanting; in others, judicial; and in others, executive. These, it is said, ought to be allotted to the general government. But the impropriety of delegating such extensive trust to one body of men is evident; yet in the same day, and perhaps in the same hour, we are told by honorable gentlemen that those three branches of government are not kept sufficiently distinct in this Constitution; we are told, also, that the Senate, possessing some executive power, as well as legislative, is such a monster. that it will swallow up and absorb every other body in the general government, after having destroyed those of the particular states.

Is this reasoning with consistency? Is the Senate, under the proposed Constitution, so tremendous a body, when checked in their legislative capacity by the House of Representatives, and in their executive authority by the President of the United States? Can this body be so tremendous as the present Congress, a single body of men, possessed of legislative, executive, and judicial powers? To what purpose was Montesquieu read to show that this was a complete tyranny? The application would have been more properly made, by the advocates of the proposed Constitution, against the patrons of the present Confederation.

It is mentioned that this federal government will annihilate and absorb all the state governments. I wish to save, as much as possible, the time of the house: I shall not, therefore, recapitulate what I had the honor of saying last week on this subject. I hope it was then shown that, instead of being abolished, (as insinuated,) from the very nature of things, and from the organization of the system itself, the state governments must exist, or the general governments must fall amidst their ruins. Indeed, so far as to the forms, it is admitted they may remain; but the gentlemen seem to think their power will be gone.

I shall have occasion to take notice of this power hereafter; and, I believe, if it was necessary, it could be shown that the state governments, as states, will enjoy as much power, and more dignity, happiness, and security, than they have hitherto done. I admit, sir, that some of the powers will be taken from them by the system before you; but it is, I believe, allowed on all hands — at least it is not among us a disputed point — that the late Convention was appointed with a particular view to give more power to the government of the Union. It is also acknowledged that the intention was to obtain the advantage of an efficient government over the United States. Now, if power is to be given by that government, I apprehend it must be taken from some place. If the state governments are to retain all the powers they held before, then, of consequence, every new power that is given to Congress must be taken from the people at large. Is this the gentleman's intention? I believe a strict examination of this subject will justify me in asserting that the states, as governments, have assumed too much power to themselves, while they left little to the people. Let not this be called cajoling the people — the elegant expression used by the honorable gentleman from Westmoreland, (Mr. Findley.) It is hard to avoid censure on one side or the other. At some time, it has been said that I have not been at the pains to conceal my contempt of the people; but when it suits a purpose better, it is asserted that I cajole them. I do neither one nor the other. The voice of approbation, sir, when I think that approbation well earned, I confess, is grateful to my ears; but I would disdain it, if it is to be purchased by a sacrifice of my duty or the dictates of my conscience. No, sir; I go practically into this system; I

have gone into it practically when the doors were shut, when it could not be alleged that I cajoled the people; and I now endeavor to show that the true and only safe principle for a free people, is a practical recognition of their original and supreme authority.

I say, sir, that it was the design of this system to take some power from the state governments, and to place it in the general government. It was also the design that the people should be admitted to the exercise of some powers which they did not exercise under the present federation. It was thought proper that the citizens, as well as the states, should be represented. How far the representation in the Senate is a representation of states, we shall see by and by, when we come to consider that branch of the federal government.

This system, it is said, "unhinges and eradicates the state governments, and was systematically intended so to do." To establish the intention, an argument is drawn from art. 1st, sect. 4th, on the subject of elections. I have already had occasion to remark upon this, and shall therefore pass on to the next objection —

That the last clause of the 8th section of the 1st article, gives the power of self-preservation to the general government, independent of the states; for, in case of their abolition, it will be alleged, in behalf of the general government, that self-preservation is the first law, and necessary to the exercise of all other powers.

Now, let us see what this objection amounts to. Who are to have this self-preserving power? The Congress. Who are Congress? It is a body that will consist of a Senate and a House of Representatives. Who compose this Senate? Those who are elected by the *legislature* of the different states? Who are the electors of the House of Representatives? Those who are qualified to vote for the most numerous branch of the *legislature* in the separate states. Suppose the state legislatures annihilated; where is the criterion to ascertain the qualification of electors? and unless this be ascertained, they cannot be admitted to vote; if a state legislature is not elected, there can be no Senate, because the senators are to be chosen by the *legislatures only*.

This is a plain and simple deduction from the Constitution; and yet the objection is stated as conclusive upon an argument expressly drawn from the last clause of this section.

It is repeated with confidence, "that this is not a *federal government*, but a complete one, with legislative, executive, and judicial powers: it is a consolidating government." I have already mentioned the misuse of the term; I wish the gentleman would indulge us with his definition of the word. If, when he says it is a consolidation, he means so far as relates to the general objects of the Union, — so far it was intended to be a consolidation, and on such a consolidation, perhaps, our very existence, as a nation, depends. If, on the other hand, (as something which has been said seems to indicate,) he (Mr. Findley) means that it will absorb the governments of the individual states, — so far is this position from being admitted, that it is unanswerably controverted.

The existence of the state governments is one of the most prominent features of this system. With regard to those purposes which are allowed to be for the general welfare of the Union, I think it no objection to this plan, that we are told it is a complete government. I think it no

objection, that it is alleged the government will possess legislative, executive, and judicial powers. Should it have only legislative authority, we have had examples enough of such a government to deter us from continuing it. Shall Congress any longer continue to make requisitions from the several states, to be treated sometimes with silent and sometimes with declared contempt? For what purpose give the power to make laws, unless they are to be executed? and if they are to be executed, the executive and judicial powers will necessarily be engaged in the business.

Do we wish a return of those insurrections and tumults to which a sister state was lately exposed? or a government of such insufficiency as the present is found to be? Let me, sir, mention one circumstance in the recollection of every honorable gentleman who hears me. To the determination of Congress are submitted all disputes between states concerning boundary, jurisdiction, or right of soil. In consequence of this power, after much altercation, expense of time, and considerable expense of money, this state was successful enough to obtain a decree in her favor, in a difference then subsisting between her and Connecticut; but what was the consequence? The Congress had no power to carry the decree into execution. Hence the distraction and animosity, which have ever since prevailed, and still continue in that part of the country. Ought the government, then, to remain any longer incomplete? I hope not. No person can be so insensible to the lessons of experience as to desire it.

It is brought as an objection "that there will be a rival-ship between the state governments and the general government; on each side endeavors will be made to increase power."

Let us examine a little into this subject. The gentlemen tell you, sir, that they expect the states will not possess any power. But I think there is reason to draw a different conclusion. Under this system, their respectability and power will increase with that of the general government. I believe their happiness and security will increase in a still greater proportion. Let us attend a moment to the situation of this country. It is a maxim of every government, and it ought to be a maxim with us, that the increase of numbers increases the dignity and security, and the respectability, of all governments. It is the first command given by the Deity to man, Increase and multiply. This applies with peculiar force to this country, the smaller part of whose territory is yet inhabited. We are representatives, sir, not merely of the present age, but of future times; not merely of the territory along the sea-coast, but of regions immensely extended westward. We should fill, as fast as possible, this extensive country, with men who shall live happy, free, and secure. To accomplish this great end ought to be the leading view of all our patriots and statesmen. But how is it to be accomplished, but by establishing peace and harmony among ourselves, and dignity and respectability among foreign nations? By these means, we may draw members from the other side of the Atlantic, in addition to the natural sources of population. Can either of these objects be attained without a protecting head? When we examine history, we shall find an important fact, and almost the only fact which will apply to all confederacies: —

They have all fallen to pieces, and have not absorbed the government.

In order to keep republics together, they must have a strong binding force, which must be either external or internal. The situation of this country shows that no foreign force can press us together; the bonds of our union ought therefore to be indissolubly strong.

The *powers of the states*, I apprehend, will increase with the population and the happiness of their inhabitants. Unless we can establish a character abroad, we shall be unhappy from foreign restraints or internal violence. These reasons, I think, prove sufficiently the necessity of having a federal head. Under it, the advantages enjoyed by the whole Union would be participated by every state. I wish honorable gentlemen would think not only of themselves, not only of the present age, but of others, and of future times.

It has been said "that the *state governments* will not be able to make head against the *general government*;" but it might be said, with more propriety, that the general government will not be able to maintain the powers given it against the encroachments and combined attacks of the state governments. They possess some particular advantages from which the general government is restrained. By this system there is a provision made in the Constitution, that no senator or representative shall be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during the time for which he was elected; and no person holding any office under the United States can be a member of either house. But there is no similar security against state influence, as a representative may enjoy places, and even sinecures, under the state governments. On which side is the door most open to *corruption*? If a person in the legislature is to be influenced by an office, the general government can give him none unless he vacate his seat. When the influence of office comes from the state government, he can retain his seat and salary too. But it is added, under this head, "that state governments will lose the attachment of the people, by losing the power of conferring advantages, and that the people will not be at the expense of keeping them up." Perhaps the state governments have already become so expensive as to alarm the gentlemen on that head. I am told that the civil list of this state amounted to £40,000 in one year. Under the proposed government, I think it would be possible to obtain, in Pennsylvania, every advantage we now possess, with a civil list that shall not exceed one third of that sum.

How differently the same thing is talked of, if it be a favorite or otherwise! When advantages to an officer are to be derived from the general government, we hear them mentioned by the name of *bribery*; but when we are told of the state governments' losing the power of conferring advantages, by the disposal of offices, it is said they will lose the attachment of the people. What is in one instance corruption and bribery, is in another the power of conferring advantages.

We are informed "that the state elections will be ill attended, and that the state governments will become mere boards of electors." Those who have a due regard for their country will discharge their duty and attend; but those who are brought only from interest or persuasion had better stay away; the public will not suffer any disadvantage from their absence. But the honest citizen, who knows the value of the privilege, will undoubtedly attend, to secure the man of his choice. The power and business of the state legislatures relate to the great objects of life, liberty and property; the same are also objects of the general government.

Certainly, the citizens of America will be as tenacious in the one instance as in the other. They will be interested. and I hope will exert themselves, to secure their rights not only from being injured by the state governments, but also from being injured by the general government.

"The power over elections, and of judging of elections, gives absolute sovereignty." This power is given to every state legislature; yet I see no necessity that the power of absolute sovereignty should accompany it. My general position is, that the absolute sovereignty never goes from the people.

We are told "that it will be in the power of the Senate to prevent any addition of representatives to the lower house."

I believe their power will be pretty well balanced; and though the Senate should have a desire to do this, yet the attempt will answer no purpose, for the House of Representatives will not let them have a farthing of public money till they agree to it; and the latter influence will be as strong as the other.

"Annual assemblies are necessary," it is said; and I answer, in many instances they are very proper. In Rhode Island and Connecticut, they are elected for six months. In larger states, that period would be found very inconvenient; but, in a government as large as that of the United States, I presume that annual *elections* would be more disproportionate than elections for six months would be in some of our largest states.

"The British Parliament took to themselves the prolongation of their sitting to seven years. But, even in the British Parliament, the appropriations are annual."

But, sir, how is the argument to apply here? How are the Congress to assume such a power? They cannot assume it under the Constitution, for that expressly provides, "The members of the House of Representatives shall be chosen, every two years, by the people of the several states, and the senators for six years." So, if they take it at all, they must take it by usurpation and force.

Appropriations may be made for two years, though in the British Parliament they are made but for one. For some purposes, such appropriations may be made annually; but for every purpose, they are not: even for a standing army, they may be made for seven, ten, or fourteen years: the civil list is established during the life of a prince. Another objection is, "that the members of the Senate may enrich themselves; they may hold their office as long as they live, and there is no power to prevent them; the Senate will swallow up every thing." I am not a blind admirer of this system. Some of the powers of the senators are not, with me, the favorite parts of it; but as they stand connected with other parts, there is still security against the efforts of that body. It was with great difficulty that security was obtained, and I may risk the conjecture that, if it is not now accepted, it never will be obtained again from the same states. Though the *Senate* was not a favorite of mine, as to some of its powers, yet it was a favorite with a majority in the Union; and we must submit to that majority, or we must break up the Union. It is but fair to repeat those reasons that weighed with the Convention: perhaps I shall not be able to do them justice; but yet I will attempt to show why additional powers were given to the Senate rather than to the House of Representatives. These additional powers, I believe, are, that of trying impeachments, that of concurring with the President in making *treaties*, and that of concurring in the appointment of officers. These are the powers that are stated as improper. It is fortunate, that, in the extent of every one of them, the Senate stands controlled. If it is that monster which it is said to be, it can

only show its teeth; it is unable to bite or devour. With regard to *impeachments*, the Senate can try none but such as will be brought before them by the House of Representatives.

The Senate can make no treaties: they can approve of none, unless the President of the United States lays it before them. With regard to the appointment of officers, the President must nominate before they can vote; so that, if the powers of either branch are perverted, it must be with the approbation of some one of the other branches of government. Thus checked on each side, they can do no one act of themselves.

"The powers of Congress extend to taxation — to direct taxation — to internal taxation — to poll taxes — to excises — to other state and internal purposes." Those who possess the power to tax, possess all other sovereign power. That their powers are thus extensive is admitted; and would any thing short of this have been sufficient? Is it the wish of these gentlemen — if it is, let us hear their sentiments — that the general government should subsist on the bounty of the states? Shall it have the power to contract, and no power to fulfil the contract? Shall it have the power to borrow money, and no power to pay the principal or interest? Must we go on in the track that we have hitherto pursued? And must we again compel those in Europe, who lent us money in our distress, to advance the money to pay themselves interest on the certificates of the debts due to them?

This was actually the case in Holland the last year. Like those who have shot one arrow, and cannot regain it, they have been obliged to shoot another in the same direction, in order to recover the first. It was absolutely necessary, sir, that this government should possess these rights; and why should it not, as well as the state governments? Wilt this government be fonder of the exercise of this authority than those of the states are? Will the states, who are equally represented in one branch of the legislature, be more opposed to the payment of what shall be required by the future, than what has been required by the present Congress? Will the people, who must indisputably pay the whole, have more objections to the payment of this tax, because it is laid by persons of their own immediate appointment, even if those taxes were to continue as oppressive as they now are? But, under the general power of this system, that cannot be the case in Pennsylvania. Throughout the Union, direct taxation will be lessened, at least in proportion to the increase of the other objects of revenue. In this Constitution, a power is given to Congress to collect imposts, which is not given by the present Articles of the Confederation. A very considerable part of the revenue of the United States will arise from that source; it is the easiest, most just, and most productive mode of raising revenue; and it is a safe one, because it is voluntary. No man is obliged to consume more than he pleases, and each buys in proportion only to his consumption. The price of the commodity is blended with the tax, and the person is often not sensible of the payment. But would it have been proper to rest the matter there? Suppose this fund should not prove sufficient; ought the public debts to remain unpaid, or the exigencies of government be left unprovided for? should our tranquillity be exposed to the assaults of foreign enemies, or violence among ourselves, because the objects of commerce may not furnish a sufficient revenue to secure them all? Certainly, Congress should possess the power of raising revenue from their constituents, for the purpose mentioned in the 8th section of the 1st article; that is, "to pay the debts and provide for the common defence and general welfare of the United States." It has been common with the gentlemen, on this subject, to present us with frightful pictures. We are told of the hosts of tax-gatherers that will swarm through the land; and

whenever taxes are mentioned, military force seems to be an attending idea. I think I may venture to predict that the taxes of the general government, if any shall be laid, will be more equitable, and much less expensive, than those imposed by state governments.

I shall not go into an investigation of this subject; but it must be confessed that scarcely any mode of laying and collecting taxes can be more burdensome than the present.

Another objection is, "that Congress may borrow money, keep up standing armies, and command the militia." The present Congress possesses the power of borrowing money and of keeping up standing armies. Whether it will be proper at all times to keep up a body of troops, will be a question to be determined by Congress; but I hope the necessity will not subsist at all times. But if it should subsist, where is the gentleman that will say that they ought not to possess the necessary power of keeping them up?

It is urged, as a general objection to this system, that "the powers of Congress are unlimited and undefined, and that they will be the judges, in all cases, of what is necessary and proper for them to do." To bring this subject to your view, I need do no more than point to the words in the Constitution, beginning at the 8th sect. art. 1st. "The Congress (it says) shall have power," &c. I need not read over the words, but I leave it to every gentleman to say whether the powers are not as accurately and minutely defined, as can be well done on the same subject, in the same language. The old Constitution is as strongly marked on this subject; and even the concluding clause, with which so much fault has been found, gives no more or other powers; nor does it, in any degree, go beyond the particular enumeration; for, when it is said that Congress shall have power to make all laws which shall be necessary and proper, those words are limited and denned by the following, "for carrying into execution the foregoing powers." It is saying no more than that the powers we have already particularly given, shall be effectually carried into execution.

I shall not detain the house, at this time, with any further observations on the liberty of the press, until it is shown that Congress have any power whatsoever to interfere with it. by licensing it to declare what shall be a libel.

I proceed to another objection, which was not so fully stated as I believe it will be hereafter; I mean the objection against the *judicial department*. The gentleman from Westmoreland only mentioned it to illustrate his objection to the legislative department.

He said, "that the judicial powers were coextensive with the legislative powers, and extend even to capital cases." I believe they ought to be coextensive; otherwise, laws would be framed that could not be executed. Certainly, therefore, the executive and judicial departments ought to have power commensurate to the extent of the laws; for, as I have already asked, are we to give power to make laws, and no power to carry them into effect?

I am happy to mention the punishment annexed to one crime. You will find the current running strong in favor of humanity; for this is the first instance in which it has not been left to the legislature to extend the crime and punishment of treason so far as they thought proper. This punishment, and the description of this crime, are the great sources of danger and persecution, on the part of government, against the citizen. Crimes against the state! and against the officers of

the state! History informs us that more wrong may be done on this subject than on any other whatsoever. But, under this Constitution, there can be no treason against the United States, except such as is defined in this Constitution. The manner of trial is clearly pointed out; the positive testimony of two witnesses to the same overt act, or a confession in open court, is required to convict any person of treason. And, after all, the consequences of the crime shall extend no further than the life of the criminal; for no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

I come now to consider the last set of objections that are offered against this Constitution. It is urged that this is not such a system as was within the powers of the Convention; they assumed the *power of proposing*. I believe they might have made proposals without going beyond their powers. I never heard, before, that to make a proposal was an exercise of power. But if it is an exercise of power, they certainly did assume it; yet they did not act as that body who framed the present Constitution of Pennsylvania acted; they did not, by an ordinance, attempt to rivet the Constitution on the people, before they could vote for members of Assembly under it. Yet such was the effect of the ordinance that attended the Constitution of this commonwealth.

I think the late Convention has done nothing beyond their powers. The fact is, they have exercised no power at all, and, in point of validity, this Constitution, proposed by them for the government of the United States, claims no more than a production of the same nature would claim, flowing from a private pen. It is laid before the citizens of the United States, unfettered by restraint; it is laid before them to be judged by the natural, civil, and political rights of men. By their *fiat*, it will become of value and authority, without it, it will never receive the character of authenticity and power. The business, we are told, which was intrusted to the late Convention, was merely to amend the present Articles of Confederation. This observation has been frequently made, and has often brought to my mind a story that is related of Mr. Pope, who, it is well known, was not a little deformed. It was customary with him to use this phrase, "God mend me!" when any little accident happened. One evening, a link-boy was lighting him along, and, coming to a gutter, the boy jumped nimbly over it. Mr. Pope called to him to turn, adding, "God mend me!" The arch rogue, turning to light him, looked at him, and repeated, "God mend you! He would sooner make half-a-dozen new ones." This would apply to the present Confederation; for it would be easier to make another than to amend this. The gentlemen urge that this is such a government as was not expected by the people, the legislatures, nor by the honorable gentlemen who mentioned it. Perhaps it was not such as was expected, but it may be better; and is that a reason why it should not be adopted? It is not worse, I trust, than the former. So that the argument of its being a system not expected, is an argument more strong in its favor than against it.

The letter which accompanies this Constitution must strike every person with the utmost force.

"The friends of our country have long seen and desired that the power of war, peace, and treaties, that of levying money and regulating commerce, and the corresponding executive and judicial authorities, should be fully and effectually vested in the general government of the Union; but the impropriety of delegating such extensive trust to one body of men, is evident. *Hence results the necessity of a different organization.*"

I therefore do not think that it can be urged, as an objection against this system, that it was not expected by the people. We are told, to add greater force to these objections, that they are not on local but on general principles, and that they are uniform throughout the United States. I confess I am not altogether of that opinion; I think some of the objections are inconsistent with others, arising from a different quarter, and I think some are inconsistent even with those derived from the same source. But, on this occasion, let us take the fact for granted, that they are all on general principles, and uniform throughout the United States. Then we can judge of their full amount; and what are they, but trifles light as air? We see the whole force of them; for, according to the sentiments of opposition, they can nowhere be stronger, or more fully stated, than here. The conclusion, from all these objections, is reduced to a point, and the plan is declared to be inimical to our liberties. I have said nothing, and mean to say nothing, concerning the dispositions or characters of those that framed the work now before you. I agree that it ought to be judged by its own intrinsic qualities. If it has not merit, weight of character ought not to carry it into effect. On the other hand, if it has merit, and is calculated to secure the blessings of liberty, and to promote the general welfare, then such objections as have hitherto been made ought not to influence us to reject it.

I am now led to consider those qualities that this system of government possesses, which will entitle it to the attention of the United States. But as I have somewhat fatigued myself, as well as the patience of the honorable members of this house, I shall defer what I have to add on this subject until the afternoon.

*Eodem Die*, P. M. — Mr. WILSON. Before I proceed to consider those qualities in the Constitution before us which I think will insure it our approbation, permit me to make some remarks — and they shall be very concise — upon the objections that were offered this forenoon, by the member from Fayette, (Mr. Smilie.) I do it at this time because I think it will be better to give a satisfactory answer to the whole of the objections, before I proceed to the other part of my subject. I find that the doctrine of a single legislature is not to be contended for in this Constitution. I shall therefore say nothing on that point. I shall consider that part of the system, when we come to view its excellences. Neither shall I take particular notice of his observation on the *qualified negative* of the President; for he finds no fault with it: he mentions, however, that he thinks it a vain and useless power, because it can never be executed. The reason he assigns for this is, that the king of Great Britain, who has an absolute negative over the laws proposed by Parliament, has never exercised it, at least for many years. It is true, and the reason why he did not exercise it was that, during all that time, the king possessed a negative before the bill had passed through the two houses — a much stronger power than a negative after debate. I believe, since the revolution, at the time of William III., it was never known that a bill disagreeable to the crown passed both houses. At one time, in the reign of Queen Anne, when there appeared some danger of this being effected, it is well known that she created twelve peers, and by that means effectually defeated it. Again: there was some risk, of late years, in the present reign, with regard to Mr. Fox's East India Bill, as it is usually called, that passed through the House of Commons; but the king had interest enough in the House of Peers to have it thrown out; thus it never came up for the royal assent. But that is no reason why this negative should not be exercised here, and exercised with great advantage. Similar powers are known in more than one of the states. The governors of Massachusetts and New York have a power similar to this, and it has been exercised frequently to good effect.

I believe the governor of New York, under this power, has been known to send back five or six bills in a week; and I well recollect that, at the time the funding system was adopted by our legislature, the people in that state considered the negative of the governor as a great security that their legislature would not be able to encumber them by a similar measure. Since that time, an alteration has been supposed in the governor's conduct, but there has been no alteration in his power.

The honorable gentleman from Westmoreland, (Mr Findley,) by his highly-refined critical abilities, discovers an inconsistency in this part of the Constitution, and that which declares, in section 1, "All legislative powers, herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives;" and yet here, says he, is a power of legislation given to the President of the United States, because every bill, before it becomes a law, shall be presented to him. Thus he is said to possess legislative powers. Sir, the Convention observed, on this occasion, strict propriety of language: "If he approve the bill, when it is sent, he shall sign it, but if not, he shall return it;" but no bill passes in consequence of having his assent: therefore, he possesses no legislative authority.

The *effect* of this power, upon this subject, is merely this: if he disapproves a bill, two thirds of the legislature become necessary to pass it into a law, instead of a bare majority. And when two thirds are in favor of the bill, it becomes a law, not by his, but by authority of the two houses of the legislature. We are told, in the next place, by the honorable gentleman from Fayette, (Mr. Smilie,) that, in the different orders of mankind, there is that of a natural aristocracy. On some occasions there is a kind of magical expression, used to conjure up ideas that may create uneasiness and apprehension. I hope the meaning of the words is understood by the gentleman who used them. I have asked repeatedly of gentlemen to explain, but have not been able to obtain the explanations of what they meant by a consolidated government. They keep round and round about the thing, but never define. I ask now what is meant by a natural aristocracy. I am not at a loss for the etymological definition of the term; for, when we trace it to the language from which it is derived, an aristocracy means nothing more or less than a government of the best men in the community or those who are recommended by the words of the Constitution of Pennsylvania, where it is directed that the representatives should consist of those most noted for wisdom and virtue. Is there any danger in such representation? I shall never find fault that such characters are employed. How happy for us, when such characters can be obtained! If this is meant by a natural aristocracy, — and I know no other, — can it be objectionable that men should be employed that are most noted for their virtue and talents? And are attempts made to mark out these as the most improper persons for the public confidence?

I had the honor of giving a definition — and I believe it was a just one — of what is called an *aristocratic government*. It is a government where the supreme power is not retained by the people, but resides in a select body of men, who either fill up the vacancies that happen, by their own choice and election, or succeed on the principle of descent, or by virtue of territorial possessions, or some other qualifications that are not the result of personal properties. When I speak of personal properties, I mean the qualities of the head and the disposition of the heart.

We are told that the representatives will not be known to the people, nor the people to the representatives, because they will be taken from large districts, where they cannot be particularly

acquainted. There has been some experience, in several of the states, upon this subject; and I believe the experience of all who had experience, demonstrates that the larger the district of election, the better the representation. It is only in remote corners of a government that little demagogues arise. Nothing but real weight of character can give a man real influence over a large district. This is remarkably shown in the commonwealth of Massachusetts. The members of the House of Representatives are chosen in very small districts; and such has been the influence of party cabal, and little intrigue in them, that a great majority seem inclined to show very little disapprobation of the conduct of the insurgents in that state.

The governor is chosen by the people at large, and that state is much larger than any district need be under the proposed Constitution. In their choice of their governor, they have had warm disputes; but, however warm the disputes, their choice only vibrated between the most eminent characters. Four of their candidates are well known — Mr. Hancock, Mr. Bowdoin, General Lincoln, and Mr. Goreham, the late president of Congress.

I apprehend it is of more consequence to be able to know the true interest of the people than their faces, and of more consequence still to have virtue enough to pursue the means of carrying that knowledge usefully into effect. And surely, when it has been thought, hitherto, that a representation, in Congress, of from five to two members, was sufficient to represent the interest of this state, is it not more than sufficient to have ten members in that body — and those in a greater comparative proportion than heretofore? The citizens of Pennsylvania will be represented by eight, and the state by two. This, certainly, though not gaining enough, is gaining a good deal; the members will be more distributed through the state, being the immediate choice of the people, who hitherto have not been represented in that body. It is said, that the House of Representatives will be subject to corruption, and the *Senate* possess the means of corrupting, by the share they have in the appointment to office. This was not spoken in the soft language of attachment to government. It is, perhaps, impossible, with all the caution of legislators and statesmen, to exclude corruption and undue influence entirely from government. All that can be done, upon this subject, is done in the Constitution before you. Yet it behoves us to call out, and add every guard and preventive in our power. I think, sir, something very important, on this subject, is done in the present system; for it has been provided, effectually, that the man that has been bribed by an office shall have it no longer in his power to earn his wages. The moment he is engaged to serve the Senate, in consequence of their gift, he no longer has it in his power to sit in the House of Representatives; for "No representative shall, during the term for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time." And the following annihilates corruption of that kind: "And no person holding any office under the United States shall be a member of either house during his continuance in office." So the mere acceptance of an office, as a bribe, effectually destroys the end for which it was offered. Was this attended to when it was mentioned that the members of the one house could be bribed by the other? "But the members of the Senate may enrich themselves," was an observation made as an objection to this system.

As the mode of doing this has not been pointed out, I apprehend the objection is not much relied upon. The Senate are incapable of receiving any money, except what is paid them out of the public treasury. They cannot vote to themselves a single penny, unless the proposition originates

from the other house. This objection, therefore, is visionary, like the following one — "that pictured group, that numerous host, and prodigious swarm of officers, which are to be appointed under the general government." The gentlemen tell you that there must be judges of the supreme, and judges of the inferior courts, with all their appendages: there will be tax-gatherers swarming throughout the land. "O!" say they, "if we could enumerate the offices, and the numerous officers that must be employed every day in collecting, receiving, and comptrolling, the moneys of the United States, the number would be almost beyond imagination."

I have been told, but I do not vouch for the fact, that there are, in one shape or another, more than a thousand persons, in this very state, who get their living by assessing and collecting our revenues from the other citizens. Sir, when this business of revenue is conducted on a general plan, we may be able to do the business of the thirteen states with an equal, nay, with a less number: instead of thirteen comptroller-generals, one comptroller will be sufficient. I apprehend that the number of officers, under this system, will be greatly reduced from the number now employed; for, as Congress can now do nothing effectually, the states are obliged to do every thing; and in this very point I apprehend that we shall be great gainers.

Sir, I confess I wish the *powers of the Senate* were not as they are. I think it would have been better if those powers had been distributed in other parts of the system. I mentioned some circumstances, in the forenoon, that I had observed on this subject. I may mention now, we may think ourselves very well off, sir, that things are as well as they are, and that that body is even so much restricted. But surely objections of this kind come with a bad grace from the advocates, or those who prefer the present Confederation, and who wish only to increase the powers of the present Congress. A single body, not constituted with checks, like the proposed one, who possess not only the power of making treaties, but executive powers, would be a perfect despotism; but further, these powers are, in the present Confederation, possessed without control.

As I mentioned before, so I will beg leave to repeat, that this Senate can do nothing without the concurrence of some other branch of the government. With regard to their concern in the appointment to offices, the President must nominate before they can be chosen; the President must acquiesce in that appointment. With regard to their power in forming treaties, they can make none; they are only auxiliaries to the President. They must try all impeachments but they have no power to try any until presented by the House of Representatives; and when I consider this subject, though I wish the regulation better, I think no danger to the liberties of this country can arise even from that part of the system. But these objections, I say, come with a bad grace from those who prefer the present Confederation, who think it only necessary to add more powers to a body organized in that form. I confess, likewise, that by combining those powers of trying impeachments, and making treaties, in the same body, it will not be so easy, as I think it ought to be, to call the senators to an account for any improper conduct in that business.

Those who proposed this system were not inattentive to do all they could. I admit the force of the observation made by the gentleman from Fayette, (Mr. Smilie,) that, when two thirds of the Senate concur in forming a bad treaty, it will be hard to procure a vote of two thirds against them, if they should be impeached. I think such a thing is not to be expected; and so far they are without that *immediate* degree of responsibility which I think requisite to make this part of the work perfect. But this will not be always the case. When a member of the Senate shall behave

criminally, the criminality will not expire with his office. The senators may be called to account after they shall have been changed, and the body to which they belonged shall have been altered. There is a rotation; and every second year one third of the whole number go out. Every fourth year two thirds of them are changed. In six years the whole body is supplied by a new one. Considering it in this view, responsibility is not entirely lost. There is another view in which it ought to be considered, which will show that we have a greater degree of security. Though they may not be convicted on impeachment before the Senate, they may be tried by their country; and if their criminality is established, the law will punish. A grand jury may present, a petty jury may convict, and the judges will pronounce the punishment. This is all that can be done under the present Confederation, for under it there is no power of impeachment; even here, then, we gain something. Those parts that are exceptionable, in this Constitution, are improvements on that concerning which so much pains are taken, to persuade us that it is preferable to the other.

The last observation respects the judges. It is said that, if they are to decide against the law, one house will impeach them, and the other will convict them. I hope gentlemen will show how this can happen; for bare supposition ought not to be admitted as proof. The judges are to be impeached, because they decide an act null and void, that was made in defiance of the Constitution! What House of Representatives would dare to impeach, or Senate to commit, judges for the performance of their duty? These observations are of a similar kind to those with regard to the liberty of the press.

I will proceed to take some notice of those qualities in this Constitution that I think entitle it to our respect and favor. I have not yet done, sir, with the great principle on which it stands; I mean the practical recognition of this doctrine — that, in the United States, the people retain the supreme power.

In giving a definition of the simple kinds of government known throughout the world, I had occasion to describe what I meant by a democracy; and I think I termed it, that government in which the people retain the supreme power, and exercise it either collectively or by representation. This Constitution declares this principle, in its terms and in its consequences, which is evident from the manner in which it is announced. "We, the People of the United States." After all the examination which I am able to give the subject, I view this as the only sufficient and most honorable basis, both for the people and government, on which our Constitution can possibly rest. What are all the contrivances of states, of kingdoms, and empires? What are they all intended for? They are all intended for man; and our natural character and natural rights are certainly to take place, in preference to all artificial refinements that human wisdom can devise.

I am astonished to hear the ill-founded doctrine, that the states alone ought to be represented in the federal government; these must possess sovereign authority, forsooth, and the people be forgot. No. Let us *reascend* to first principles. That expression is not strong enough to do my ideas justice.

Let us *retain* first principles. The people of the United States are now in the possession and exercise of their original rights; and while this doctrine is known, and operates, we shall have a cure for every disease.

I shall mention another good quality belonging to this system. In it the legislative, executive, and judicial powers are kept nearly independent and distinct. I express myself in this guarded manner, because I am aware of some powers that are blended in the Senate. They are but few; and they are not dangerous. It is an exception; yet that exception consists of but few instances, and none of them dangerous. I believe in no constitution for any country on earth is this great principle so strictly adhered to, or marked with so much precision and accuracy, as this. It is much more accurate than that which the honorable gentleman so highly extols: I mean, the constitution of England. There, sir, one branch of the legislature can appoint members of another. The king has the power of introducing members into the House of Lords. I have already mentioned that, in order to obtain a vote, twelve peers were poured into that house at one time. The operation is the same as might be under this Constitution, if the President had a right, to appoint the members of the Senate. This power of the king extends into the other branch, where, though he cannot immediately introduce a member, yet he can do it remotely, by virtue of his prerogative, as he may create boroughs with power to send members to the House of Commons. The House of Lords form a much stronger exception to this principle than the Senate in this system; for the House of Lords possess judicial powers — not only that of trying impeachments, but that of trying their own members, and civil causes, when brought before them from the courts of chancery and the other courts in England.

If we therefore consider this Constitution with regard to this special object, though it is not so perfect as I could wish, yet it is more perfect than any government that I know.

I proceed to another property, which I think will recommend it to those who consider the effects of beneficence and wisdom; I mean the *division of this legislative authority* into two branches. I had an opportunity of dilating somewhat on this subject before; and as it is not likely to afford a subject of debate, I shall take no further notice of it than barely to mention it. The next good quality that I remark is, that the *executive authority is one*. By this means we obtain very important advantages. We may discover from history, from reason, and from experience, the security which this furnishes. The executive power is better to be trusted when it has no screen. Sir, we have a responsibility in the person of our President; he cannot act improperly, and hide either his negligence or inattention; he cannot roll upon any other person the weight of his criminality; no appointment can take place without his nomination; and he is responsible for every nomination he makes. We secure *vigor*. We well know what numerous executives are. We know there is neither vigor, decision, nor responsibility, in them. Add to all this, that officer is placed high, and is possessed of power far from being contemptible; yet not a *single privilege* is annexed to his character; far from being above the laws, he is amenable to them in his private character as a citizen, and in his public character by *impeachment*.

Sir, it has often been a matter of surprise, and frequently complained of even in Pennsylvania, that the *independence of the judges* is not properly secured. The servile dependence of the judges, in some of the states that have neglected to make proper provision on this subject, endangers the liberty and property of the citizen; and I apprehend that, whenever it has happened that the appointment has been for a less period than during good behavior, this object has not been sufficiently secured; for if, every five or seven years, the judges are obliged to make court for their appointment to office, they cannot be styled independent. This is not the case with regard to those appointed under the general government; for the judges here shall hold their

offices during good behavior. I hope no further objections will be taken against this part of the Constitution, the consequence of which will be, that private property, so far as it comes before their courts, and personal liberty, so far as it is not forfeited by crimes, will be guarded with firmness and watchfulness.

It may appear too professional to descend into observations of this kind; but I believe that public happiness, personal liberty, and private property, depend essentially upon the able and upright determinations of independent judges.

Permit me to make one more remark on the subject of the judicial department. Its objects are extended *beyond* the bounds or power of every particular state, and therefore must be proper objects of the general government. I do not recollect any instance where a case can come before the judiciary of the United States, that could possibly be determined by a particular state, except one — which is, where citizens of the same state claim lands under the grant of different states; and in that instance, the power of the two states necessarily comes in competition; wherefore there would be great impropriety in having it determined by either.

Sir, I think there is another subject with regard to which this Constitution deserves approbation. I mean the accuracy with which the *line is drawn* between the powers of the *general government* and those of the *particular state governments*. We have heard some general observations, on this subject, from the gentlemen who conduct the opposition. They have asserted that these powers are unlimited and undefined. These words are as easily pronounced as *limited* and *defined*. They have already been answered by my honorable colleague, (Mr. M'Kean;) therefore I shall not enter into an explanation. But it is not pretended that the line is drawn with mathematical precision; the inaccuracy of language must, to a certain degree, prevent the accomplishment of such a desire. Whoever views the matter in a true light, will see that the powers are as minutely enumerated and defined as was possible, and will also discover that the general clause, against which so much exception is taken, is nothing more than what was necessary to render effectual the particular powers that are granted.

But let us suppose — and the supposition is very easy in the minds of the gentlemen on the other side — that there is some difficulty in ascertaining where the true line lies. Are we therefore thrown into despair? Are *disputes* between the *general government* and the *state governments* to be necessarily the consequence of inaccuracy? I hope, sir, they will not be the enemies of each other, or resemble comets in conflicting orbits, mutually operating destruction; but that their motion will be better represented by that of the planetary system, where each part moves harmoniously within its proper sphere, and no injury arises by interference or opposition. Every part, I trust, will be considered as a part of the United States. Can any cause of distrust arise here? Is there any increase of risk? Or, rather, are not the enumerated powers as well denned here, as in the present Articles of Confederation?

Permit me to proceed to what I deem another excellency of this system: all authority, of every kind, *is derived by REPRESENTATION from the PEOPLE, and the DEMOCRATIC principle is carried into every part of the government*. I had an opportunity, when I spoke first, of going fully into an elucidation of this subject. I mean not now to repeat what I then said.

I proceed to another quality, that I think estimable in this system: *it secures, in the strongest manner, the right of suffrage.* Montesquieu, book 2d, chap. 2d, speaking of laws relative to democracy, says, —

"When the body of the people is possessed of the supreme power, this is called a *democracy*. When the supreme power is lodged in the hands of a part of the people, it is then an *aristocracy*."

"In a democracy the people are in some respects the sovereign, and in others the subject."

"There can be no exercise of sovereignty but by their suffrages, which are their own will. Now, the sovereign's will is the sovereign himself. The laws, therefore, which establish the right of suffrage, are fundamental to this government. And, indeed, it is as important to regulate, in a republic, in what manner, by whom, to whom, and concerning what, suffrages are to be given, as it is, in a monarchy, to know who is the prince, and after what manner he ought to govern."

In this system, it is declared that the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. This being made the criterion of the right of suffrage, it is consequently secured, because the same Constitution guaranties to every state in the Union a republican form of government. The right of suffrage is fundamental to republics.

Sir, there is another principle that I beg leave to mention. *Representation and direct taxation*, under this Constitution, are to be according to numbers. As this is a subject which I believe has not been gone into in this house, it will be worth while to show the sentiments of some respectable writers thereon. *Montesquieu*, in considering the requisites in a confederate republic, book 9th, chap. 3d, speaking of Holland, observes, "It is difficult for the united states to be all of equal power and extent. The Lycian (*Strabo*, lib. 14) republic was an association of twenty-three towns; the large ones had three votes in the common council, the middling ones two, and the small towns one. The Dutch republic consists of seven provinces, of different extent of territory, which have each one voice."

"The cities of Lycia (*Strabo*, lib. 14) contributed to the expenses of the state, according to the proportion of suffrages. The provinces of the United Netherlands cannot follow this proportion; they must be directed by that of their power."

"In *Lycia*, (*Strabo*, lib. 14,) the judges and town magistrates were elected by the common council, and according to the proportion already mentioned. In the republic of Holland, they are not chosen by the common council, but each town names its magistrates. Were I to give a model of an excellent confederate republic, I should pitch upon that of *Lycia*."

I have endeavored, in all the books that I have access to, to acquire some information relative to the *Lycian republic*; but its history is not to be found; the few facts that relate to it are mentioned only by *Strabo*; and however excellent the model it might present, we were reduced to the necessity of working without it. Give me leave to quote the sentiments of another author, whose peculiar situation and extensive worth throw a lustre on all he says. I mean Mr. *Necker*, whose ideas are very exalted, both in theory and practical knowledge, on this subject. He approaches the

nearest to the truth in his calculations from experience, and it is very remarkable that he makes use of that expression. His words are, (*Necker on Finance*, vol. 1. p. 308.) —

"Population can therefore be only looked on as an exact measure of comparison when the provinces have resources nearly equal; but even this imperfect rule of proportion ought not to be neglected; and of all the objects which may be subjected to a determined and positive calculation, that of the taxes, to the population, approaches nearest to the truth."

Another good quality in this Constitution is, that the members of the legislature cannot hold offices under the authority of this government. The operation of this, I apprehend, would be found to be very extensive, and very salutary, in this country, to prevent those intrigues, those factions, that corruption, that would otherwise rise here, and have risen so plentifully in every other country. The reason why it is necessary in England to continue such influence, is, that the crown, in order to secure its own influence against two other branches of the legislature, must continue to bestow places; but those *places produce the opposition* which frequently runs so strong in the British Parliament.

Members who do not enjoy offices combine against those who do enjoy them. It is not from principle that they thwart the ministry in all its operations. No; their language is, Let us turn them out, and succeed to their places. The great source of corruption, in that country, is, that persons may hold offices under the crown, and seats in the legislature, at the same time.

I shall conclude, at present, — and I have endeavored to be as concise as possible, — with mentioning that, in my humble opinion, the powers of the general government are necessary and well denned; that the restraints imposed on it, and those imposed on the state governments, are rational and salutary; and that it is entitled to the approbation of those for whom it was intended.

I recollect, on a former day, the honorable gentleman from Westmoreland, (Mr. Findley,) and the honorable gentleman from Cumberland, (Mr. Whitehill,) took exceptions against the 1st clause of the 9th sect., art. 1, arguing, very unfairly, that, because Congress might impose a tax or duty of ten dollars on the importation of slaves, within any of the United States, Congress might therefore permit slaves to be imported within this state, contrary to its laws. I confess, I little thought that this part of the system would be excepted to.

I am sorry that it could be extended no farther; but so far as it operates, it presents us with the pleasing prospect that the rights of mankind will be acknowledged and established throughout the Union.

If there was no other lovely feature in the Constitution but this one, it would diffuse a beauty over its whole countenance. Yet the lapse of a few years, and Congress will have power to exterminate slavery from within our borders.

How would such a delightful prospect expand the breast of a benevolent and philanthropic European! Would he cavil at an expression? catch at a phrase? No, sir, that is only reserved for the gentleman on the other side of your chair to do. What would be the exultation of that great

man whose name I have just now mentioned, we may learn from the following sentiments on this subject; they cannot be expressed so well as in his own words (vol. 1, page 329.)

"The colonies of France contain, as we have seen, near five hundred thousand slaves; and it is from the number of these wretches the inhabitants set a value on their plantations. What a fatal prospect, and how profound a subject for reflection! Alas! how inconsequent we are, both in our morality and our principles! We preach up humanity, and yet go every year to bind in chains twenty thousand natives of Africa. We call the Moors barbarians and ruffians, because they attack the liberty of Europeans at the risk of their own; yet these Europeans go, without danger, and as mere speculators, to purchase slaves, by gratifying the cupidity of their masters, and excite all those bloody scenes which are the usual preliminaries of this traffic! In short, we pride ourselves on the superiority of man, and it is with reason that we discover this superiority in the wonderful and mysterious unfolding of the intellectual faculties; and yet the trifling difference in the hair of the head, or in the color of the epidermis, is sufficient to change our respect into contempt, and to engage us to place beings like ourselves in the rank of those animals devoid of reason, whom we subject to the yoke, that we may make use of their strength and of their instinct at command.

"I am sensible, and I grieve at it, that these reflections, which others have made much better than I, are unfortunately of very little use! The necessity of supporting sovereign power has its peculiar laws, and the wealth of nations is one of the foundations of this power: thus the sovereign who should be the most thoroughly convinced of what is due to humanity, would not singly renounce the service of slaves in his colonies: time alone could furnish a population of free people to replace them, and the great difference that would exist in the price of labor would give so great an advantage to the nation that should adhere to the old custom, that the others would soon be discouraged in wishing to be more virtuous. And yet, would it be a chimerical project to propose a general compact, by which all the European nations should unanimously agree to abandon the traffic of African slaves! they would, in that case, find themselves exactly in the same proportion, relative to each other, as at present; for it is only on comparative riches that the calculations of power are founded.

"We cannot as yet indulge such hopes; statesmen in general think that every common idea must be a low one; and since the morals of private people stand in need of being curbed and maintained by the laws, we ought not to wonder if those of sovereigns conform to their independence.

"The time may nevertheless arrive, when, fatigued of that ambition which agitates them, and of the continual rotation of the same anxieties and the same plans, they may turn their views to the great principles of humanity; and if the present generation is to be witness of this happy revolution, they may at least be allowed to be unanimous in offering up their vows for the perfection of the social virtues, and for the progress of public beneficial institutions."

These are the enlarged sentiments of that great man.

Permit me to make a single observation, in this place, on the restraints placed on the state governments. If only the following lines were inserted in this Constitution, I think it would be

worth our adoption: "No state shall hereafter *emit bills of credit*; make any thing but gold and silver coin a *tender* in payment of debts; pass any bills of attainder, ex post facto law, or law *impairing the obligation of contracts*." Fatal experience has taught us, dearly taught us, the value of these restraints. What is the consequence even at this moment? It is true, we have no tender law in Pennsylvania; but the moment you are conveyed across the Delaware, you find it haunt your journey, and follow close upon your heels. The paper passes commonly at twenty-five or thirty per cent. discount. How insecure is property!

These are a few of those properties in this system, that, I think, recommend it to our serious attention, and will entitle it to receive the adoption of the United States. Others might be enumerated, and others still will probably be disclosed by experience.

FRIDAY, *December 7, 1787*, A. M. — Mr. WILSON. This is the first time that the article respecting the *judicial department* has come directly before us. I shall therefore take the liberty of making such observations as will enable honorable gentlemen to see the extent of the views of the Convention in forming this article, and the extent of its probable operation.

This will enable gentlemen to bring before this house their objections more pointedly than, without any explanation, could be done. Upon a distinct examination of the different powers, I presume it will be found that not one of them is unnecessary. I will go farther — there is not one of them but will be discovered to be of such a nature as to be attended with very important advantages. I shall beg leave to premise one remark — that the Convention, when they formed this system, did not expect they were to deliver themselves, their relations, and their posterity, into the hands of such men as are described by the honorable gentlemen in opposition. They did not suppose that the legislature, under this Constitution, would be an *association of demons* They thought that a proper attention would be given, by the citizens of the United States, at the general election for members to the House of Representatives; they also believed that the particular states would nominate as good men as they have heretofore done, to represent them in the Senate. If they should now do otherwise, the fault will not be in Congress, but in the people or states themselves. I have mentioned, oftener than once, that for a people wanting to themselves there is no remedy.

The Convention thought further, (for on this very subject there will appear caution, instead of imprudence, in their transactions;) they considered, that, if suspicions are to be entertained, they are to be entertained with regard to the objects in which government have separate interests and separate views from the interest and views of the people. To say that officers of government will oppress, when nothing can be got by oppression, is making an inference, bad as human nature is, that cannot be allowed. When persons can derive no advantage from it, it can never be expected they will sacrifice either their duty or their popularity.

Whenever the general government can be a party against a citizen, the trial is guarded and secured in the Constitution itself, and therefore it is not in its power to oppress the citizen. In the case of treason, for example, though the prosecution is on the part of the United States, yet the Congress can neither define nor try the crime. If we have recourse to the history of the different governments that have hitherto subsisted, we shall find that a very great part of their tyranny over the people has arisen from the extension of the definition of treason. Some very remarkable

instances have occurred, even in so free a country as England. If I recollect right, there is one instance that puts this matter in a very strong point of view. A person possessed a favorite buck, and, on finding it killed, wished the horns in the belly of the person who killed it. This happened to be the king: the injured complainant was tried, and convicted of treason for wishing the king's death.

I speak only of free governments; for, in despotic ones, (reason depends entirely upon the will of the prince. Let this subject be attended to, and it will be discovered where the dangerous power of the government operates on the oppression of the people. Sensible of this, the Convention has guarded the people against it, by a particular and accurate definition of treason.

It is very true that trial by jury is not mentioned in civil cases; but I take it that it is very improper to infer from hence that it was not meant to exist under this government. Where the people are represented, where the interest of government cannot be separate from that of the people, (and this is the case in trial between citizen and citizen,) the power of making regulations with respect to the mode of trial may certainly be placed in the legislature; for I apprehend that the legislature will not do wrong in an instance from which they can derive no advantage. These were not all the reasons that influenced the Convention to leave it to the future Congress to make regulations on this head.

By the Constitution of the different states, it will be found that no particular mode of trial by jury could be discovered that would suit them all. The manner of summoning jurors, their qualifications, of whom they should consist, and the course of their proceedings, are all different in the different states; and I presume it will be allowed a good general principle, that, in carrying into effect the laws of the general government by the judicial department, it will be proper to make the regulations as agreeable to the habits and wishes of the particular states as possible; and it is easily discovered that it would have been impracticable, by any general regulation, to give satisfaction to all. We must have thwarted the custom of eleven or twelve to have accommodated any one. Why do this when there was no danger to be apprehended from the omission? We could not go into a particular detail of the manner that would have suited each state.

Time, reflection, and experience, will be necessary to suggest and mature the proper regulations on this subject; time and experience were not possessed by the Convention; they left it therefore to be particularly organized by the legislature — the representatives of the United States — from time to time, as should be most eligible and proper. Could they have done better?

I know, in every part where opposition has arisen, what a handle has been made to this objection; but I trust, upon examination, it will be seen that more could not have been done with propriety. Gentlemen talk of bills of rights. What is the meaning of this continual clamor, after what has been urged? Though it may be proper, in a single state, whose legislature calls itself the sovereign and supreme power, yet it would be absurd in the body of the people, when they are delegating from among themselves persons to transact certain business, to add an enumeration of those things which they are not to do. "But trial by jury is secured in the bill of rights of Pennsylvania; the parties have a right to trials by jury, which *ought* to be held sacred." And what is the consequence? There have been more violations of this right in Pennsylvania, since the revolution, than are to be found in England in the course of a century.

I hear no objection made to the tenure by which the judges hold their offices; it is declared that the judges shall hold them during good behavior; — nor to the security which they will have for their salaries; they shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

The article respecting the judicial department is objected to as going too far, and is supposed to carry a very indefinite meaning. Let us examine this: "The judicial power shall extend to all cases, in law and equity, *arising under this Constitution and the laws of the United States.*" Controversies may certainly arise under this Constitution and the laws of the United States, and is it not proper that there should be judges to decide them? The honorable gentleman from Cumberland (Mr. Whitehill) says that laws may be made inconsistent with the Constitution; and that therefore the powers given to the judges are dangerous. For my part, Mr. President, I think the contrary inference true. If a law should be made inconsistent with those powers vested by this instrument in Congress, the judges, as a consequence, of their independence, and the particular powers of government being defined, will declare such law to be null and void; for the power of the Constitution predominates. Any thing, therefore, that shall be enacted by Congress contrary thereto, will not have the force of law.

The judicial power extends to all cases arising under treaties made, or which shall be made, by the United States. I shall not repeat, at this time, what has been said with regard to the power of the states to make treaties; it cannot be controverted, that, when made, they ought to be observed. But it is highly proper that this regulation should be made; for the truth is, — and I am sorry to say it, — that, in order to prevent the payment of British debts, and from other causes, our treaties have been violated, and violated, too, by the express laws of several states in the Union. Pennsylvania — to her honor be it spoken — has hitherto done no act of this kind; but it is acknowledged on all sides, that many states in the Union have infringed the treaty; and it is well known that, when the minister of the United States made a demand of Lord Carmarthen of a surrender of the western posts, he told the minister, with truth and justice, "The treaty under which you claim those possessions has not been performed on your part; until that is done, those possessions will not be delivered up." This clause, sir, will show the world that we make the faith of treaties a constitutional part of the character of the United States; that we secure its performance no longer nominally, for the judges of the United States will be enabled to carry it into effect, let the legislatures of the different states do what they may.

The power of judges extends to all cases affecting ambassadors, other public ministers, and consuls. I presume very little objection will be offered to this clause; on the contrary, it will be allowed proper and unexceptionable.

This will also be allowed with regard to the following clause: "*all cases of admiralty and maritime jurisdiction.*"

The next is, "*to controversies to which the United States shall be a party.*" Now, I apprehend it is something very incongruous, that, because the United States are a party, it should be urged, as an objection, that their judges ought not to decide, when the universal practice of all nations has, and unavoidably must have, admitted of this power. But, say the gentlemen, the sovereignty of the states is destroyed, if they should be engaged in a controversy with the United States, because

a suiter in a court must acknowledge the jurisdiction of that court, and it is not the custom of sovereigns to suffer their names to be made use of in this manner. The answer is plain and easy: the government of each state ought to be subordinate to the government of the United States.

*"To controversies between two or more states."* This power is vested in the present Congress; but they are unable, as I have already shown, to enforce their decisions. The additional power of carrying their decree into execution, we find, is therefore necessary, and I presume no exception will be taken to it.

*"Between a state and citizens of another state."* When this power is attended to, it will be found to be a necessary one. Impartiality is the leading feature in this Constitution; it pervades the whole. When a citizen has a controversy with another state, there ought to be a tribunal where both parties may stand on a just and equal footing.

*"Between citizens of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects."* This part of the jurisdiction, I presume, will occasion more doubt than any other part; and, at first view, it may seem exposed to objections well founded and of great weight; but I apprehend this can be the case only at first view. Permit me to observe here, with regard to this power, or any other of the foregoing powers given to the federal court, that they are not exclusively given. In all instances, the parties may commence suits in the courts of the several states. Even the United States may submit to such decision if they think proper. Though the citizens of a state, and the citizens or subjects of foreign states, may sue in the federal court, it does not follow that they must sue. These are the instances in which the jurisdiction of the United States may be exercised; and we have all the reason in the world to believe that it will be exercised impartially; for it would be improper to infer that the judges would abandon their duty, the rather for being independent. Such a sentiment is contrary to experience, and ought not to be hazarded. If the people of the United States are fairly represented, and the President and Senate are wise enough to choose men of abilities and integrity for judges, there can be no apprehension, because, as I mentioned before, the government can have no interest in injuring the citizens.

But when we consider the matter a little further, is it not necessary, if we mean to restore either public or private credit, that foreigners, as well as ourselves, have a just and impartial tribunal to which they may resort? I would ask how a merchant must feel to have his property lie at the mercy of the laws of Rhode Island. I ask, further, How will a creditor feel who has his debts at the mercy of tender laws in other states? It is true that, under this Constitution, these particular iniquities may be restrained in future; but, sir, there are other ways of avoiding payment of debts. There have been instalment acts, and other acts of a similar effect. Such things, sir, destroy the very sources of credit.

Is it not an important object to extend our manufactures and our commerce? This cannot be done, unless a proper security is provided for the regular discharge of contracts. This security cannot be obtained, unless we give the power of deciding upon those contracts to the general government.

I will mention, further, an object that I take to be of particular magnitude, and I conceive these regulations will produce its accomplishment. The object, Mr. President, that I allude to, is *the*

*improvement of our domestic navigation*, the instrument of trade between the several states. Private credit, which fell to decay from the destruction of public credit, by a too inefficient general government, will be restored; and this valuable intercourse among ourselves must give an increase to those useful improvements that will astonish the world. At present, how are we circumstanced! Merchants of eminence will tell you that they cannot trust their property to the laws of the state in which their correspondents live. Their friend may die, and may be succeeded by a representative of a very different character. If there is any particular objection that did not occur to me on this part of the Constitution, gentlemen will mention it; and I hope, when this article is examined, it will be found to contain nothing but what is proper to be annexed to the general government. The next clause, so far as it gives original jurisdiction in cases affecting ambassadors, I apprehend, is perfectly unexceptionable.

It was thought proper to give the citizens of foreign states full opportunity of obtaining justice in the general courts, and this they have by its appellate jurisdiction; therefore, in order to restore credit with those foreign states, that part of the article is necessary. I believe the alteration that will take place in their minds when they learn the operation of this clause, will be a great and important advantage to our country; nor is it any thing but justice: they ought to have the same security against the state laws that may be made, that the citizens have; because regulations ought to be equally just in the one case as in the other. Further, it is necessary in order to preserve peace with foreign nations. Let us suppose the case, that a wicked law is made in some one of the states, enabling a debtor to pay his creditor with the fourth, fifth, or sixth part of the real value of the debt, and this creditor, a foreigner, complains to his prince or sovereign, of the injustice that has been done him. What can that prince or sovereign do? Bound by inclination, as well as duty, to redress the wrong his subject sustains from the hand of perfidy, he cannot apply to the particular guilty state, because he knows that, by the Articles of Confederation, it is declared that no state shall enter into treaties. He must therefore apply to the United States; the United States must be accountable. "My subject has received a flagrant injury: do me justice, or I will do myself justice." If the United States are answerable for the injury, ought they not to possess the means of compelling the faulty state to repair it? They ought; and this is what is done here. For now, if complaint is made in consequence of such injustice, Congress can answer, "Why did not your subject apply to the General Court, where the unequal and partial laws of a particular state would have had no force?"

In two cases the Supreme Court has original jurisdiction — that affecting ambassadors, and when a state shall be a party. It is true it has appellate jurisdiction in more, but it will have it under such restrictions as the Congress shall ordain. I believe that any gentleman, possessed of experience or knowledge on this subject, will agree that it was impossible to go further with any safety or propriety, and that it was best left in the manner in which it now stands.

*"In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact."* The jurisdiction as to fact may be thought improper; but those possessed of information on this head see that it is necessary. We find it essentially necessary from the ample experience we have had in the courts of admiralty with regard to captures. Those gentlemen who, during the late war, had their vessels retaken, know well what a poor chance they would have had when those vessels were taken in their states and tried by juries, and in what a situation they would have been if the Court of Appeals had not been possessed of

authority to reconsider and set aside the verdicts of those juries. Attempts were made by some of the states to destroy this power; but it has been confirmed in every instance.

There are other cases in which it will be necessary; and will not Congress better regulate them, as they rise from time to time, than could have been done by the Convention? Besides, if the regulations shall be attended with inconvenience, the Congress can alter them as soon as discovered. But any thing done in Convention must remain unalterable but by the power of the citizens of the United States at large.

I think these reasons will show that the powers given to the Supreme Court are not only safe, but constitute a wise and valuable part of the system.

TUESDAY, *December* 11, 1787, A. M. — Mr. WILSON Three weeks have now elapsed since this Convention met. Some of the delegates attended on Tuesday, the 20th November; a great majority within a day or two afterwards; and all but one on the 4th day. We have been since employed in discussing the business for which we are sent here. I think it will now become evident to every person who takes a candid view of our discussions, that it is high time our proceedings should draw towards a *conclusion*.

Perhaps our debates have already continued as long, nay, longer than is sufficient for every good purpose. The business which we were intended to perform is necessarily reduced to a very narrow compass. The single question to be determined is, Shall we assent to and ratify the Constitution proposed?

As *this* is the *first* state whose Convention has met on the subject, and as the subject itself is of very great importance, not only to Pennsylvania, but to the United States, it was thought proper fairly, openly, and candidly to canvass it. This has been done. You have heard, Mr. President, from day to day, and from week to week, the objections that could be offered from any quarter. We have heard these objections once: we have heard a great number of them repeated much oftener than once. Will it answer any valuable end, sir, to protract these debates longer? I suppose it will not. I apprehend it may serve to promote very pernicious and destructive purposes. It may, perhaps, be insinuated to other states, and even to distant parts of this state, by people in opposition to this system, that the expediency of adopting is at most very doubtful, and that the business lingers among the members of the Convention

This would not be a true representation of the fact; for there is the greatest reason to believe that there is a very considerable majority who do not hesitate to ratify the Constitution. We were sent here to express the voice of our constituents on the subject, and I believe that many of them expected to hear the echo of that voice before this time.

When I consider the attempts that have been made on this floor, and the many misrepresentations of what has been said among us that have appeared in the public papers, printed in this city, I confess that I am induced to suspect that opportunity may be taken to pervert and abuse the principles on which the friends of this Constitution act. If attempts are made here, will they not be repeated when the distance is greater, and the means of information fewer? Will they not at length produce an uneasiness, for which there is, in fact, no cause? Ought we not to prohibit any

such uses being made of the continuance of our deliberations? We do not wish to preclude debate: of this our conduct has furnished the most ample testimony. The members in opposition have not been prevented a repetition of all their objections that they could urge against this plan.

The honorable gentleman from Fayette, (Mr. Smilie,) the other evening, claimed for the minority the merit of contending for the rights of mankind; and he told us that it has been the practice of all ages to treat such minorities with contempt; he further took the liberty of observing, that, if the majority had the power, they do not want the inclination, to consign the minority to punishment. I know that claims, self-made, form no small part of the merit to which we have heard undisguised pretences; but it is one thing to claim, and it is another thing, very different indeed, to support that claim. The minority, sir, are contending for the rights of mankind; what, then, are the majority contending for? If the minority are contending for the rights of mankind, the majority must be contending for the doctrines of tyranny and slavery. Is it probable that that is the case? Who are the majority in this assembly? — Are they not the people? are they not the representatives of the people, as well as the minority? Were they not elected by the people, as well as the minority? Were they not elected by the greater part of the people? Have we a single right separate from the rights of the people? Can we forge fetters for others that will not be clasped round our own limbs? Can we make heavy chains that shall not cramp the growth of our own posterity? On what fancied distinction shall the minority assume to themselves the merit of contending for the rights of mankind?

Sir, if the system proposed by the late Convention, and the conduct of its advocates who have appeared in this house, deserve the declarations and insinuations that have been made concerning them, well may we exclaim, "Ill-fated America! thy crisis was approaching! perhaps it was come! Thy various interests were neglected — thy most sacred rights were insecure. Without a government, without energy, without confidence internally, without respect externally, the advantages of society were lost to thee! In such a situation, distressed, but not despairing, thou desiredst to reassume thy native vigor, and to lay the foundation of future empire. Thou selectedst a number of thy sons, to meet together for the purpose. The selected and honored characters met; but, horrid to tell, they not only consented, but they combined in an aristocratic system, calculated and intended to enslave their country! Unhappy Pennsylvania! thou, as a part of the Union, must share in its unfortunate fate; for when this system, after being laid before thy citizens, comes before the delegates selected by them for its consideration, there are found but *three* of the numerous members that have virtue enough to raise their voices in support of the rights of mankind!" America, particularly Pennsylvania, must be ill-starred, indeed, if this is a true state of the case. I trust we may address our country in far other language.

"Happy America! thy crisis was indeed alarming, but thy situation was not desperate. We had confidence in our country; though, on whichever side we turned, we were presented with scenes of distress. Though the jarring interests of the various states, and the different habits and inclinations of their inhabitants, all lay in the way, and rendered our prospect gloomy and discouraging indeed, yet such were the generous and mutual sacrifices offered up, that, amidst *forty-two* members, who represented twelve of (he United States, there were only *three* who did not attest the instrument, as a confirmation of its goodness. Happy Pennsylvania! this plan has been laid before thy citizens for consideration; they have sent delegates to express their voice; and listen — with rapture listen! — from only *three* opposition has been heard against it."

The singular unanimity that has attended the whole progress of their business, will, in the minds of those considerate men who have not had opportunity to examine the general and particular interest of their country, prove, to their satisfaction, that it is an excellent Constitution, and worthy to be adopted, ordained, and established, by the people of the United States.

After having viewed the arguments drawn from probability, whether this is a good or a bad system, whether those who contend for it, or those who contend against it, contend for the rights of mankind, let us step forward and examine the fact.

We were told, some days ago, by the honorable gentle man from Westmoreland, (Mr. Findley,) when speaking of this system and its objects, that the Convention, no doubt, thought they were forming a compact, or contract, of the greatest importance. Sir, I confess I was much surprised, at so late a stage of the debate, to hear such principles maintained. It was a matter of surprise to see the great leading principle of this system still so very much misunderstood. "The Convention, no doubt, thought they were forming a *contract*!" I cannot answer for what every member thought; but I believe it cannot be said that they thought they were making a contract, because I cannot discover the least trace of a compact in that system. There can be no compact unless there are more parties than one. It is a new doctrine that one can make a compact with himself. "The Convention were forming compacts!" With whom? I know no bargains that were made there. I am unable to conceive who the parties could be. The state governments make a bargain with one another; that is the doctrine that is endeavored to be established by gentlemen in opposition, — that state sovereignties wish to be represented! But far other were the ideas of the Convention, and far other are those conveyed in the system itself.

As this subject has been often mentioned, and as often misunderstood, it may not be improper to take some further notice of it. This, Mr. President, is not a government founded upon compact; it is founded upon the power of the people They express in their name and their authority — "*We, the people, do ordain and establish,*" &c.; from their ratification alone it is to take its constitutional authenticity; without that, it is no more than *tabula rasa*.

I know very well all the common-place rant of state sovereignties, and that government is founded in original compact. If that position was examined, it will be found not to accede very well with the true principle of free government. It does not suit the language or genius of the system before us. I think it does not accord with experience, so far as I have been able to obtain information from history.

The greatest part of governments have been founded on conquest: perhaps a few early ones may have had their origin in paternal authority. Sometimes a family united, and that family afterwards extended itself into a community. But the greatest governments which have appeared on the face of the globe have been founded in conquest. The great empires of Assyria, Persia, Macedonia, and Rome, were all of this kind. I know well that in Great Britain, since the revolution, it has become a principle that the constitution is founded in contract; but the form and time of that contract, no writer has yet attempted to discover. It was, however, recognized at the time of the revolution, therefore is politically true. But we should act very imprudently to consider our liberties as placed on such foundation.

If we go a little further on this subject, I think we shall see that the doctrine of original compact cannot be supported consistently with the best principles of government. If we admit it, we exclude the idea of amendment; because a contract once entered into between the governor and governed becomes obligatory, and cannot be altered but by the mutual consent of both parties. The citizens of united America, I presume, do not wish to stand on that footing with those to whom, from convenience, they please to delegate the exercise of the general powers necessary for sustaining and preserving the Union. They wish a principle established, by the operation of which the legislatures may feel the direct authority of the people. The people, possessing that authority, will continue to exercise it by amending and improving their own work. This Constitution may be found to have defects in it; hence amendments may become necessary; but the idea of a government founded on contract destroys the means of improvement. We heal it every time the gentlemen are up, "Shall we violate the Confederation, which directs every alteration that is thought necessary to be established by the state legislatures only!" Sir, those gentlemen must ascend to a higher source: the people fetter themselves by no contract. If your state legislatures have cramped themselves by compact, it was done without the authority of the people, who alone possess the supreme power.

I have already shown that this system is not a compact, or contract; the system itself tells you what it is; it is an ordinance and establishment of the people. I think that the force of the introduction to the work must by this time have been felt. It is not an unmeaning flourish. The expressions declare, in a practical manner, the principle of this Constitution. It is ordained and established by the people themselves; and we, who give our votes for it, are merely the proxies of our constituents. We sign it as their attorneys, and, as to ourselves, we agree to it as individuals.

We are told, by honorable gentlemen in opposition, "that the present Confederation should have been continued, but that additional powers should have been given to it; that such was the business of the late Convention, and that they had assumed to themselves the power of proposing another in its stead; and that which is proposed is such a one as was not expected by the legislature nor by the people." I apprehend this would have been a very insecure, very inadequate, and a very pernicious mode of proceeding. Under the present Confederation, Congress certainly do not possess sufficient power; but one body of men we know they are; and were they invested with additional powers, they must become dangerous. Did not the honorable gentleman himself tell us that the powers of government, vested either in one man or one body of men, formed the very description of tyranny? To have placed in the present the legislative, the executive, and judicial authority, all of which are essential to the general government, would indubitably have produced the severest despotism. From this short deduction, one of these two things must have appeared to the Convention, and must appear to every man who is at the pains of thinking on the subject. It was indispensably necessary either to make a new distribution of the powers of government, or to give such powers to one body of men as would constitute a tyranny. If it is proper to avoid tyranny, it becomes requisite to avoid placing additional powers in the hands of a Congress constituted like the present; hence the conclusion is warranted, that a different organization ought to take place.

Our next inquiry ought to be, whether this is the most proper disposition and organization of the necessary powers. But before I consider this subject, I think it proper to notice one sentiment,

expressed by an honorable gentleman from the county of Cumberland, (Mr. Whitehill.) He asserts that the extent of the government is too great, and this system cannot be executed. What is the consequence, if this assertion is true? It strikes directly at the root of the Union.

I admit, Mr. President, there are great difficulties in adapting a system of good and free government to the extent of our country. But I am sure that our interests, as citizens, as states, and as a nation, depend essentially upon a union. This Constitution is proposed to accomplish that great and desirable end. Let the experiment be made; let the system be fairly and candidly tried, before it is determined that it cannot be executed.

I proceed to another objection; for I mean to answer those that have been suggested since I had the honor of addressing you last week. It has been alleged, by honorable gentlemen, that this general government possesses powers for internal purposes, and that the general government cannot exercise internal powers. The honorable member from Westmoreland (Mr. Findley) dilates on this subject, and instances the opposition that was made by the colonies against Great Britain, to prevent her imposing internal taxes or excises. And before the federal government will be able to impose the one, or obtain the other, he considers it necessary that it should possess power for every internal purpose.

Let us examine these objections: If this government does not possess internal as well as external power, and that power for internal as well as external purposes, I apprehend that all that has hitherto been done must go for nothing. I apprehend a government that cannot answer the purposes for which it was intended is not a government for this country. I know that Congress, under the present Articles of Confederation, possess no internal power, and we see the consequences: they can recommend — they can go further, they can make requisitions; but there they must stop; for, as far as I recollect, after making a law, they cannot take a single step towards carrying it into execution. I believe it will be found, in experience, that, with regard to the exercise of internal powers, the general government will not be unnecessarily rigorous. The future collection of the duties and imposts will, in the opinion of some, supersede the necessity of having recourse to internal taxation. The United States will not, perhaps, be often under the necessity of using this power at all; but if they should, it will be exercised only in a moderate degree. The good sense of the citizens of the United States is not to be alarmed by the picture of taxes collected at the point of the bayonet. There is no more reason to suppose that the delegates and representatives in Congress, any more than the legislature of Pennsylvania, or any other state, will act in this manner. Insinuations of this kind, made against one body of men, and not against another, though both the representatives of the people, are not made with propriety; nor will they have the weight of argument. I apprehend the greatest part of the revenue will arise from external taxation. But certainly it would have been very unwise in the late Convention to have omitted the addition of the other powers; and I think it would be very unwise in this Convention to refuse to adopt this Constitution, because it grants Congress power to lay and collect taxes, for the purpose of providing for the common defence and general welfare of the United States.

What is to be done to effect these great purposes, if an impost should be found insufficient? Suppose a war was suddenly declared against us by a foreign power, possessed of a formidable navy; our navigation would be laid prostrate, our imposts must cease; and shall our existence as a

nation depend upon the peaceful navigation of our seas? A strong exertion of maritime power, on the part of an enemy, might deprive us of these sources of revenue in a few months. It may suit honorable gentlemen, who live at the western extremity of this state, that they should contribute nothing, by internal taxes, to the support of the general government. They care not what restraints are laid upon our commerce; for what is the commerce of Philadelphia to the inhabitants on the other side of the Alleghany Mountains? But though it may suit them, it does not suit those in the lower part of the state, who are by far the most numerous. Nor can we agree that our safety should depend altogether upon a revenue arising from commerce.

Excise may be a necessary mode of taxation; it takes place in most states already.

The capitation tax is mentioned as one of those that are exceptionable. In some states, that mode of taxation is used; but I believe, in many, it would be received with great reluctance; there are one or two states where it is constantly in use, and without any difficulties and inconveniences arising from it. An excise, in its very principles, is an improper tax, if it could be avoided; but yet it has been a source of revenue in Pennsylvania, both before the revolution and since; during all which time we have enjoyed the benefit of free government.

I presume, sir, that the executive powers of government ought to be commensurate with the government itself, and that a government which cannot act in every part is, so far, defective. Consequently, it is necessary that Congress possess powers to tax internally, as well as externally.

It is objected to this system, that under it there is no sovereignty left in the state governments. I have had occasion to reply to this already; but I should be very glad to know at what period the state governments became possessed of the supreme power. On the principle on which I found my arguments, — and that is, the principle of this Constitution, — the supreme power resides in the people. If they choose to indulge a part of their sovereign power to be exercised by the state governments, they may. If they have done it, the states were right in exercising it; but if they think it no longer safe or convenient, they will resume it, or make a new distribution, more likely to be productive of that good which ought to be our constant aim.

The powers both of the general government and the state governments, under this system, are acknowledged to be so many emanations of power from the people. The great object now to be attended to, instead of disagreeing about who shall possess the supreme power, is, to consider whether the present arrangement is well calculated to promote and secure the tranquillity and happiness of our common country. These are the dictates of sound and unsophisticated sense, and what ought to employ the attention and judgment of this honorable body.

We are next told by the honorable gentleman in opposition, (as indeed we have been, from the beginning of the debates in this Convention, to the conclusion of their speeches yesterday,) that this is a consolidated government, and will abolish the state governments.

Definitions of a consolidated government have been called for; the gentlemen gave us what they termed definition, but it does not seem to me, at least, that they have as yet expressed clear ideas upon that subject. I will endeavor to state their different ideas upon this point. The gentleman

from Westmoreland, (Mr. Findley,) when speaking on this subject, says that he means, by a consolidation, that government which puts the thirteen states into one.

The honorable gentleman from Fayette (Mr. Smilie) gives you this definition: "What I mean by a consolidated government, is one that will transfer the sovereignty from the slate governments to the general government."

The honorable member from Cumberland, (Mr. Whitehill,) instead of giving you a definition, sir, tells you again, that "it is a consolidated government, and we have proved it so."

These, I think, sir, are the different descriptions given to us of a consolidated government. As to the first, that it is a consolidated government, that puts the thirteen United States into one, — if it is meant that the general government will destroy the governments of the states, I will admit that such a government would not suit the people of America. It would be improper for this country, because it could not be proportioned to its extent, on the principles of freedom. But that description does not apply to the system before you. This, instead of placing the state governments in jeopardy, is founded on their existence. On this principle its organization depends; it must stand or fall, as the state governments are secured or ruined. Therefore, though this may be a very proper description of a consolidated government, yet it must be disregarded, as inapplicable to the proposed Constitution. It is not treated with decency when such insinuations are offered against it.

The honorable gentleman (Mr. Smilie) tells you that a consolidated government "is one that will transfer the sovereignty from the state governments to the general government." Under this system, the sovereignty is not in the possession of the governments, therefore it cannot be transferred from them to the general government; so that in no point of view of this definition can we discover that it applies to the present system.

In the exercise of its powers will be insured the exercise of their powers to the state governments; it will insure peace and stability to them; their strength will increase with its strength; their growth will extend with its growth.

Indeed, narrow minds — and some such there are in every government — narrow minds and intriguing spirits will be active in sowing dissensions and promoting discord between them. But those whose understandings and whose hearts are good enough to pursue the general welfare, will find that what is the interest of the whole, must, on the great scale, be the interest of every part. It will be the duty of a state, as of an individual, to sacrifice her own convenience to the general good of the Union.

The next objection that I mean to take notice of is, that the powers of the several parts of this government are not kept as distinct and independent as they ought to be. I admit the truth of this general sentiment. I do not think that, in the powers of the Senate, the distinction is marked with so much accuracy as I wished, and still wish; but yet I am of opinion that real and effectual security is obtained, which is saying a great deal. I do not consider this part as wholly unexceptionable; but even where there are defects in this system, they are improvements upon the old. I will go a little further; though, in this system, the distinction and independence of

power is not adhered to with entire theoretical precision, yet it is more strictly adhered to than in any other system of government in the world. In the Constitution of Pennsylvania, the executive department exercises judicial powers in the trial of public officers; yet a similar power, in this system, is complained of; at the same time, the Constitution of Pennsylvania is referred to as an example for the late Convention to have taken a lesson by.

In New Jersey, in Georgia, in South Carolina, and North Carolina, the executive power is blended with the legislative. Turn to their constitutions, and see in how many instances.

In North Carolina, the Senate and House of Commons elect the governor himself: they likewise elect seven persons to be a council of state, to advise the governor in the execution of his office. Here we find the whole executive department under the nomination of the legislature, at least the most important part of it.

In South Carolina, the legislature appoints the governor and commander-in-chief, lieutenant-governor and privy council. "Justices of the peace shall be nominated by the legislature, and commissioned by the governor;" and what is more, they are appointed during pleasure. All other judicial officers are to be appointed by the Senate and House of Representatives. I might go further, and detail a great multitude of instances, in which the legislative, executive, and judicial powers are blended; but it is unnecessary; I only mention these to show, that, though this Constitution does not arrive at what is called perfection, yet it contains great improvements, and its powers are distributed with a degree of accuracy superior to what is termed accuracy in particular states.

There are four instances in which improper powers are said to be blended in the Senate. We are told that this government is imperfect, because the Senate possess the power of trying impeachments; but here, sir, the Senate are under a check, as no impeachment can be tried until it is made; and the House of Representatives possess the sole power of making impeachments. We are told that the share which the Senate have in making treaties is exceptionable; but here they are also under a check, by a constituent part of the government, and nearly the immediate representative of the people — I mean the President of the United States. They can make no treaty without his concurrence. The same observation applies in the appointment of officers. Every officer must be nominated solely and exclusively by the President.

Much has been said on the subject of treaties; and this power is denominated a blending of the legislative and executive powers in the Senate. It is but justice to represent the favorable, as well as unfavorable, side of a question, and from thence determine whether the objectionable parts are of a sufficient weight to induce a rejection of this Constitution.

There is no doubt, sir, but, under this Constitution, treaties will become the supreme law of the land; nor is there any doubt but the Senate and President possess the power of making them. But though the treaties are to have the force of laws, they are in some important respects very different from other acts of legislation. In making laws, our own consent alone is necessary. In forming treaties, the concurrence of another power becomes necessary. Treaties, sir, are truly contracts, or compacts, between the different states, nations, or princes, who find it convenient or necessary to enter into them. Some gentlemen are of opinion that the power of making treaties

should have been placed in the legislature at large; there are, however, reasons that operate with great force on the other side. Treaties are frequently (especially in time of war) of such a nature, that it would be extremely improper to publish them, or even commit the secret of their negotiation to any great number of persons. For my part, I am not an advocate for secrecy in transactions relating to the public; not generally even in forming treaties, because I think that the history of the diplomatic corps will evince, even in that great department of politics, the truth of an old adage, that "honesty is the best policy," and this is the conduct of the most able negotiators; yet sometimes secrecy may be necessary, and therefore it becomes an argument against committing the knowledge of these transactions to too many persons. But in their nature treaties originate differently from laws. They are made by equal parties, and each side has half of the bargain to make; they will be made between us and powers at the distance of three thousand miles. A long series of negotiation will frequently precede them; and can it be the opinion of these gentlemen that the legislature should be in session during this whole time? It well deserves to be remarked, that, though the House of Representatives possess no active part in making treaties, yet their legislative authority will be found to have strong restraining influences upon both President and Senate. In England, if the king and his ministers find themselves, during their negotiation, to be embarrassed because an existing law is not repealed, or a new law is not enacted, they give notice to the legislature of their situation, and inform them that it will be necessary, before the treaty can operate, that some law be repealed, or some be made. And will not the same thing take place here? Shall less prudence, less caution, less moderation, take place among those who negotiate treaties for the United States, than among those who negotiate them for the other nations of the earth? And let it be attended to, that, even in the making of treaties, the states are immediately represented, and the people mediately represented; two of the constituent parts of government must concur in making them. Neither the President nor the Senate, solely, can complete a treaty; they are checks upon each other, and are so balanced as to produce security to the people.

I might suggest other reasons, to add weight to what has already been offered; but I believe it is not necessary; yet let me, however, add one thing — the Senate is a favorite with many of the states, and it was with difficulty that these checks could be procured; it was one of the last exertions of conciliation, in the late Convention, that obtained them.

It has been alleged, as a consequence of the small number of representatives, that they will not know, as intimately as they ought, the interests, inclinations, or habits, of their constituents.

We find, on an examination of all its parts, that the objects of this government are such as extend beyond the bounds of the particular states. This is the line of distinction between this government and the particular state governments.

This principle I had an opportunity of illustrating on a former occasion. Now, when we come to consider the objects of this government, we shall find that, in making our choice of a proper character to be a member of the House of Representatives, we ought to fix on one whose mind and heart are enlarged; who possesses a general knowledge of the interests of America, and a disposition to make use of that knowledge for the advantage and welfare of his country. It belongs not to this government to make an act for a particular township, county, or state.

A defect in *minute* information has not certainly been an objection in the management of the business of the United States; but the want of enlarged ideas has hitherto been chargeable on our councils; yet, even with regard to minute knowledge, I do not conceive it impossible to find eight characters that may be very well informed as to the situation, interests, and views, of every part of this state, and who may have a concomitant interest with their fellow-citizens; they could not materially injure others without affecting their own fortunes.

I did say that, in order to obtain that enlarged information in our representatives, a large district for election would be more proper than a small one. When I speak of large districts, it is not agreeably to the idea entertained by the honorable member from Fayette, (Mr. Smilie,) who tells you that elections for large districts must be ill attended, because the people will not choose to go very far on this business. It is not meant, sir, by me, that the votes should be taken at one place; no, sir; the elections may be held through this state in the same manner as elections for members of the General Assembly; and this may be done, too, without any additional inconvenience or expense.

If it could be effected, all the people of the same society ought to meet in one place, and communicate freely with each other on the great business of representation. Though this cannot be done in fact, yet we find that it is the most favorite and constitutional idea. It is supported by this principle too, that every member is the representative of the whole community, and not of a particular part. The larger, therefore, the district is, the greater is the probability of selecting wise and virtuous characters, and the more agreeable it is to the constitutional principle of representation.

As to the objection that the House of Representatives may be bribed by the Senate, I confess I do not see that bribery is an objection against *this system*; it is rather an objection against human nature. I am afraid that bribes in every government may be offered and received; but let me ask of the gentlemen who urge this objection to point out where any power is given to *bribe under this Constitution*. Every species of influence is guarded against as much as possible. Can the Senate procure money to effect such design? All public moneys must be disposed of by law, and it is necessary that the House of Representatives originate such law. Before the money can be got out of the treasury, it must be appropriated by law. If the legislature had the effrontery to set aside three or four hundred thousand pounds for this purpose, and the people would tamely suffer it, I grant it might be done; and in Pennsylvania the legislature might do the same; for, by a law, and that conformably to the Constitution, they might divide among themselves what portion of the public money they pleased. I shall just remark, sir, that the objections which have repeatedly been made with regard to "the number of representatives being too small, and that they may possibly be made smaller; that the districts are too large, and not within the reach of the people; and that the House of Representatives may be bribed by the Senate," come with an uncommon degree of impropriety from those who would refer us back to the Articles of Confederation; for, under these, the representation of this state cannot exceed seven members, and may consist of only two; and these are wholly without the reach or control of the people. Is there not also greater danger that the majority of such a body might be more easily bribed than the majority of one not only more numerous, but checked by a division of two or three distinct and independent parts? The danger is certainly better guarded against in the proposed system than in any other yet devised.

The next objections, which I shall notice, are, "that the powers of the Senate are too great; that the representation therein is unequal; and that the Senate, from the smallness of its number, may be bribed." Is there any propriety in referring us to the Confederation on this subject? Because, in one or two instances, the Senate possess more power than the House of Representatives, are these gentlemen supported in their remarks, when they tell you they wished and expected more powers to be given to the present Congress — a body certainly much more exceptionable than any instituted under this system?

That "the representation in the Senate is unequal," I regret, because I am of opinion that the states ought to be represented according to their importance; but in this system there is a considerable improvement; for the true principle of representation is carried into the House of Representatives, and into the choice of the President; and without the assistance of one or the other of these, the Senate is inactive, and can do neither good nor evil.

It is repeated, again and again, by the honorable gentleman, that "the power over elections, which is given to the general government in this system, is a dangerous power." I must own I feel, myself, surprised that an objection of this kind should be persisted in, after what has been said by the honorable colleague in reply. I think it has appeared, by a minute investigation of the subject, that it would have been not only unwise, but highly improper, in the late Convention, to have omitted this clause, or given less power than it does over elections. Such powers, sir, are enjoyed by every state government in the United States. In some they are of a much greater magnitude; and why should this be the only one deprived of them? Ought not these, as well as every other legislative body, to have the power of judging of the qualifications of its own members? "The times, places, and manner of holding elections for representatives, may be altered by Congress." This power, sir, has been shown to be necessary, not only on some particular occasions, but even to the very existence of the federal government. I have heard some very improbable suspicions indeed suggested with regard to the manner in which it will be exercised. Let us suppose it may be improperly exercised; is it not more likely so to be by the particular states than by the government of the United States? — because the general government will be more studious of the good of the whole than a particular state will be; and therefore, when the power of regulating the time, place, or manner of holding elections, is exercised by the Congress, it will be to correct the improper regulations of a particular state.

I now proceed to the second article of this Constitution, which relates to the executive department.

I find, sir, from an attention to the arguments used by the gentlemen on the other side of the house, that there are but few exceptions taken to this part of the system. I shall take notice of them, and afterwards point out some valuable qualifications, which I think this part possesses in an eminent degree.

The objection against the powers of the President is not that they are too many or too great; but, to state it in the gentlemen's own language, they are so trifling, that the President is no more than the *tool* of the Senate.

Now, sir, I do not apprehend this to be the case, because I see that he may do a great many things independently of the Senate; and, with respect to the executive powers of government in which the Senate participate, they can do nothing without him. Now, I would ask, which is most likely to be the tool of the other? Clearly, sir, he holds the helm, and the vessel can proceed neither in one direction nor another, without his concurrence. It was expected by many, that the cry would have been against the powers of the President as a monarchical power; indeed, the echo of such sound was heard some time before the rise of the late Convention. There were men, at that time, determined to make an attack upon whatever system should be proposed; but they mistook the point of direction. Had the President possessed those powers, which the opposition on this floor are willing to consign him, of making treaties and appointing officers, with the advice of a council of state, the clamor would have been, that the House of Representatives and the Senate were the *tools* of the monarch. This, sir, is but conjecture; but I leave it to those who are acquainted with the current of the politics pursued by the enemies of this system, to determine whether it is a reasonable conjecture or not.

The manner of appointing the President of the United States, I find, is not objected to; therefore I shall say little on that point. But I think it well worth while to state to this house how little the difficulties, even in the most difficult part of this system, appear to have been noticed by the honorable gentlemen in opposition. The Convention, sir, were perplexed with no part of this plan so much as with the mode of choosing the President of the United States. For my own part, I think the most unexceptionable mode, next after the one prescribed in this Constitution, would be that practised by the Eastern States and the state of New York; yet, if gentlemen object that an eighth part of our country forms a district too large for election, how much more would they object, if it was extended to the whole Union! On this subject, it was the opinion of a great majority in Convention, that the thing was impracticable; other embarrassments presented themselves.

Was the President to be appointed by the legislature? Was he to continue a certain time in office, and afterwards was he to become ineligible?

To have the executive officers dependent upon the legislative, would certainly be a violation of that principle, so necessary to preserve the freedom of republics, that the legislative and executive powers should be separate and independent. Would it have been proper that he should be appointed by the Senate? I apprehend that still stronger objections could be urged against that: cabal — intrigue — corruption — every thing bad, would have been the necessary concomitant of every election.

To avoid the inconveniences already enumerated, and many others that might be suggested, the mode before us was adopted. By it we avoid corruption; and we are little exposed to the lesser evils of party intrigue; and when the government shall be organized, proper care will undoubtedly be taken to counteract influence even of that nature. The Constitution, with the same view, has directed, that the day on which the electors shall give their votes shall be the same throughout the United States. I flatter myself the experiment will be a happy one for our country.

The choice of this officer is brought as nearly home to the people as is practicable. With the approbation of the state legislatures, the people may elect with only one remove; for "each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in Congress." Under this regulation, it will not be easy to corrupt the electors, and there will be little time or opportunity for tumult or intrigue. This, sir, will not be like the elections of a Polish diet, begun in noise and ending in bloodshed.

If gentlemen will look into this article, and read for themselves, they will find that there is no well-grounded reason to suspect the President will be the *tool* of the Senate. "The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. He may require the opinion, in writing, of the principal officers in each of the executive departments, upon any subject relative to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States." Must the President, after all, be called the *tool* of the Senate? I do not mean to insinuate that he has more powers than he ought to have, but merely to declare that they are of such a nature as to place him above expression of contempt.

There is another power of no small magnitude intrusted to this officer. "He shall take care that the laws be faithfully executed."

I apprehend that, in the administration of this government, it will not be found necessary for the Senate always to sit. I know some gentlemen have insinuated and conjectured that this will be the case; but I am inclined to a contrary opinion. If they had employment every day, no doubt but it might be the wish of the Senate to continue their session; but, from the nature of their business, I do not think it will be necessary for them to attend longer than the House of Representatives. Besides their legislative powers, they possess three others, viz., trying impeachments, concurring in making treaties, and in appointing officers. With regard to their power in making treaties, it is of importance that it should be very seldom exercised. We are happily removed from the vortex of European politics, and the fewer and the more simple our negotiations with European powers, the better they will be. If such be the case, it will be but once in a number of years that a single treaty will come before the Senate. I think, therefore, that on this account it will be unnecessary to sit constantly. With regard to the trial of impeachments, I hope it is what will seldom happen. In this observation, the experience of the ten last years supports me. Now, there is only left the power of concurring in the appointment of officers; but care is taken, in this Constitution, that this branch of business may be done without their presence. The president is authorized to fill up all vacancies that may happen, during the recess of the Senate, by granting commissions, which shall expire at the end of their next session; so that, on the whole, the Senate need not sit longer than the House of Representatives, at the public expense; and no doubt, if apprehensions are entertained of the Senate, the House of Representatives will not provide pay for them one day longer than is necessary. But what (it will be asked) is this great power of the President? He can fill the offices only by temporary appointments. True; but every person knows the advantage of being once introduced into an office; it is often of more importance than the highest recommendation.

Having now done with the legislative and executive branches of this government, I shall just remark, that, upon the whole question of the executive, it appears that the gentlemen in opposition state nothing as exceptionable but the deficiency of powers in the President; but rather seem to allow some degree of political merit in this department of government.

I now proceed to the judicial department; and here, Mr. President, I meet an objection, I confess, I had not expected; and it seems it did not occur to the honorable gentleman (Mr. Findley) who made it until a few days ago.

He alleges that the judges, under this Constitution, are not rendered sufficiently independent, because they may hold other offices; and though they may be independent as judges, yet their other office may depend upon the legislature. I confess, sir, this objection appears to me to be a little wire-drawn. In the first place, the legislature can appoint to no office; therefore, the dependence could not be on them for the office, but rather on the President and Senate; but then these cannot add the salary, because no money can be appropriated but in consequence of a law of the United States. No sinecure can be bestowed on any judge but by the concurrence of the whole legislature and the President; and I do not think this an event that will probably happen.

It is true that there is a provision made in the Constitution of Pennsylvania, that the judges shall not be allowed to hold any other office whatsoever; and I believe they are expressly forbidden to sit in Congress; but this, sir, is not introduced as a principle into this Constitution. There are many states in the Union, whose constitutions do not limit the usefulness of their best men, or exclude them from rendering those services to their country for which they are found eminently qualified. New York, far from restricting their chancellor, or judges of the Supreme Court, from a seat in Congress, expressly provide for sending them there on extraordinary occasions. In Connecticut, the judges are not precluded from enjoying other offices. Judges from many states have sat in Congress. Now, it is not to be expected that eleven or twelve states are to change their sentiments and practice, on this subject, to accommodate themselves to Pennsylvania.

It is again alleged, against this system, that the powers of the judges are too extensive; but I will not trouble you, sir, with a repetition of what I had the honor of delivering the other day. I hope the result of those arguments gave satisfaction, and proved that the judicial were commensurate with the legislative powers; that they went no farther, and that they ought to go so far.

The laws of Congress being made for the Union, no particular state can be alone affected; and as they are to provide for the general purposes of the Union, so ought they to have the means of making the provisions effectual over all that country included within the Union.

*Eodem die*, 1787, P. M. — Mr. WILSON. I shall now proceed, Mr. President, to notice the remainder of the objections that have been suggested by the honorable gentlemen who oppose the system now before you.

We have been told, sir, by the honorable member from Fayette, (Mr. Smilie,) "that the trial by jury was intended to be given up, and the civil law was intended to be introduced into its place, in civil cases."

Before a sentiment of this kind was hazarded, I think, sir, the gentleman ought to be prepared with better proof in its support than any he has yet attempted to produce. It is a charge, sir, not only unwarrantable, but cruel: the idea of such a thing, I believe, never entered into the mind of a single member of that Convention; and I believe further, that they never suspected there would be found, within the United States, a single person that was capable of making such a charge. If it should be well founded, sir, they must abide by the consequences; but if (as I trust it will fully appear) it is ill founded, then he or they who make it ought to abide by the consequences.

Trial by jury forms a large field for investigation, and numerous volumes are written on the subject; those who are well acquainted with it may employ much time in its discussion; but in a country where its excellences are so well understood, it may not be necessary to be very prolix in pointing them out. For my part, I shall confine myself to a few observations in reply to the objections that have been suggested.

The member from Fayette (Mr. Smilie) has labored to infer that, under the Articles of Confederation, the Congress possessed no appellate jurisdiction; but this being decided against him by the words of that instrument, by which is granted to Congress the power of "establishing courts for receiving, and determining finally, appeals in all cases of capture, he next attempts a distinction, and allows the power of appealing from the decisions of the judges, but not from the verdict of a jury; but this is determined against him also by the practice of the states; for, in every instance which has occurred, this power has been claimed by Congress, and exercised by the Courts of Appeals. But what would be the consequence of allowing the doctrine for which he contends? Would it not be in the power of a jury, by their verdict, to involve the whole Union in a war? They may condemn the property of a neutral, or otherwise infringe the law of nations; in this case, ought their verdict to be without revisal? Nothing can be inferred from this to prove that trials by jury were intended to be given up. In Massachusetts, and all the Eastern States, their causes are tried by juries, though they acknowledge the appellate jurisdiction of Congress.

I think I am not now to learn the advantages of a trial by jury. It has excellences that entitle it to a superiority over any other mode, in cases to which it is applicable.

Where jurors can be acquainted with the characters of the parties and the witnesses, — where the whole cause can be brought within their knowledge and their view, — I know no mode of investigation equal to that by a jury: they hear every thing that is alleged; they not only hear the words, but they see and mark the features of the countenance; they can judge of weight due to such testimony; and moreover, it is a cheap and expeditious manner of distributing justice. There is another advantage annexed to the trial by jury; the jurors may indeed return a mistaken or ill-founded verdict, but their errors cannot be systematical.

Let us apply these observations to the objects of the judicial department, under this Constitution. I think it has been shown, already, that they all extend beyond the bounds of any particular state; but further, a great number of the civil causes there enumerated depend either upon the law of nations, or the marine law, that is, the general law of mercantile countries. Now, sir, in such cases, I presume it will not be pretended that this mode of decision ought to be adopted; for the law with regard to them is the same here as in every other country, and ought to be administered in the same manner. There are instances in which I think it highly probable that the trial by jury

will be found proper; and if it is highly probable that it will be found proper, is it not equally probable that it will be adopted? There may be causes depending between citizens of different states; and as trial by jury is known and regarded in all the states, they will certainly prefer that mode of trial before any other. The Congress will have the power of making proper regulations on this subject, but it was impossible for the Convention to have gone minutely into it; but if they could, it must have been very improper, because alterations, as I observed before, might have been necessary; and whatever the Convention might have done would have continued unaltered, unless by an alteration of the Constitution. Besides, there was another difficulty with regard to this subject. In some of the states they have courts of chancery, and other appellate jurisdictions, and those states are as attached to that mode of distributing justice as those that have none are to theirs.

I have desired, repeatedly, that honorable gentlemen, who find fault, would be good enough to point out what they deem to be an improvement. The member from Westmoreland (Mr. Findley) tells us that the trial between citizens of different states ought to be by a jury of that state in which the cause of action rose. Now, it is easy to see that, in many instances, this would be very improper and very partial; for, besides the different manner of collecting and forming juries in the several states, the plaintiff comes from another state; he comes a stranger, unknown as to his character or mode of life, while the other party is in the midst of his friends, or perhaps his dependants. Would a trial by jury, in such a case, insure justice to the stranger? But again: I would ask that gentleman whether, if a great part of his fortune was in the hands of some person in Rhode Island, he would wish that his action to recover it should be determined by a jury of that country, under its present circumstances.

The gentleman from Fayette (Mr. Smilie) says that, if the Convention found themselves embarrassed, at least they might have done thus much — they should have declared that the substance should be secured by Congress. This would be saying nothing unless the cases were particularized.

Mr. SMILIE. I said the Convention ought to have declared that the legislature should establish the trial by jury by proper regulations.

Mr. WILSON. The legislature shall establish it by proper regulations! So, after all, the gentleman has landed us at the very point from which we set out. He wishes them to do the very thing they have done — to leave it to the discretion of Congress. The fact, sir, is, nothing more could be done.

It is well known that there are some cases that should not come before juries; there are others, that, in some of the states, never come before juries, and in those states where they do come before them, appeals are found necessary, the facts reexamined, and the verdict of the jury sometimes is set aside; but I think, in all cases where the cause has come originally before a jury, that the last examination ought to be before a jury likewise.

The power of having appellate jurisdiction, as to facts, has been insisted upon as a proof, "that the Convention *intended* to give up the trial by jury in civil cases, and to introduce the civil law." I have already declared my own opinion on this point, and have shown not merely that it is

founded on reason and authority; — the express declaration of Congress (*Journals of Congress*, March 6, 1779) is to the same purpose. They insist upon this power, as requisite to preserve the peace of the Union; certainly, therefore, it ought always to be possessed by the head of the confederacy. We are told, as an additional proof, that the trial by jury was intended to be given up; "that appeals are unknown to the **common law**; that the term is a civil-law term, and with it the civil law is intended to be introduced." I confess I was a good deal surprised at this observation being made; for Blackstone, in the very volume which the honorable member (Mr. Smilie) had in his hand, and read us several extracts from, has a chapter entitled "Of Proceeding in the Nature of Appeals," — and in that chapter says, that the principal method of redress for erroneous judgments, in the king's courts of record, is by writ of error to some superior "*court of appeal*." (3 *Blackstone*, 406.) Now, it is well known that his book is a commentary upon the **common law**. Here, then, is a strong refutation of the assertion, "that appeals are unknown to the **common law**."

I think these were all the circumstances adduced to show the truth of the assertion, that, in this Constitution, the trial by jury was *intended* to be given up by the late Convention in framing it. Has the assertion been proved? I say not: and the allegations offered, if they apply at all, apply in a contrary direction. I am glad that this objection has been stated, because it is a subject upon which the enemies of this Constitution have much insisted. We have now had an opportunity of investigating it fully; and the result is, that there is no foundation for the charge, but it must proceed from ignorance, or something worse.

I go on to another objection which has been taken to this system: "that the expense of the general government and of the state governments will be too great, and that the citizens will not be able to support them." If the state governments are to continue as cumbersome and expensive as they have hitherto been, I confess it would be distressing to add to their expenses, and yet it might be necessary; but I think I can draw a different conclusion on this subject, from more conjectures than one. The additional revenue to be raised by a general government will be more than sufficient for additional expense; and a great part of that revenue may be so contrived as not to be taken from the citizens of this country; for I am not of opinion that the consumer always pays the impost that is laid on imported articles; it is paid sometimes by the importer, and sometimes by the foreign merchant who sends them to us. Had a duty of this nature been laid at the time of the peace, the greatest part of it would have been the contribution of foreigners. Besides, whatever is paid by the citizens is a *voluntary* payment.

I think, sir, it would be very easy and laudable to lessen the expenses of the state governments. I have been told (and perhaps it is not very far from the truth) that there are *two thousand* members of assembly in the several states. The business of revenue is done in consequence of requisitions from Congress; and whether it is furnished or not, it commonly becomes a subject of discussion. Now, when this business is executed by the legislature of the United States, I leave it to those who are acquainted with the expense of long and frequent sessions of Assembly, to determine the great saving that will take place. Let me appeal to the citizens of Pennsylvania, how much time is taken up in this state every year, if not every session, in providing for the payment of an amazing interest due on her funded debt. There will be many sources of revenue, and many opportunities for economy, when the business of finance shall be administered under one government: the

funds will be more productive, and the taxes, in all probability, less burdensome, than they are now.

I proceed to another objection that is taken against the power, given to Congress, of raising and keeping up standing armies. I confess I have been surprised that this objection was ever made; but I am more so that it is still repeated and insisted upon. I have taken some pains to inform myself how the other governments of the world stand with regard to this power, and the result of my inquiry is, that there is not one which has not the power of raising and keeping up standing armies. A government without the power of defence! it is a solecism.

I well recollect the principle insisted upon by the patriotic body in Great Britain; it is, that, in time of peace, a standing army ought not to be kept up without the consent of Parliament. Their only apprehension appears to be, that it might, be dangerous, were the army kept up without the concurrence of the representatives of the people. Sir, we are not in the millennium. Wars may happen; and when they do happen, who is to have the power of collecting and appointing the force, then become immediately and indispensably necessary?

It is not declared, in this Constitution, that the Congress shall raise and support armies. No, sir: if they are not driven to it by necessity, why should we suppose they would do it by choice, any more than the representatives of the same citizens in the state legislatures? For we must not lose sight of the great principle upon which this work is founded. The authority here given to the general government flows from the same source as that placed in the legislatures of the several states.

It may be frequently necessary to keep up standing armies in time of peace. The present Congress have experienced the necessity, and seven hundred troops are just as much a standing army as seventy thousand. The principle which sustains them is precisely the same. They may go further, and raise an army, without communicating to the public the purpose for which it is raised. On a particular occasion they did this. When the commotions existed in Massachusetts, they gave orders for enlisting an additional body of two thousand men. I believe it is not generally known on what a perilous tenure we held our freedom and independence at that period. The names of internal insurrection were ready to burst out in every quarter; they were formed by the correspondents of state officers, (to whom an allusion was made on a former day,) and from one end to the other of the continent, we walked on ashes, concealing fire beneath our feet; and ought Congress to be deprived of power to prepare for the defence and safety of our country? Ought they to be restricted from arming, until they divulge the motive which induced them to arm? I believe the *power* of raising and keeping up an army, in time of peace, is essential to every government. No government can secure its citizens against dangers, internal and external, without possessing it, and sometimes carrying it into execution. I confess it is a power in the exercise of which all wise and moderate governments will be as prudent and forbearing as possible. When we consider the situation of the United States, we must be satisfied that it will be necessary to keep up some troops for the protection of the western frontiers, and to secure our interest in the internal navigation of that country. It will be not only necessary, but it will be economical on the great scale. Our enemies, finding us invulnerable, will not attack us; and we shall thus prevent the occasion for larger standing armies. I am now led to consider another charge that is brought against this system.

It is said that Congress should not possess the power of calling out the militia, to execute the laws of the Union, suppress insurrections, and repel invasions; nor the President have the command of them when called out for such purposes.

I believe any gentleman, who possesses military experience, will inform you that men without a uniformity of arms, accoutrements, and discipline, are no more than a mob in a camp; that, in the field, instead of assisting, they interfere with one another. If a soldier drops his musket, and his companion, unfurnished with one, takes it up, it is of no service, because his cartridges do not fit it. By means of this system, a uniformity of arms and discipline will prevail throughout the United States.

I really expected that, for this part of the system at least, the framers of it would have received plaudits instead of censures, as they here discover a strong anxiety to have this body put upon an effective footing, and thereby, in a great measure, to supersede the necessity of raising or keeping up standing armies.

The militia formed under this system, and trained by the several states, will be such a bulwark of internal strength, as to prevent the attacks of foreign enemies. I have been told that, about the year 1744, an attack was intended by France upon Massachusetts Bay, but was given up on reading the militia law of the province.

If a single state could deter an enemy from such attempts, what influence will the proposed arrangement have upon the different powers of Europe?

In every point of view, this regulation is calculated to produce good effects. How powerful and respectable must the body of militia appear under general and uniform regulations! How disjointed, weak, and inefficient are they at present! I appeal to military experience for the truth of my observations.

The next objection, sir, is a serious one indeed; it was made by the honorable gentleman from Fayette, (Mr. Smilie.) "The Convention knew this was not a free government; otherwise, they would not have asked the powers of the purse and sword." I would beg to ask the gentleman what free government he knows that has not the powers of both? There was, indeed, a government under which we unfortunately were for a few years past, that had them not; but it does not now exist. A government without these powers is one of the improvements with which opposition wish to astonish mankind.

Have not the freest governments those powers? And are they not in the fullest exercise of them? This is a thing so clear, that really it is impossible to find facts or reasons more clear, in order to illustrate it. Can we create a government without the power to act? How can it act without the assistance of men? And how are men to be procured without being paid for their services? Is not the one power the consequence of the other?

We are told, — and it is the last and heaviest charge, — "that this government is an aristocracy, and was *intended* so to be by the late Convention;" and we are told (the truth of which is not disputed) that an aristocratical government is incompatible with freedom. I hope, before this

charge is believed, some stronger reasons will be given in support of it than any that have yet been produced.

The late Convention were assembled to devise some plan for the security, safety, and happiness of the people of the United States. If they have devised a plan that robs them of their power, and constitutes an aristocracy, they are the parricides of their country, and ought to be punished as such. What part of this system is it that warrants the charge?

What is an aristocratic government? I had the honor of giving a definition of it at the beginning of our debates. It is, sir, the government of a few over the many — elected by themselves, or possessing a share in the government by inheritance, or in consequence of territorial rights, or some quality independent of the choice of the people. This is an aristocracy, and this Constitution is said to be an aristocratical form of government; and it is also said that it was intended so to be by the members of the late Convention who framed it. What peculiar rights have been reserved to any class of men, on any occasion? Does even the first magistrate of the United States draw to himself a single privilege or security that does not extend to every person throughout the United States? Is there a single distinction attached to him, in this system, more than there is to the lowest officer in the republic? Is there an office from which any one set of men whatsoever are excluded? Is there one of any kind in this system but is as open to the poor as to the rich? to the inhabitant of the country, as well as to the inhabitant of the city? And are the places of honor and emoluments confined to a few? And are these few the members of the late Convention? Have they made any particular provisions in favor of themselves, their relations, or their posterity? If they have committed their country to the demon of aristocracy, have they not committed themselves also, with every thing they held near and dear to them?

Far, far other is the genius of this system. I have had already the honor of mentioning its general nature; but I will repeat it, sir. In its principle it is purely democratical; but its parts are calculated in such manner as to obtain those advantages, also, which are peculiar to the other forms of government in other countries. By appointing a single magistrate, we secure strength, vigor, energy, and responsibility in the executive department. By appointing a Senate, the members of which are elected for six years, yet, by a rotation already taken notice of, changing every second year, we secure the benefit of experience, while, on the other hand, we avoid the inconveniences that arise from a long and detached establishment. This body is periodically renovated from the people, like a tree, which, at the proper season, receives its nourishment from its parent earth.

In the other branch of the legislature, the House of Representatives, shall we not have the advantages of benevolence and attachment to the people, whose immediate representatives they are?

A free government has often been compared to a pyramid. This allusion is made with peculiar propriety in the system before you; it is laid on the broad basis of the people; its powers gradually rise, while they are confined, in proportion as they ascend, until they end in that most permanent of all forms. When you examine all its parts, they will invariably be found to preserve that essential mark of free governments — a chain of connection with the people.

Such, sir, is the nature of this system of government; and the important question at length presents itself to our view — Shall it be ratified, or shall it be rejected, by this Convention? In order to enable us still further to form a judgment on this truly momentous and interesting point, on which all we have, or can have, dear to us on earth is materially depending, let us for a moment consider the consequences that will result from one or the other measure. Suppose we reject this system of government; what will be the consequence? Let the farmer say, he whose produce remains unasked for; nor can he find a single market for its consumption, though his fields are blessed with luxuriant abundance. Let the manufacturer, and let the mechanic, say; they can feel, and tell their feelings. Go along the wharves of Philadelphia, and observe the melancholy silence that reigns. I appeal not to those who enjoy places and abundance under the present government; they may well dilate upon the easy and happy situation of our country. Let the merchants tell you what is our commerce; let them say what has been their situation since the return of peace — an era which they might have expected would furnish additional sources to our trade, and a continuance, and even an increase, to their fortunes. Have these ideas been realized? or do they not lose some of their capital in every adventure, and continue the unprofitable trade from year to year, subsisting under the hopes of happier times under an efficient general government? The ungainful trade carried on by our merchants has a baneful influence on the interests of the manufacturer, the mechanic, and the farmer; and these, I believe, are the chief interests of the people of the United States.

I will go further. Is there now a government among us that can do a single act that a national government ought to do? Is there any power of the United States that can *command* a single shilling? This is a plain and a home question.

Congress may recommend; they can do no more: they may require; but they must not proceed one step further. If things are bad now, — and that they are not worse is only owing to hopes of improvement or change in the system, — will they become better when those hopes are disappointed? We have been told, by honorable gentlemen on this floor, (Mr. Smilie, Mr. Findley, and Mr. Whitehill,) that it is improper to urge this kind of argument in favor of a new system of government, or against the old one: unfortunately, sir, these things are too severely felt to be omitted; the people feel them; they pervade all classes of citizens, and every situation from New Hampshire to Georgia: the argument of necessity is the patriot's defence, as well as the tyrant's plea.

Is it likely, sir, that, if this system of government is rejected, a better will be framed and adopted? I will not expatiate on this subject; but I believe many reasons will suggest themselves to prove that such expectation would be illusory. If a better could be obtained at a future time, is there any thing essentially wrong in this? I go further. Is there any thing wrong that cannot be amended more easily by the mode pointed out in the system itself, than could be done by calling convention after convention, before the organization of the government? Let us now turn to the consequences that will result if we assent to and ratify the instrument before you. I shall trace them as concisely as I can, because I have trespassed already too long on the patience and indulgence of the house.

I stated, on a former occasion, one important advantage; by adopting this system, we become a *nation*; at present, we are not one. Can we perform a single national act? Can we do any thing to

procure us dignity, or to preserve peace and tranquillity? Can we relieve the distress of our citizens? Can we provide for their welfare or happiness? The powers of our government are mere sound. If we offer to treat with a nation, we receive this humiliating answer: "You cannot, in propriety of language, make a treaty, because you have no power to execute it." Can we borrow money? There are too many examples of unfortunate creditors existing, both on this and the other side of the Atlantic, to expect success from this expedient. But could we borrow money, we cannot command a fund, to enable us to pay either the principal or interest; for, in instances where our friends have advanced the principal, they have been obliged to advance the interest also, in order to prevent the principal from being annihilated in their hands by depreciation. Can we raise an army? The prospect of a war is highly probable. The accounts we receive, by every vessel from Europe, mention that the highest exertions are making in the ports and arsenals of the greatest maritime powers. But whatever the consequence may be, are we to lie supine? We know we are unable, under the Articles of Confederation, to exert ourselves; and shall we continue so, until a stroke be made on our commerce, or we see the debarkation of a hostile army on our unprotected shores? Who will guaranty that our property will not be laid waste, that our towns will not be put under contribution, by a small naval force, and subjected to all the horror and devastation of war? May not this be done without opposition, at least effectual opposition, in the present situation of our country? There may be safety over the Appalachian Mountains, but there can be none on our sea-coast. With what propriety can we hope our flag will be respected, while we have not a single gun to fire in its defence?

Can we expect to make internal improvement, or accomplish any of those great national objects which I formerly alluded to, when we cannot find money to remove a single lock out of a river?

This system, sir, will at least make us a nation, and put it in the power of the Union to act as such. We shall be considered as such by every nation in the world. We shall regain the confidence of our citizens, and command the respect of others.

As we shall become a nation, I trust that we shall also form a national character, and that this character will be adapted to the principles and genius of our system of government: as yet we possess none; our language, manners, customs, habits, and dress, depend too much upon those of other countries. Every nation, in these respects, should possess originality; there are not, on any part of the globe, finer qualities for forming a national character, than those possessed by the children of America. Activity, perseverance, industry, laudable emulation, docility in acquiring information, firmness in adversity, and patience and magnanimity under the greatest hardships; — from these materials, what a respectable national character may be raised! In addition to this character I think there is strong reason to believe that America may take the lead in literary improvements and national importance. This is a subject which, I confess, I have spent much pleasing time in considering. That language, sir, which shall become most generally known in the civilized world, will impart great importance over the nation that shall use it. The language of the United States will, in future times, be diffused over a greater extent of country than any other that we know. The French, indeed, have made laudable attempts toward establishing a universal language; but, beyond the boundaries of France, even the French language is not spoken by one in a thousand. Besides the freedom of our country, the great improvements she has made, and will make, in the science of government, will induce the patriots and *literati* of every nation to

read and understand our writings on that subject; and hence it is not improbable that she will take the lead in political knowledge.

If we adopt this system of government, I think we may promise security, stability, and tranquillity, to the governments of the, different states. They would not be exposed to the danger of competition on questions of territory, or any other that have heretofore disturbed them. A tribunal is here found to decide, justly and quietly, any interfering claim; and now is accomplished what the great mind of Henry IV. of France had in contemplation — a system of government for large and respectable dominions, united and bound together, in peace, under a superintending head, by which all their differences may be accommodated, without the destruction of the human race. We are told by Sully that this was the favorite pursuit of that good king during the last years of his life; and he would probably have carried it into execution, had not the dagger of an assassin deprived the world of his valuable life. I have, with pleasing emotion, seen the wisdom and beneficence of a less efficient power under the Articles of Confederation, in the determination of the controversy between the states of Pennsylvania and Connecticut; but I have lamented that the authority of Congress did not extend to extinguish, entirely, the spark which has kindled a dangerous flame in the district of Wyoming.

Let gentlemen turn their attention to the amazing consequences which this principle will have in this extended country. The several states cannot war with each other; the general government is the great arbiter in contentions between them; the whole force of the Union can be called forth to reduce an aggressor to reason. What a happy exchange for the disjointed, contentious state sovereignties!

The adoption of this system will also secure us from danger, and procure us advantages from foreign nations. This, in our situation, is of great consequence. We are still an inviting object to one European power at least; and, if we cannot defend ourselves, the temptation may become too alluring to be resisted. I do not mean that, with an efficient government, we should mix with the commotions of Europe. No, sir, we are happily removed from them, and are not obliged to throw ourselves into the scale with any. This system will not hurry us into war; it is calculated to guard against it. It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is vested in the legislature at large: this declaration must be made with the concurrence of the House of Representatives: from this circumstance we may draw a certain conclusion that nothing but our national interest can draw us into a war. I cannot forbear, on this occasion, (the pleasure of mentioning to you the sentiments of the great and benevolent man, whose works I have already quoted on another subject. Mr. Necker has addressed this country in language important and applicable in the strictest degree to its situation and to the present subject. Speaking of war, and the greatest caution that all nations ought to use in order to avoid its calamities, — "And you, rising nation," says he, "whom generous efforts have freed from the yoke of Europe! let the universe be struck with still greater reverence at the sight of the privileges you have acquired, by seeing you continually employed for the public felicity: do not offer it as a sacrifice at the unsettled shrine of political ideas, and of the deceitful combinations of warlike ambition; avoid, or, at least, delay, participating in the passions of our hemisphere; make your own advantage of the knowledge which experience alone has given to our old age, and preserve, for a long time, the simplicity of childhood; in short,

honor human nature, by showing that, when left to its own feelings, it is still capable of those virtues that maintain public order, and of that prudence which insures public tranquillity."

Permit me to offer one consideration more, that ought to induce our acceptance of this system. I feel myself lost in the contemplation of its magnitude. By adopting this system, we shall probably lay a foundation for erecting temples of liberty in every part of the earth. It has been thought by many, that on the success of the struggle America has made for freedom will depend the exertions of the brave and enlightened of other nations. The advantages resulting from this system will not be confined to the United States, but will draw from Europe many worthy characters, who pant for the enjoyment of freedom. It will induce princes, in order to preserve their subjects, to restore to them a portion of that liberty of which they have for many ages been deprived. It will be subservient to the great designs of Providence with regard to this globe — the multiplication of mankind, their improvement in knowledge, and their advancement in happiness.

Mr. M'KEAN. Sir, you have under your consideration a matter of very great weight and importance, not only to the present generation, but to posterity; for where the rights and liberties of the people are concerned, there certainly it is fit to proceed with the utmost caution and regard. You have done so hitherto. The power of this Convention being derived from the people of Pennsylvania, by a *positive* and *voluntary* grant, cannot be extended farther than what this *positive grant* hath conveyed. You have been chosen by the people for the sole purpose of "assenting to and ratifying the Constitution proposed for the future government of the United States, with respect to their general and common concerns," or of rejecting it. It is a sacred trust; and as, on the one hand, you ought to weigh well the innovations it will create in the governments of the individual states, and the dangers which may arise by its adoption, so, upon the other hand, you ought fully to consider the benefits it may promise, and the consequences of a rejection of it. You have hitherto acted strictly conformably to your delegated power; you have agreed that a single question can come before you; and it has been accordingly moved that you resolve "to assent to and ratify this Constitution." Three weeks have been spent in hearing the objections that have been made against it, and it is now time to determine whether they are of such a nature as to overbalance any benefits or advantages that may be derived to the state of Pennsylvania by your accepting it.

Sir, I have as yet taken up but little of your time; notwithstanding this, I will endeavor to contract what occurs to me on the subject. And in what I have to offer, I shall observe this method: I will first consider the arguments that may have been used against this Constitution, and then give my reasons why I am for the motion.

The arguments *against* the Constitution are, I think, chiefly these: —

First. That the elections of representatives and senators are not frequent enough to insure responsibility to their constituents.

Second. That one representative for thirty thousand persons is too few.

Third. The Senate have a share in the appointment of certain officers, and are to be the judges on the impeachment of such officers. This is blending the executive with the legislative and judicial department, and is likely to screen the offenders impeached, because of the concurrence of a majority of the Senate in their appointment.

Fourth. That the Congress may, by law, deprive the electors of a fair choice of their representatives, by fixing improper times, places, and modes of election.

Fifth. That the powers of Congress are too large, particularly in laying internal taxes and excises, because they may lay excessive taxes, and leave nothing for the support of the state governments.

In raising and supporting armies; and that the appropriation of money, for that use, should not be for so long a term as two years.

In calling forth the militia on necessary occasions; because they may call them from one end of the continent to the other, and wantonly harass them; besides, they may coerce men to act in the militia, whose consciences are against bearing arms in any case.

In making all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof;

And in declaring that this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land.

The migration or importation of such persons as any of the states shall admit shall not be prohibited prior to 1808, nor a tax or duty imposed on such importation exceeding ten dollars for each person.

Sixth. That the whole of the executive power is not lodged in the President alone, so that there might be one responsible person.

That he has the sole power of pardoning offences against the United States, and may therefore pardon traitors, for treasons committed in consequence of his own ambitious and wicked projects, or those of the Senate.

That the Vice-President is a useless officer, and, being an executive officer, is to be president of the Senate, and in case of a division is to have the casting voice.

Seventh. The judicial power shall be vested in one Supreme Court. An objection is made, that the compensation for the services of the judges shall not be diminished during their continuance in office; and this is contrasted with the compensation to the President, which is to be neither *increased* nor *diminished* during the period for which he shall have been elected; but that of the

judges may be increased, and the judges may hold other offices of a lucrative nature, and their judgments be thereby warped.

That in all the cases enumerated, except where the Supreme Court has original jurisdiction, "they shall have appellate jurisdiction both as to law and facts, with such exceptions, and under such regulations, as the Congress shall make." From hence is inferred that the trial by jury is not secured.

That they have jurisdiction between citizens of different states.

Eighth. That there is no bill or declaration of rights in this Constitution.

Ninth. That this is a *consolidation* of the several states, and not a *confederation*.

Tenth. It is an *aristocracy*, and was intended to be so by the framers of it.

The first objection that I heard advanced against this Constitution, I say, sir, was, that "the elections of representatives and senators are not frequent enough to insure responsibility to their constituents."

This is a subject that most men differ about; but there are more considerations than that of mere responsibility. By this system the House of Representatives is composed of persons chosen every second year by the people of the several states; and the senators every six years by the legislatures. Whether the one or the other of these periods is of too long duration, is a question to which various answers will be given. Some persons are of opinion, that three years in the one case, and seven in the other, would be a more eligible term than that adopted in this Constitution. In Great Britain, we find the House of Commons elected for seven years; the House of Lords is perpetual, and the king never dies. The Parliament of Ireland is octennial. In various other parts of the British dominions, the House of Representatives sit during the royal pleasure, and have been continued twenty years. This, sir, is a term undoubtedly too long. In a single state, I think annual elections most proper; but then there ought to be more branches in the legislature than one. An annual legislature, possessed of supreme power, may be properly termed an *annual despotism*; and, like an individual, they are subject to caprice, and act as party spirit or spleen dictates; hence that instability to the laws which is the bane of republican governments.

The framers of this Constitution wisely divided the legislative department between the two houses, subject to the qualified negative of the President of the United States, though this government embraces only enumerated powers. In a single state, annual elections may be proper; the more so, when the legislative powers extend to all cases; but in such an extent of country as the United States, and when the powers are circumscribed, there is not that necessity, nor are the objects of the general government of that nature as to be acquired immediately by every capacity. To combine the various interests of thirteen different states, requires more extensive knowledge than is necessary for the legislature of any one of them. Two years are therefore little enough for the members of the House of Representatives to make themselves fully acquainted with the views, the habits, and interests, of the United States. With respect to the Senate, when we consider the trust reposed in them, we cannot hesitate to pronounce that the period assigned to

them is short enough; they possess, in common with the House of Representatives, legislative power; with its concurrence they also have power to declare war; they are joined with the President in concluding treaties; it therefore behoves them to be conversant with the politics of the nations of the world, and the dispositions of the sovereigns and their ministers; this requires much reading and attention. And, believe me, the longer a man bends his study to any particular subject, the more likely he is to be master of it. Experience and practice will assist genius and education. I therefore think the time allowed, under this system, to both houses, to be extremely proper. This objection has been made repeatedly; but it can only have weight with those who are not at the pains of thinking on the subject. When any thing, sir, new or great, is done, it is very apt to create a ferment among those out of doors, who, as they cannot always enter into the depth and wisdom of counsels, are too apt to censure what they do not understand; upon a little reflection and experience, the people often find that to be a singular *blessing* which at first they deemed a *curse*.

Second. "That one representative for thirty thousand persons is too few."

There will be, sir, sixty-five in the House of Representatives, and twenty-six in the Senate — in all ninety-one, who, together with the President, are to make laws in the several particular matters intrusted to them, and which are all enumerated and expressed. I think the number sufficient at the present, and in three years' time, when a census or actual enumeration must take place, they will be increased, and in less than twenty-five years they will be more than double. With respect to this, different gentlemen in the several states will differ, and at least the opinion of the majority must govern.

Third. "The senators have a share in the appointment of certain officers, and are to be the judges on the impeachment of such officers. This is blending the executive with the legislative and judicial department, and is likely to screen the offenders impeached, because of the concurrence of a majority of the Senate in their appointment."

The President is to nominate to office, and, with the advice and consent of the Senate, appoint officers, so that he is the responsible person; and when any such impeachment shall be tried, it is more than probable that not one of the Senate, who concurred in the appointment, will be a senator, for the seats of a third part are to be vacated every two years, and of all in six.

As to the senators having a share in the executive power, so far as to the appointment of certain officers, I do not know where this restraint on the President could be more safely lodged. Some may think a privy counsellor might have been chosen by every state: but this could little amend the matter, if any, and it would be a considerable additional expense to the people. Nor need the Senate be under any necessity of sitting constantly, as has been alleged; for there is an express provision made to enable the President to fill up all vacancies that may happen during their recess — the commissions to expire at the end of the next session.

As to the impeachments, the objection is much stronger against the supreme executive council of Pennsylvania.

The House of Lords, in Great Britain, are judges in the last resort in all civil causes, and, besides, have the power of trying impeachments.

On the trial of impeachments, the senators are to be under the sanction of an oath or affirmation, besides the other ties upon them to do justice; and the basis is more likely to be against the officer accused than in his favor, for there are always more persons disobliged, than the contrary, when an office is given away, and the expectants of office are more numerous than the possessors.

Fourth. "That the Congress may by law deprive the electors of a fair choice of their representatives, by fixing improper times, places, and modes of election."

Every House of Representatives are of necessity to be the judges of the elections, returns, and qualifications of its own members. It is therefore their province, as well as duty, to see that they are fairly chosen, and are the legal members; for this purpose, it is proper they should have it in their power to provide that the times, places, and manner of election should be such as to insure free and fair elections.

Annual *Congresses* are expressly secured; they have only a power given to them to take care that the *elections* shall be at convenient and suitable times and places, and conducted in a proper manner; and I cannot discover why we may not intrust these particulars to the representatives of the United States with as much safety as to those of individual states.

In some states the electors vote *viva voce*, in others by ballot. They ought to be uniform, and the elections held on the same day throughout the United States, to prevent corruption or undue influence. Why are we to suppose that Congress will make a bad use of this power, more than the representatives in the several states?

It is said, "that the powers of Congress, under this Constitution, are too large, particularly in laying internal taxes and excises, because they *may* lay excessive taxes, and leave nothing for the support of the state governments." Sir, no doubt but you will discover, on consideration, the necessity of extending these powers to the government of the Union. If they have to borrow money, they are certainly bound, in honor and conscience, to pay the interest, until they pay the principal, as well to the foreign as to the domestic creditor; it therefore becomes our duty to put it in their power to be honest. At present, sir, this is not the case, as experience has fully shown. Congress have solicited and required the several states to make provision for these purposes. Has one state paid its quota? I believe not one of them. And what has been the result? Foreigners have been compelled to advance money to enable us to pay the interest due them on what they furnished to Congress during the late war. I trust we have had experience enough to convince us that Congress ought no longer to depend upon the force of requisition. I heard it urged, that Congress ought not to be authorized to collect taxes, until a state had refused to comply with this requisition. Let us examine this position. The engagements entered into by the general government render it necessary that a certain sum shall be paid in one year; notwithstanding this, they must not have power to collect it until the year expires, and then it is too late. Or is it expected that Congress will borrow the deficiency? Those who lent us, in our distress, have little encouragement to make advances again to our government; but give the power to Congress to

lay such taxes as may be just and necessary, and public credit will revive. Yet, because they have the power to lay taxes and excise, does it follow that they *must*? For my part, I hope it may not be necessary; but if it is, it is much easier for the citizens of the United States to contribute their proportion, than for a few to bear the weight of the whole principal and interest of the domestic debt; and there is perfect security on this head, because the regulation must equally affect every state, and the law must originate with the immediate representatives of the people, subject to the investigation of the state representatives. But is the abuse an argument against the use of power? I think it is not; and, upon the whole, I think this power wisely and securely lodged in the hands of the general government; though, on the first view of this work, I was of opinion they might have done without it; but, sir, on reflection, I am satisfied that it is not only proper, but that our political salvation may depend upon the exercise of it.

The next objection is against "the power of raising and supporting armies; and the appropriation of money for that use should not be for so long a term as two years." Is it not necessary that the authority superintending the general concerns of the United States should have the power of raising and supporting armies? Are we, sir, to stand defenceless amidst conflicting nations? Wars are inevitable, but war cannot be declared without the consent of the immediate representatives of the people. They must also *originate* the law which appropriates the money for the support of the army; yet they can make no appropriation for a longer term than two years; but does it follow, because they *may* make appropriations for that period, that they *must*, or even *will*, do it? The power of raising and supporting armies is not only necessary, but is enjoyed by the present Congress, who also judge of the expediency or necessity of keeping them up. In England there is a standing army: though in words it is engaged but for one year, yet is it not kept constantly up? Is there a year that Parliament refuses to grant them supplies? Though this is done annually, it might be done for any longer term. Are not their officers commissioned for life? And when *they* exercise this power with so much prudence, shall the representatives of this country be suspected the more, because they are restricted to two years?

It is objected that the powers of Congress are too large, because "they have the power of calling forth the militia on necessary occasions, and may call them from one end of the continent to the other, and wantonly harass them; besides, they may coerce men to act in the militia whose consciences are against bearing arms in any case." It is true, by this system power is given to Congress to organize, arm, and discipline the militia, but every thing else is left to the state governments; they are to officer and train them. Congress have also the power of calling them forth for the purpose of executing the laws of the Union, suppressing insurrections, and repelling invasions; but can it be supposed they would call them, in such case, from Georgia to New Hampshire? Common sense must oppose the idea.

Another objection was taken from these words of the Constitution — "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof." And, in declaring "that this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land," this has at last been conceded, that, though it is explicit enough, yet it gives to Congress no further powers than those already enumerated. Those that first said it gave to Congress the power of superseding the state

governments, cannot persist in it; for no person can, with a tolerable face, read the clauses over, and infer that such may be the consequence.

Provision is made that Congress shall have power to prohibit the importation of slaves after the year 1808; but the gentlemen in opposition accuse this system of a crime, because it has not prohibited it at once. I suspect those gentlemen are not well acquainted with the business of the diplomatic body, or they would know that an agreement might be made that did not perfectly accord with the will and pleasure of any one person. Instead of finding fault with what has been gained, I am happy to see a disposition in the United States to do so much.

The next objections have been against the executive power. It is complained of, "because the whole of the executive power is not lodged in the President *alone*, so that there might be one responsible person. He has the *sole* powers of pardoning offences against the United States, and may therefore pardon traitors, for treasons committed in consequence of his own ambitious or wicked projects, or those of the Senate."

Observe the contradiction, sir, in these two objections. One moment the system is blamed for not leaving all executive authority to the President *alone*, the next it is censured for giving him the *sole* power to pardon traitors. I am glad to hear these objections made, because it forebodes an amendment in that body in which amendment is necessary. The President of the United States must nominate to all offices, before the persons can be chosen; he here consents and becomes liable. The executive council of Pennsylvania appoint officers by ballot, which effectually destroys responsibility. He may pardon offences; and hence it is inferred that he may pardon traitors, for treason committed in consequence of his own ambitious and wicked projects. The executive council of Pennsylvania can do the same. But the President of the United States may be impeached before the Senate, and punished for his crimes.

"The Vice-President is a useless officer." Perhaps the government might be executed without him, but there is a necessity of having a person to preside in the Senate, to continue a full representation of each state in that body. The chancellor of England is a judicial officer; yet he sits in the House of Lords.

The next objection is against the judicial department. "The judicial power shall be vested in one Supreme Court." An objection is made that the compensation for the services of the judges shall not be *diminished* during their continuance in office; and this is contrasted with the compensation of the President, which is to be neither *increased* nor *diminished* during the period for which he shall be elected. But that of the judges may be increased, and the judge may hold other offices of a lucrative nature, and his judgment be thereby warped.

Do gentlemen not see the reason why this difference is made? Do they not see that the President is appointed but for four years, whilst the judges may continue for life, if they shall so long behave themselves well? In the first case, little alteration can happen in the value of money; but in the course of a man's life, a very great one may take place from the discovery of silver and gold mines, and the great influx of those metals; in which case an increase of salary may be requisite. A security that their compensation shall not be lessened, nor they have to look up to every session for salary, will certainly tend to make those officers more easy and independent.

"The judges may hold other offices of a lucrative nature." This part of the objection reminds me of the scheme that was fallen upon, in Pennsylvania, to prevent any person from taking up large tracts of land. A law was passed restricting the purchaser to a tract not exceeding three hundred acres; but all the difference it made was, that the land was taken up by several patents, instead of one, and the wealthy could procure, if they chose it, three thousand acres. What though the judges could hold no other office, might they not have brothers, children, and other relations, whom they might wish to see placed in the offices forbidden to themselves? I see no apprehensions that may be entertained on this account.

That, in all cases enumerated, except where the Supreme Court has original jurisdiction, "they shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make." From this it is inferred that the trial by jury is not secured; and an objection is set up to the system, because they have jurisdiction between citizens of different states. Regulations under this head, are necessary; but the Convention could form no one that would have suited each of the United States. It has been a subject of amazement to me to hear gentlemen contend that the verdict of a jury shall be without revision in all cases. Juries are not infallible because they are twelve in number. When the law is so blended with the fact as to be almost inseparable, may not the decision of a jury be erroneous? Yet, notwithstanding this, trial by jury is the best mode that is known. Appellate jurisdiction, sir, is known in the **common law**, and causes are removed from inferior courts, by writs of error, into some court of appeal. It is said that the lord chancellor, in all cases, sends down to the lower courts when he wants to determine a fact; but that opinion is not well founded, because he determines nineteen out of twenty without the intervention of any jury. The power to try causes between citizens of different states was thought by some gentlemen invidious; but I apprehend they must see the necessity of it, from what has been already said by my honorable colleague.

"That there is no bill or declaration of rights in this Constitution."

To this I answer, Such a thing has not been deemed essential to liberty, excepting in Great Britain, where there is a king and a House of Lords, quite distinct, with respect to power and interest, from the rest of the people; or, in Poland, the *pacta conventus*, which the king signs before he is crowned; and in six states of the American United States.

Again, because it is unnecessary; for the powers of Congress, being derived from the people in the mode pointed out by this Constitution, and being therein enumerated and *positively* granted, can be no other than what this positive grant conveys. (*Locke on Civil Government*, vol. ii, b. 2, chap. 2, sect. 140, and in the 13th chap., sect. 152.)

With respect to executive officers, they have no manner of authority, any of them, beyond what is by *positive* grant and commission delegated to them.

"That this is a *consolidation* of the several states, and not a *confederation*."

To this I answer, the name is immaterial; the thing unites the several states, and makes them like one, in particular instances and for particular purposes — which is what is ardently desired by most of the sensible men in this country. I care not whether it is called a *consolidation*,

*confederation*, or *national government*, or by what other name, if it is a good government, and calculated to promote the blessings of liberty, tranquillity, and happiness.

"It is an *aristocracy*, and was intended to be so by the framers of it."

Here, again, sir, the name is immaterial, if it is a good system of government for the general and common concerns of the United States. But after the definition which has already been given of an aristocratic government, it becomes unnecessary to repeat arguments to prove that this system does not establish an aristocracy.

There have been some other small objections to, or rather criticisms on, this work, which I rest assured the gentlemen who made them will, on reflection, excuse me in omitting to notice.

Many parts of this Constitution have been wrested and Tortured, in order to make way for shadowy objections, which must have been observed by every auditor. Some other things were said with acrimony; they seemed to be personal; I heard the sound, but it was inarticulate. I can compare it to nothing better than the feeble noise occasioned by the working of small beer.

It holds in argument, as well as nature, that *destructio unius est generatio alterius* — the refutation of an argument begets a proof.

The objections to this Constitution having been answered, and all done away, it remains pure and unhurt; and this alone is a forcible argument of its goodness.

Mr. President, I am sure nothing can prevail with me to give my vote for ratifying this Constitution, but a conviction, from comparing the arguments on both sides, that the not doing it is liable to more inconvenience and danger than the doing it.

1. If you do it, you strengthen the government and people of these United States, and will thereby have the wisdom and assistance of all the states.
2. You will settle, establish, and firmly perpetuate, our independence, by destroying the vain hopes of all its enemies, both at home and abroad.
3. You will encourage your allies to join with you; nay, to depend, that what hath been stipulated, or shall hereafter be stipulated and agreed upon, will be punctually performed, and other nations will be induced to enter into treaties with you.
4. It will have a tendency to break our parties and divisions, and, by that means, lay a firm and solid foundation for the future tranquillity and happiness of the United States in general, and of this state in particular.
5. It will invigorate our commerce, and encourage shipbuilding.
6. It will have a tendency not only to prevent any other nation from making war upon you, but from offering you any wrong, or even insult.

In short, the advantages that must result from it are obviously so numerous and important, and have been so fully and ably pointed out by others, that it appears to be unnecessary to enlarge on this head.

Upon the whole, sir, the law has been my study from my infancy, and my only profession. I have gone through the circle of offices, in the legislative, executive, and judicial departments of government; and from all my study, observation, and experience, I must declare that, from a full examination and due consideration of this system, it appears to me the *best the world has yet seen*.

I congratulate you on the fair prospect of its being adopted, and am happy in the expectation of seeing accomplished what has been long my ardent wish — that you will hereafter have a *salutary permanency in magistracy, and stability in the laws*.

---

PROCEEDINGS OF THE MEETING AT HARRISBURG, IN PENNSYLVANIA.

HARRISBURG, Sept. 3, 1788.

Agreeably to a circular letter which originated in the county of Cumberland, inviting to a conference such of the citizens of this state who conceive that a revision of the federal system, lately proposed for the government of these United States, is necessary, -- a number of gentlemen from the city of Philadelphia, and counties of Philadelphia, Bucks, Chester, Lancaster, Cumberland, Berks, Northumberland, Bedford, Fayette, Washington, Franklin, Dauphin, and Huntingdon, assembled at this place for the said purpose, viz.:

--

Hon. George Bryan, Esq.	Robert Whitehill,	John Kean,
Blair M'Clenahan,	William Sterrett,	Jonathan Hoge,
James Hanna,	Adam Orth,	Daniel Montgomery,
James Mercer,	Thomas Murray,	John Dickey,
Albert Gallatin,	Joseph Gardner,	John Bishop,
Benjamin Elliot,	Benjamin Blyth,	John Lytle,

James Crooks,	John Jordan,	Hon. John Smilie,
Daniel Bradley,	William Rodgers,	James Marshall,
James Anderson,	John Rodgers,	Richard Baird,
Charles Pettit,	Robert M'Kee,	John A. Hanna,
Richard Backhouse,	William Petricken,	Robert Smith.

Blair M'Clenahan, Esq., was unanimously elected chairman, and John A. Hanna, Esq., secretary.

After free discussion, and mature deliberation, had upon the subject before them, the following resolutions and propositions were adopted --

The ratification of the federal Constitution having formed a new era in the American world, highly interesting to all the citizens of the United States, it is not less the duty than the privilege of every citizen to examine with attention the principles and probable effect of a system on which the happiness or misery of the present as well as future generations so much depends. In the course of such examination, many of the good citizens of the state of Pennsylvania have found their apprehensions excited that the Constitution, in its present form, contains in it some principles which may be perverted to purposes injurious to the rights of free citizens, and some ambiguities which may probably lead to contentions incompatible with order and good government. In order to remedy these inconveniences, and to avert the apprehended dangers, it has been thought expedient that delegates, chosen by those who wish for early amendments in the said Constitution, should meet together for the purpose of deliberating on the subject, and uniting in some constitutional plan for obtaining the amendments which they may deem necessary.

We, the conferees, assembled for the purpose aforesaid, agree in opinion, --

That a federal government, only, can preserve the liberties and secure the happiness of the inhabitants of a country so extensive as these United States; and experience having taught us that the ties of our union, under the Articles of Confederation, were so weak as to deprive us of some of the greatest advantages we had a right to expect from it, we are fully convinced that a more efficient government is indispensably necessary. But although the Constitution proposed for the United States is likely to obviate most of the inconveniences we labored under, yet several parts of it appear so exceptionable to us, that we are clearly of opinion considerable amendments are essentially necessary. In full confidence, however, of obtaining a revision of such exceptionable parts by general convention, and from a desire to harmonize with our fellow-citizens, we are induced to acquiesce in the organization of the said Constitution.

We are sensible that a large number of the citizens both of this and the other states, who give their assent to its being carried into execution previous to any amendments, were actuated more by fear of the dangers that might arise from delays, than by a conviction of its being perfect; we therefore hope they will concur with us in pursuing every peaceable method of obtaining a speedy revision of the Constitution in the mode therein provided; and, when we reflect on the present circumstances of the Union, we can entertain no doubt that motives of conciliation, and the dictates of policy and prudence, will conspire to induce every man of true federal principles to give his support to a measure which is not only calculated to recommend the new Constitution to the approbation and support of every class

of citizens, but even necessary to prevent the total defection of some members of the Union.

Strongly impressed with those sentiments, we have agreed to the following resolutions: --

I. Resolved, That it be recommended to the people of this state to acquiesce in the organization of the said government; but, although we thus accord in its organization, we by no means lose sight of the grand object of obtaining very considerable amendments and alterations, which we consider essential to preserve the peace and harmony of the Union, and those invaluable privileges for which so much blood and treasure have been recently expended.

II. Resolved, That it is necessary to obtain a speedy revision of said Constitution, by a general convention.

III. Resolved, That, in order to effect this desirable end, a petition be presented to the legislature of this state, requesting that honorable body to take the earliest opportunity to make application, for that purpose, to the new Congress.

The petition proposed is as follows: --

To the Honorable the Representatives of the Freemen of the Commonwealth of Pennsylvania, in General Assembly met:

The petition and representation of the subscribers humbly show --

That your petitioners possess sentiments completely federal; being convinced

that a confederacy of republican states, and no other, can secure political liberty, happiness, and safety, throughout a territory so extended as the United States of America. They are well apprized of the necessity of devolving extensive powers to Congress, and of vesting the supreme legislature with every power and resource of a general nature; and consequently they acquiesce in the general system of government framed by the late federal Convention, -- in full confidence, however, that the same will be revised without delay; for, however worthy of approbation the general principles and outlines of the system may be, your petitioners conceive that amendments in some parts of the plan are essential not only to the preservation of such rights and privileges as ought to be reserved in the respective states, and in the citizens thereof, but to the fair and unembarrassed operation of the government in its various departments. And as provision is made, in the Constitution itself, for the making such amendments as may be deemed necessary, and your petitioners are desirous of obtaining the amendments which occur to them as more immediately desirable and necessary, in the mode admitted by such provision, --

They pray, that your honorable house, as the representatives of the people in this commonwealth, will, in the course of your present session, take such measures as you, in your wisdom, shall deem most effectual and proper to obtain a revision and amendment of the Constitution of the United States, in such parts, and in such manner, as have been or shall be pointed out by the conventions or assemblies of the respective states and that such revision be by a general convention of representatives from the several states in the Union.

Your petitioners consider the amendments pointed out in the propositions

hereunto subjoined as essentially necessary; and as such they suggest them to your notice, submitting to your wisdom the order in which they shall be presented to the consideration of the United States.

The amendments proposed are as follows, viz.: --

I. That Congress shall not exercise any powers whatever, but such as are expressly given to that body by the Constitution of the United States: nor shall any authority, power, or jurisdiction, be assumed or exercised by the executive or judiciary departments of the Union, under color or pretence of construction or fiction; but all the rights of sovereignty, which are not by the said Constitution expressly and plainly vested in the Congress, shall be deemed to remain with, and shall be exercised by, the several states in the Union, according to their respective constitutions; and that every reserve of the rights of individuals, made by the several constitutions of the states in the Union, to the citizens and inhabitants of each state respectively, shall remain inviolate, except so far as they are expressly and manifestly yielded or narrowed by the national Constitution.

Article 1, section 2, paragraph 3.

II. That the number of representatives be, for the present, one for every twenty thousand inhabitants, according to the present estimated numbers in the several states, and continue in that proportion until the whole number of representatives shall amount to two hundred; and then to be so proportioned and modified as not to exceed that number, until the proportion of one representative for every thirty thousand inhabitants shall amount to the said number of two hundred.

Section 3. III. That senators, though chosen for six years, shall be liable to be recalled, or superseded by other appointments, by the respective legislatures of the states, at any time.

Section 4. IV. That Congress shall not have power to make or alter regulations concerning the time, place, and manner of electing senators and representatives, except in case of neglect or refusal by the state to make regulations for the purpose; and then only for such time as such neglect or refusal shall continue.

Section 8. V. That when Congress shall require supplies, which are to be raised by direct taxes, they shall demand from the several states their respective quotas thereof, giving a reasonable time to each state to procure and pay the same; and if any state shall refuse, neglect, or omit to raise and pay the same within such limited time, then Congress shall have power to assess, levy, and collect the quota of such state, together with interest for the same, from the time of such delinquency, upon the inhabitants and estates therein, in such manner as they shall by law direct; provided that no poll tax be imposed.

Section 8. VI. That no standing army of regular troops shall be raised or kept up in time of peace, without the consent of two thirds of both houses in Congress.

Section 8. VII. That the clause respecting the exclusive legislation over a district not exceeding ten miles square be qualified by a proviso that such right of legislation extend only to such regulations as respect the police and good order thereof.

Section 8. VIII. That each state, respectively, shall have power to provide for organizing, arming, and disciplining the militia thereof, whensoever Congress shall omit or neglect to provide for the same. That the militia shall not be subject to martial law, but when in actual service, in the time of war, invasion, or rebellion; and when not in the actual service of the United States, shall be subject to such fines, penalties, and punishments, only, as shall be directed or inflicted by the laws of its own state: nor shall the militia of any state be continued in actual service longer than two months, under any call of Congress, without the consent of the legislature of such state, or, in their recess, the executive authority thereof.

Section 9. IX. That the clause respecting vessels bound to or from any one of the states be explained.

Article 3, section 1. X. That Congress establish no other court than the Supreme Court, except such as shall be necessary for determining causes of admiralty jurisdiction.

Section 2, paragraph 2. XI. That a proviso be added at the end of the second clause of the second section of the third article, to the following effect, viz.: Provided, that such appellate jurisdiction, in all cases of common-law cognizance, be by a writ of error, and confined to matters of law only; and that no such writ of error shall be admitted, except in revenue cases, unless the matter in controversy exceed the value of three thousand dollars.

Article 6, paragraph 2. XII. That to article 6, clause 2, be added the following proviso, viz.: Provided always that no treaty, which shall

hereafter be made, shall be deemed or construed to alter or affect any law of the United States, or of any particular state, until such treaty shall have been laid before and assented to by the House of Representatives in Congress.

Resolved, That the foregoing proceedings be committed to the chairman for publication.

BLAIR M'CLENAHAN, Chairman.

Attest, JOHN A. HANNA. Secretary.

## **Ratification of the Constitution by the State of New Jersey; December 18, 1787. (1)**

In Convention of the State of New Jersey

Whereas a convention of Delegates from the following States, vizt. New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, met at Philadelphia for the purpose of deliberating on, and forming a constitution for the United States of America, finished their Session on the seventeenth day of September last and reported to Congress the form which they had agreed upon, in the words following, Vizt

And Whereas Congress on the twenty eighth day of September last unanimously did resolve " that the said report with the Resolutions and letter accompanying the same, be transmitted to the several Legislatures, in order to be submitted to a convention of Delegates, chosen in each State by the People thereof, in conformity to the Resolves of the convention made and provided in that case."

And Whereas the Legislature of this State did on the twenty ninth day of October last Resolve in the words following, Vizt- " Resolved unanimously, That it be recommended to such of the Inhabitants of this State as are entitled to vote for Representatives in General Assembly, to meet in their respective counties on the fourth Tuesday in November next, at the several places fixed by law for holding the annual elections, to choose three suitable persons to serve as Delegates from each County in a State Convention, for the purposes herein before-mentioned, and that the same be conducted agreeably to the mode, and conformably with the Rules and Regulations prescribed for conducting such Elections."

Resolved unanimously, That the Persons so Elected to serve in State Convention, do assemble and meet together on the second Tuesday in December next, at Trenton, in the County of Hunterdon, then and there to take into Consideration the aforesaid [Constitution](#); and if approved of by them, finally to Ratify the same in behalf and on the part of this State; and make Report thereof to the United States in Congress assembled, in Conformity with the Resolutions thereto annexed."

" Resolved, That the Sheriffs of the respective Counties of this State shall be, and they are hereby required to give as timely Notice as may be, by Advertisements to the People of their Counties of the time, place and Purpose of holding Elections as aforesaid."

And Whereas the Legislature of this State did also on the first day of November last make and pass the following Act, Vizt- "An Act to authorize the People of this State to meet in Convention, deliberate upon, agree to, and ratify the [Constitution of the United States](#), proposed by the late General Convention. Be it Enacted by the Council and General Assembly of this State, and it is hereby enacted by the Authority of the same, That it shall and may be lawful for the People thereof, by their Delegates, to meet in Convention, to deliberate upon, and, if approved of by them, to ratify the [Constitution for the United States](#), proposed by the General Convention, held at Philadelphia, and every Act, matter and clause therein contained, conformably to the Resolutions of the

Legislature, passed the twenty-ninth day of October, Seventeen hundred and eighty seven, any Law, Usage or Custom to the contrary in any wise notwithstanding."

Now be it known that we the Delegates of the State of New-Jersey chosen by the People thereof for the purposes aforesaid having maturely deliberated on, and considered the aforesaid proposed Constitution, do hereby for and on the behalf of the People of the said State of New-Jersey agree to, ratify and confirm the same and every part thereof.

Done in Convention by the unanimous consent of the members present, this eighteenth day of December in the year of our Lord one thousand seven hundred and eighty seven, and of the Independence of the United States of America the twelfth.-In Witness whereof we have hereunto subscribed our names.

Note, Before the Signing hereof, the following words, viz, " Cession of " were interlined between the fifteenth and sixteenth lines on the second sheet.

JOHN STEVENS President- and Delegate from the County of Hunterdon

County of Bergen	JOHN FELL PETER ZABRISKIE CORNELIUS HENNION
Essex	JOHN CHETWOOD SAMUEL HAY DAVID CRANE
Middlesex	JOHN NEILSON JOHN BEATTY BENJAMIN MANNING
Monmouth	ELISHA LAWRENCE SAMUEL BREESE WILLIAM CRAWFORD
Somerset	JN <sup>o</sup> WITHERSPOON JACOB R HARDENBERGH FRED: FRELINGHUYSEN
Burlington	THOMAS REYNOLDS GEO. ANDERSON JOSHUA M. WALLACE
Gloucester	R <sup>D</sup> HOWELS AND <sup>W</sup> HUNTER BENJAMIN WHITALL
Salem	WHITTEN CRIPPS EDMUND WETHERBY
County of Cape-May	JESSE HAND JEREMIAH ELDREDGE MATTHEW WHILLDIN
Hunterdon	DAVID BREARLEY JOSHUA CORSHON

Morris	WILLIAM WINDES WILLIAM WOODHULL JOHN JACOB FAESCH
Cumberland	DAVD POTTER JONATHAN BOWEN ELI ELMER
Sussex	ROBERT OGDEN THOM <sup>S</sup> ANDERSON ROB <sup>T</sup> HOOPS

Attest. SAM<sup>L</sup> W. STOCKTON Secy.

(1) Reprinted from Documentary History of the Constitution Vol. II (1894) pp. 46, 61-64.

# Ratification of the Constitution by the State of Georgia; January 2, 1788.

(1)

In Convention; Wednesday, January the second, one thousand seven hundred and eighty eight:

To all to whom these Presents shall come, Greeting.

Whereas the form of a Constitution for the Government of the United States of America, was, on the seventeenth day of September, one thousand seven hundred and eighty-seven, agreed upon and reported to Congress by the Deputies of the said United States convened in Philadelphia; which said Constitution is written in the words following, to wit;

And Whereas the United States in Congress assembled did, on the twenty-eighth day of September, one thousand seven hundred and eighty-seven, Resolve, unanimously, That the said Report, with the resolutions and letter accompanying the same, be transmitted to the several Legislatures, in order to be submitted to a Convention of Delegates chosen in each State by the People thereof, in conformity to the Resolves of the Convention made and provided in that case.

And Whereas the Legislature of the State of Georgia did, on the twenty-sixth day of October, one thousand seven hundred and eighty-seven, in pursuance of the above recited resolution of Congress,

Resolve, That a convention be elected on the day of the next General Election, and in the same manner as representatives are elected; and that the said Convention consist of not more than three members from each County. And that the said Convention should meet at Augusta, on the fourth Tuesday in December then next, and as soon thereafter as convenient, proceed to consider the said Report, letter and resolutions, and to adopt or reject any part or the whole thereof.

Now Know Ye, That We, the Delegates of the People of the State of Georgia in Convention met, pursuant to the Resolutions of the Legislature aforesaid, having taken into our serious consideration the said Constitution, Have assented to, ratified and adopted, and by these presents DO, in virtue of the powers and authority to Us given by the People of the said State for that purpose, for, and in behalf of ourselves and our Constituents, fully and entirely assent to, ratify and adopt the said Constitution.

Done in Convention, at Augusta in the said State, on the second day of January, in the year of our Lord one thousand seven hundred and eighty eight, and of the Independence of the United States the twelfth. In Witness whereof we have hereunto subscribed our names.

JOHN WEREAT. President

and Delegate for the County of Richmond.

W: STEPHENS

Chatham

JOSEPH HABERSHAM	
JENKINS DAVIS	
N BROWNSON	Effingham
EDW <sup>D</sup> TELFAIR	
H. TODD	Burke
WILLIAM FEW	
JAMES MCNEIL	Richmond
GEO MATHEWS	
FLOR <sup>CE</sup> SULLIVAN	Wilkes
JOHN KING	
JAMES. POWELL	
JOHN ELLIOTT	Liberty
JAMES MAXWELL	
GEO: HANDLEY.	
CHRISTOPHER HILLARY	Glynn
J: MASON.	
HENRY OSBORNE	
JAMES SEAGROVE	Camden
JACOB WEED	
JARED IRWIN	
JOHN RUTHERFORD	Washington
ROB <sup>T</sup> CHRISTMAS	
THOMAS DANIELL	Greene
R MIDDLETON	

(1) Reprinted from Documentary History of the Constitution, Vol. II (1894), pp. 65, 66, 82-84

**FRAGMENT**  
**OF THE**  
**DEBATES**  
**IN**  
**THE CONVENTION**  
**OF THE**  
**STATE OF CONNECTICUT,**  
**ON THE**  
**ADOPTION OF THE FEDERAL CONSTITUTION.**

Collected from contemporary publications, since the first edition of this work.

IN CONVENTION, HARTFORD, *January 4, 1788.*

*SPEECH of OLIVER ELSWORTH, on opening the Debates.*

OLIVER ELSWORTH. Mr. President, it is observable that there is no preface to the proposed Constitution; but it evidently presupposes two things: one is, the necessity of a federal government; the other is, the inefficacy of the old Articles of Confederation. A union is necessary for the purposes of a national defence. United, we are strong; divided, we are weak. It is easy for hostile nations to sweep off a number of separate states, one after another. Witness the states in the neighborhood of ancient Rome. They were successively subdued by that ambitious city, which they might have conquered with the utmost ease, if they had been united. Witness the Canaanitish nations, whose divided situation rendered them an easy prey. Witness England, which, when divided into separate states, was twice conquered by an inferior force. Thus it always happens to small states, and to great ones, if divided. Or if, to avoid this, they connect themselves with some powerful state, their situation is not much better. This shows us the necessity of combining our whole force, and as to national purposes, becoming one state.

A *union*, sir, is likewise necessary, considered with relation to economy. Small states have enemies, as well as great ones. They must provide for their defence. The expense of it, which would be moderate for a large kingdom, would be intolerable to a petty state. The Dutch are wealthy; but they are one of the smallest of the European nations, and their taxes are higher than in any other country of Europe. Their taxes amount to forty shillings per head, when those of England do not exceed half that sum.

We must unite, in order to preserve peace among ourselves. If we be divided, what is to prevent wars from breaking out among the states? States, as well as individuals, are subject to ambition, to avarice, to those jarring passions which disturb the peace of society. What is to check these? If there be a parental hand over the whole, this, and nothing else, can restrain the unruly conduct of the members.

Union is necessary to preserve commutative justice between the states. If divided, what is to prevent the large states from oppressing the small? What is to defend us from the ambition and rapacity of New York, when she has spread over that vast territory which she claims and holds? Do we not already see in her the seeds of an overbearing ambition? On our other side there is a large and powerful state. Have we not already begun to be tributaries? If we do not improve the present critical time, — if we do not unite, — shall we not be like Issachar of old, a strong ass crouching down between two burdens? New Jersey and Delaware have seen this, and have adopted the Constitution unanimously.

A more energetic system is necessary. The present is merely advisory. It has no coercive power. Without this, government is ineffectual, or rather is no government at all. But it is said, "Such a power is not necessary. States will not do wrong. They need only to be told their duty, and they will do it." I ask, sir, What warrant is there for this assertion? Do not states do wrong? Whence come wars? One of two hostile nations must be in the wrong. But it is said, "Among sister states, this can never be presumed." But do we not know that, when friends become enemies, their enmity is the most virulent? The seventeen provinces of the Netherlands were once confederated: they fought under the same banner. Antwerp, hard pressed by Philip, applied to the other states for relief. Holland, a rival in trade, opposed and prevented the needy succors. Antwerp was made a sacrifice. I wish I could say there were no seeds of similar injustice springing up among us. Is there not in one of our states injustice too barefaced for Eastern despotism? That state is small: it does little hurt to any but itself. But it has a spirit which would make a Tophet of the universe. But some will say, "We formerly did well without any union." I answer, Our situation is materially changed. While Great Britain held her authority, she awed us. She appointed governors and councils for the American provinces. She had a negative upon our laws. But now, our circumstances are so altered, that there is no arguing what we shall be, from what we have been.

It is said, that other confederacies have not had the principle of coercion. Is this so? Let us attend to those confederacies which have resembled our own. Some time before Alexander, the Grecian states confederated together. The Amphictyonic council, consisting of deputies from these states, met at Delphos, and had authority to regulate the general interests of Greece. This council did enforce its decrees by coercion. The Boeotians once infringed upon a decree of the Amphictyons. A mulct was laid upon them. They refused to pay it. Upon that, their whole territory was confiscated. They were then glad to compound the matter. After the death of Alexander, the Achaean league was formed. The decrees of this confederacy were enforced by dint of arms. The Aetolian league was formed by some other Grecian cities, in opposition to the Achaean; and there was no peace between them until they were conquered and reduced to a Roman province. They were then obliged to sit down in peace under the same yoke of despotism.

How is it with respect to the principle of coercion in the Germanic body? In Germany there are about three hundred principalities and republics. Deputies from these meet annually in the general diet, to make regulations for the empire. But the execution of these is not left voluntarily with the members. The empire is divided into ten circles, over each of which a superintendent is appointed, with the rank of a major-general. It is his duty to execute the decrees of the empire with a military force.

The confederation of the Swiss cantons has been considered as an example. But their circumstances are far different from ours. They are small republics, about twenty miles square, situated among the Alps, and inaccessible to hostile attacks. They have nothing to tempt an invasion. Till lately, they had neither commerce nor manufactures. They were merely a set of herdsmen. Their inaccessibility has availed them. Four hundred of those mountaineers defeated 15,000 Austrians, who were marching to subdue them. They spend the ardor of youth in foreign service: they return old, and disposed for tranquillity. Between some of the cantons and France, there has long subsisted a defensive treaty. By this treaty, France is to be a mediator to settle differences between the cantons. If any one be obstinate, France is to compel a submission to reasonable terms.

The Dutch republic is an example that merits attention. The form of their constitution, as it is on paper, admits not of coercion. But necessity has introduced it in practice. This coercive power is the influence of the stadtholder — an officer originally unknown to their constitution. But they have been necessitated to appoint him, in order to set their unwieldy machine of government in motion. He is commander-in-chief of their navy, and of their army, consisting of forty or fifty regiments. He appoints the officers of the land and naval forces. He presides in the States-General, and in the states of every province, and, by means of this, he has a great opportunity to influence the elections and decisions. The province of Holland has ever been opposed to the appointment of a stadtholder; because, by its wealth and power, being equal to all the other provinces, it possesses the weight and influence of the stadtholder, when that office is vacant. Without such an influence, their machine of government would no more move, than a ship without wind, or a clock without weights.

But to come nearer home. Mr. President, have we not seen and felt the necessity of such a coercive power? What was the consequence of the want of it during the late war, particularly towards the close? A few states bore the burden of the war. While we and one or two more of the states were paying eighty or a hundred dollars per man to recruit the Continental army, the regiments of some states had scarcely men enough to wait on their officers. Since the close of the war, some of the states have done nothing towards complying with the requisitions of Congress. Others, who did something at first, seeing that they were left to bear the whole burden, have become equally remiss. What is the consequence? To what shifts have we been driven? To the wretched expedient of negotiating new loans in Europe, to pay the interest of the foreign debt. And what is still worse, we have even been obliged to apply the new loans to the support of our own civil government at home.

Another ill consequence of this want of energy is, that treaties are not performed. The treaty of peace with Great Britain was a very favorable one for us. But it did not happen perfectly to

please some of the states, and they would not comply with it. The consequence is, Britain charges us with the breach, and refuses to deliver up the forts on our northern quarter.

Our being tributaries to our sister states is in consequence of the want of a federal system. The state of New York raises 60 or £80,000 a year by impost. Connecticut consumes about one third of the goods upon which this impost is laid, and consequently pays one third of this sum to New York. If we import by the medium of Massachusetts, she has an impost, and to her we pay a tribute. If this is done when we have the shadow of a national government, what shall we not suffer when even that shadow is gone!

If we go on as we have done, what is to become of the foreign debt? Will sovereign nations forgive us this debt, because we neglect to pay? or will they levy it by reprisals, as the laws of nations authorize them? Will our weakness induce Spain to relinquish the exclusive navigation of the Mississippi, or the territory which she claims on the east side of that river? Will our weakness induce the British to give up the northern posts? If a war breaks out, and our situation invites our enemies to make war, how are we to defend ourselves? Has government the means to enlist a man or buy an ox? Or shall we rally the remainder of our old army? The European nations I believe to be not friendly to us. They were pleased to see us disconnected from Great Britain; they are pleased to see us disunited among ourselves. If we continue so, how easy it is for them to canton us out among them, as they did the kingdom of Poland! But supposing this is not done, if we suffer the union to expire, the least that may be expected is, that the European powers will form alliances, some with one state and some with another, and play the states off one against another, and that we shall be involved in all the labyrinths of European politics. But I do not wish to continue the painful recital; enough has been said to show that a power in the general government to enforce the decrees of the Union is absolutely necessary.

The Constitution before us is a complete system of legislative, judicial, and executive power. It was designed to supply the defects of the former system; and I believe, upon a full discussion, it will be found calculated to answer the purposes for which it was designed.

JANUARY 7, 1788. [*On the Power of Congress to lay Taxes.*]

OLIVER ELSWORTH. Mr. President, this is a most important clause in the Constitution; and the gentlemen do well to offer all the objections which they have against it. Through the whole of this debate, I have attended to the objections which have been made against this clause; and I think them all to be unfounded. The clause is general; it gives the general legislature "power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States." There are three objections against this clause — first, that it is too extensive, as it extends to all the objects of taxation; secondly, that, it is partial; thirdly, that Congress ought not to have power to lay taxes at all.

The first objection is, that this clause extends to all the objects of taxation. But though it does extend to all, it does not extend to them exclusively. It does not say that Congress shall have all these sources of revenue, and the states none. All, excepting the impost, still lie open to the states. This state owes a debt; it must provide for the payment of it. So do all the other states. This will not escape the attention of Congress. When making calculations to raise a revenue, they

will bear this in mind. They will not take away that which is necessary for the states. They are the head, and will take care that the members do not perish. The state debt, which now lies heavy upon us, arose from the want of powers in the federal system. Give the necessary powers to the national government, and the state will not be again necessitated to involve itself in debt for its defence in war. It will lie upon the national government to defend all the states, to defend all its members, from hostile attacks. The United States will bear the whole burden of war. It is necessary that the power of the general legislature should extend to all the objects of taxation, that government should be able to command all the resources of the country; because no man can tell what our exigencies may be. Wars have now become rather wars of the purse than of the sword. Government must therefore be able to command the whole power of the purse; otherwise a hostile nation may look into our Constitution, see what resources are in the power of government, and calculate to go a little beyond us; thus they may obtain a decided superiority over us, and reduce us to the utmost distress. A government which can command but half its resources is like a man with but one arm to defend himself.

The second objection is, that the impost is not a proper mode of taxation; that it is partial to the Southern States. I confess I am mortified when I find gentlemen supposing that their delegates in Convention were inattentive to their duty, and made a sacrifice of the interests of their constituents. If, however, the impost be a partial mode, this circumstance, high as my opinion of it is, would weaken my attachment to it; for I abhor partiality. But I think there are three special reasons why an impost is the best way of raising a national revenue.

The first is, it is the most fruitful and easy way. All nations have found it to be so. Direct taxation can go but little way towards raising a revenue. To raise money in this way, people must be provident; they must constantly be laying up money to answer the demands of the collector. But you cannot make people thus provident. If you would do any thing to the purpose, you must come in when they are spending, and take a part with them. This does not take away the tools of a man's business, or the necessary utensils of his family: it only comes in when he is taking his pleasure, and feels generous; when he is laying out a shilling for superfluities, it takes twopence of it for public use, and the remainder will do him as much good as the whole. I will instance two facts, which show how easily and insensibly a revenue is raised by indirect taxation. I suppose people in general are not sensible that we pay a tax to the state of New York. Yet it is an incontrovertible fact, that we, the people of Connecticut, pay annually into the treasury of New York more than fifty thousand dollars. Another instance I will mention: one of our common river sloops pays in the West Indies a portage bill of £60. This is a tax which foreigners lay upon us, and we pay it; for a duty laid upon our shipping, which transports our produce to foreign markets, sinks the price of our produce, and operates as an effectual tax upon those who till the ground, and bring the fruits of it to market. All nations have seen the necessity and propriety of raising a revenue by indirect taxation, by duties upon articles of consumption. France raises a revenue of twenty-four millions sterling per annum; and it is chiefly in this way. Fifty millions of livres they raise upon the single article of salt. The Swiss cantons raise almost the whole of their revenue upon salt. Those states purchase all the salt which is to be used in the country: they sell it out to the people at an advanced price; the advance is the revenue of the country. In England, the whole public revenue is about twelve millions sterling per annum. The land tax amounts to about two millions; the window and some other taxes, to about two millions more. The other eight millions are raised upon articles of consumption. The whole standing army of Great Britain

could not enforce the collection of this vast sum by direct taxation. In Holland, their prodigious taxes, amounting to forty shillings for each inhabitant, are levied chiefly upon articles of consumption. They excise every thing, not excepting even their houses of infamy.

The experiments, which have been made in our own country, show the productive nature of indirect taxes. The imports into the United States amount to a very large sum. They never will be less, but will continue to increase for centuries to come. As the population of our country increases the imports will necessarily increase. They will increase, because our citizens will choose to be farmers, living independently on their freeholds, rather than to be manufacturers, and work for a groat a day. I find by calculation that a general impost of 5 per cent. would raise the sum of £245,000 per annum, deducting 8 per cent. for the charges of collecting. A further sum might be deducted for smuggling — a business which is too well understood among us, and which is looked upon in too favorable a light. But this loss in the public revenue will be overbalanced by an increase of importations. And a further sum may be reckoned upon some articles which will bear a higher duty than the one recommended by Congress. Rum, instead of 4d. per gallon, may be set higher without any detriment to our health or morals. In England, it pays a duty of 4s. 6d. the gallon. Now, let us compare this source of revenue with our national wants. The interest of the foreign debt is £130,000 lawful money per annum. The expenses of the civil list are £37,000. There are likewise further expenses for maintaining the frontier posts, for the support of those who have been disabled in the service of the Continent, and some other contingencies, amounting, together with the civil list, to £130,000. This sum, added to the interest of the foreign debt, will be £260,000. The consequence follows, that the avails of the impost will pay the interest of the whole foreign debt, and nearly satisfy those current national expenses. But perhaps it will be said that these paper calculations are overdone, and that the real avails will fall far short. Let me point out, then, what has actually been done. In only three of the states, in Massachusetts, New York, and Pennsylvania, 160 or £180,000 per annum have been raised by impost. From this fact, we may certainly conclude that, if a general impost should be laid, it would raise a greater sum than I have calculated. It is a strong argument in favor of an impost, that the collection of it will interfere less with the internal police of the states than any other species of taxation. It does not fill the country with revenue officers, but is confined to the sea-coast, and is chiefly a water operation. Another weighty reason in favor of this branch of the revenue is, if we do not give it to Congress, the individual states will have it. It will give some states an opportunity of oppressing others, and destroy all harmony between them. If we would have the states friendly to each other, let us take away this bone of contention, and place it, as it ought in justice to be placed, in the hands of the general government.

"But," says an honorable gentleman near me, "the impost will be a partial tax; the Southern States will pay but little in comparison with the Northern." I ask, What reason is there for this assertion? Why, says he, we live in a cold climate, and want warming. Do not they live in a hot climate, and want quenching? Until you get as far south as the Carolinas, there is no material difference in the quantity of clothing which is worn. In Virginia, they have the same course of clothing that we have; in Carolina, they have a great deal of cold, raw, chilly weather; even in Georgia, the River Savannah has been crossed upon the ice. And if they do not wear quite so great a quantity of clothing in those states as with us, yet people of rank wear that which is of a much more expensive kind. In these states, we manufacture one half of our clothing, and all our tools of husbandry; in those, they manufacture none, nor ever will. They will not manufacture,

because they find it much more profitable to cultivate their lands, which are exceedingly fertile. Hence they import almost every thing, not excepting the carriages in which they ride, the hoes with which they till the ground, and the boots which they wear. If we doubt of the extent of their importations, let us look at their exports. So exceedingly fertile and profitable are their lands, that a hundred large ships are every year loaded with rice and indigo from the single port of Charleston. The rich return of these cargoes of immense value will be all subject to the impost. Nothing is omitted; a duty is to be paid upon the blacks which they import. From Virginia, their exports are valued at a million sterling per annum: the single article of tobacco amounts to seven or eight hundred thousand. How does this come back? Not in money; for the Virginians are poor, to a proverb, in money. They anticipate their crops: they spend faster than they earn: they are ever in debt. Their rich exports return in eatables, in drinkables, and in wearables. All these are subject to the impost. In Maryland, their exports are as great in proportion as those in Virginia. The imports and exports of the Southern States are quite as great in proportion as those of the Northern. Where, then, exists this partiality, which has been objected? It exists nowhere but in the uninformed mind.

But there is one objection, Mr. President, which is broad enough to cover the whole subject. Says the objector, Congress ought not to have power to raise any money at all. Why? Because they have the power of the sword; and if we give them the power of the purse, they are despotic. But I ask, sir, if ever there were a government without the power of the sword and the purse? This is not a new-coined phrase; but it is misapplied: it belongs to quite another subject. It was brought into use in Great Britain, where they have a king vested with hereditary power. Here, say they, it is dangerous to place the power of the sword and the purse in the hands of one man, who claims an authority independent of the people: therefore we will have a Parliament. But the king and Parliament together, the supreme power of the nation, — they have the sword and the purse. And they must have both; else, how could the country be defended? For the sword without the purse is of no effect: it is a sword in the scabbard. But does it follow, because it is dangerous to give the power of the sword and purse to an hereditary prince, who is independent of the people, that therefore it is dangerous to give it to the Parliament — to Congress, which is your Parliament — to men appointed by yourselves, and dependent upon yourselves? This argument amounts to this: you must cut a man in two in the middle, to prevent his hurting himself.

But, says the honorable objector, if Congress levies money, they must legislate. I admit it. Two legislative powers, says he, cannot legislate in the same place. I ask, Why can they not? It is not enough to say they cannot. I wish for some reason. I grant that both cannot legislate upon the same object at the same time, and carry into effect laws which are contrary to each other. But the Constitution excludes every thing of this kind. Each legislature has its province; their limits may be distinguished. If they will run foul of each other, if they will be trying who has the hardest head, it cannot be helped. The road is broad enough; but if two men will jostle each other, the fault is not in the road. Two several legislatures have in fact existed and acted at the same time in the same territory. It is in vain to say they cannot exist, when they actually have done it. In the time of the war, we had an army. Who made the laws for the army? By whose authority were offenders tried and executed? Congress. By their authority a man was taken, tried, condemned, and hanged, in this very city. He belonged to the army; he was a proper subject of military law; he deserted to the enemy; he deserved his fate. Wherever the army was, in whatever state, there Congress had complete legislative, judicial, and executive power. This very spot where we now

are is a city. It has complete legislative, judicial, and executive powers; it is a complete state in miniature. Yet it breeds no confusion, it makes no schism. The city has not eaten up the state, nor the state the city. But if there be a new city, if it have not had time to unfold its principles, I will instance the city of New York, which is, and long has been, an important part of that state; it has been found beneficial; its powers and privileges have not clashed with the state. The city of London contains three or four times as many inhabitants as the whole state of Connecticut. It has extensive powers of government, and yet it makes no interference with the general government of the kingdom. This Constitution defines the extent of the powers of the general government. If the general legislature should at any time overleap their limits, the judicial department is a constitutional check. If the United States go beyond their powers, if they make a law which the Constitution does not authorize, it is void; and the judicial power, the national judges, who, to secure their impartiality, are to be made independent, will declare it to be void. On the other hand, if the states go beyond their limits, if they make a law which is a usurpation upon the general government, the law is void; and upright, independent judges will declare it to be so. Still, however, if the United States and the individual states will quarrel, if they want to fight, they may do it, and no frame of government can possibly prevent it. It is sufficient for this Constitution. that, so far from laying them under a necessity of contending, it provides every reasonable check against it. But perhaps, at some. time or other, there will be a contest; the states may rise against the general government. If this do take place, if all the states combine, if all oppose, the whole will not eat up the members, but the measure which is opposed to the sense of the people will prove abortive. In republics, it is a fundamental principle that the majority govern, and that the minority comply with the general voice. How contrary, then, to republican principles, how humiliating, is our present situation! A single state can rise up, and put a *veto* upon the most important public measures. We have seen this actually take place. A single state has controlled the general voice of the Union: a minority, a very small minority, has governed us. So far is this from being consistent with republican principles, that it is, in effect, the worst species of monarchy.

Hence we see how necessary for the Union is a coercive principle. No man pretends the contrary: we all see and feel this necessity. The only question is, Shall it be a coercion of law, or a coercion of arms? There is no other possible alternative. Where will those who oppose a coercion of law come out? Where will they end? A necessary consequence of their principles is a war of the states one against the other. I am for coercion by law — that coercion which acts only upon delinquent individuals. This Constitution does not attempt to coerce sovereign bodies, states, in their political capacity. No coercion is applicable to such bodies, but that of an armed force. If we should attempt to execute the laws of the Union by sending an armed force against a delinquent state, it would involve the good and bad, the innocent and guilty, in the same calamity.

But this legal coercion singles out the guilty individual, and punishes him for breaking the laws of the Union. All men will see the reasonableness of this; they will acquiesce, and say, Let the guilty suffer.

How have the morals of the people been depraved for the want of an efficient government, which might establish justice and righteousness! For the want of this, iniquity has come in upon us like an overflowing flood. If we wish to prevent this alarming evil, if we wish to protect the good

citizen in his right, we must lift up the standard of justice; we must establish a national government, to be enforced by the equal decisions of law, and the peaceable arm of the magistrate.

JANUARY 9, 1788. Gov. HUNTINGDON. Mr. President, I do not rise to detain this Convention for any length of time. The subject has been so fully discussed, that very little can be added to what has already been offered. I have heard and attended with pleasure to what has been said on it. The importance of it merited a full and ample discussion. It does not give me pain, but pleasure, to hear the sentiments of those gentlemen who differ from me. It is not to be expected from human nature that we should all have the same opinion. The best way to learn the nature and effects of different systems of government, is not from theoretical dissertations, but from experience — from what has actually taken place among mankind. From this same source it is that mankind have obtained a more complete knowledge of the nature of government than they had in ages past. It is an established truth that no nation can exist without a coercive power — a power to enforce the execution of its political regulations. There is such a love of liberty implanted in the human heart, that no nation ever willingly gave up its liberty. If they lose this inestimable birthright of men, it is not for a want of the will, but of the proper means to support it. If we look into history, we shall find that the common avenue through which tyranny has entered in, and enslaved nations who were once free, has been their not supporting government.

The great secret of preserving liberty is, to lodge the supreme power so as to be well supported, and not abused. If this could be effected, no nation would ever lose its liberty. The history of man clearly shows that it is dangerous to intrust the supreme power in the hands of one man. The same source of knowledge proves that it is not only inconvenient, but dangerous to liberty, for the people of a large community to attempt to exercise in person the supreme authority. Hence arises the necessity that the people should act by their representatives; but this method, so necessary for civil liberty, is an improvement of modern times. Liberty, however, is not so well secured as it ought to be, when the supreme power is lodged in one body of representatives. There ought to be two branches of the legislature, that one may be a check upon the other. It is difficult for the people at large to know when the supreme power is verging towards abuse, and to apply the proper remedy. But if the government be properly balanced, it will possess a renovating principle, by which it will be able to right itself. The constitution of the British nation affords us great light upon the subject of government. Learned men in other countries have admired it, though they thought it too fine-spun to prove beneficial in practice. But a long trial has now shown its excellence; and the difficulties which that nation now experiences arise not from their constitution, but from other circumstances.

The Author of nature has given mankind a certain degree of insight into futurity. As far as we can see a probability that certain events will happen, so far we do well to provide and guard. But we may attempt to go too far. It is in vain to think of providing against every possible contingency. The happiness of society depends not merely upon its constitution of government, but upon a variety of circumstances. One constitution may suit one particular nation exceedingly well, when a different one would suit another nation in different circumstances. Even among the American states, there is such a difference in sentiments, habits, and customs, that a government which might be very suitable for one might not be agreeable to the other.

I am fully of opinion that the great council of the Union must have a controlling power with respect to national concerns. There is, at present, an extreme want of power in the national government; and it is my opinion that this Constitution does not give too much. As to the subject of representation, at the first view it appears small; but, on the whole, the purposes of the Union could not be so well answered by a greater number. It is impracticable to have the number of the representatives as great, and times of election as frequent, as they are in our state governments. Nor is this necessary for the security of our liberty. It is sufficient if the choice of our representatives be so frequent that they must depend upon the people, and that an inseparable connection be kept up between the electors and the elected.

The state governments, I think, will not be endangered by the powers vested by this Constitution in the general government. While I have attended in Congress, I have observed that the members were quite as strenuous advocates for the rights of their respective states, as for those of the Union. I doubt not but that this will continue to be the case; and hence I infer that the general government will not have the disposition to encroach upon the states. But still the people themselves must be the chief support of liberty. While the great body of freeholders are acquainted with the duties which they owe to their God, to themselves, and to men, they will remain free. But if ignorance and depravity should prevail, they will inevitably lead to slavery and ruin. Upon the whole view of this Constitution, I am in favor of it, and think it bids fair to promote our national prosperity.

This is a new event in the history of mankind. Heretofore most governments have been formed by tyrants, and imposed on mankind by force. Never before did a people, in time of peace and tranquillity, meet together by their representatives, and, with calm deliberation, frame for themselves a system of government. This noble attempt does honor to our country. While I express my sentiments in favor of this Constitution, I candidly believe that those gentlemen who oppose it are actuated by principles of regard to the public welfare. If we will exercise mutual candor for each other, and sincerely endeavor to maintain our liberties, we may long continue to be a free and happy people.

Hon. RICHARD LAW. Mr. President, the important subject before us has been examined so particularly, that I do not expect to add any thing new. As we have been a long time poring upon the defective parts of the Constitution, I think it will not be amiss to pay some attention to its excellences. There is one clause in it which provides a remedy for whatever defects it may have. The clause to which I refer is that which provides that, whenever two thirds of Congress, or a convention to be called at the instance of two thirds of the states, shall propose amendments, and they be agreed to by three fourths of the states, such amendments shall be valid, as part of the Constitution. This is an easy and peaceable way of amending any parts of the Constitution which may be found inconvenient in practice.

As this is a most important question, as it concerns not only present but future generations, we ought to consider it upon its real merits, without suffering our minds to be misled by examples of other nations, whose circumstances are very different from ours. Some have been led into a mistake, by comparing a part of this Constitution with that of Great Britain. But this is very different from theirs. Our President is not a King, nor our Senate a House of Lords. They do not claim an independent, hereditary authority. But the whole is elective; all dependent on the

people. The President, the Senate, the Representatives, are all creatures of the people. Therefore the people will be secure from oppression; though I admit that, if our President and Senate were possessed of an independent, hereditary authority, the democratical branch would be too weak for the others.

Some suppose that the general government, which extends over the whole, will annihilate the state governments. But consider that this general government rests upon the state governments for its support. It is like a vast and magnificent bridge, built upon thirteen strong and stately pillars. Now, the rulers, who occupy the bridge, cannot be so beside themselves as to knock away the pillars which support the whole fabric. But, some say, a free government, like this, has not energy enough to pervade a country of such vast extent.

We are not satisfied with this assertion. We want to try the experiment. A free system of government is now presented to our acceptance. We shall be wanting to ourselves, if, instead of adopting it, we wait for the arm of tyranny to impose upon us a system of despotism. The finger of Providence is evidently to be seen in the political affairs of this country. The old Articles of Confederation were once the best that we should have been willing to adopt. We have been led on by imperceptible degrees to see that they are defective; and now, if it be the design of Providence to make us a great and happy people, I believe that he who turns the hearts of the children of men as the rivers of water are turned, will induce the people of the United States to accept of a Constitution which is well calculated to promote their national welfare.

Hon. OLIVER WOLCOTT. Mr. President, I do not expect to throw any new light on a subject which has been so fully discussed. Yet I cannot content myself without giving my opinion more explicitly than by a silent vote. It is generally agreed that the present Confederation is inadequate to the exigencies of our national affairs. We must therefore adopt this plan of government, or some other, or risk the consequences of disunion. As the present Articles of Confederation are inadequate, we ought to consider whether this Constitution be as good as can be agreed on by so many different states, or whether it be a dangerous system; whether it secures the liberties of the people, or whether its tendency be unfavorable to the rights of a free people. I have given it all the consideration in my power, and I have, a considerable time since, made up my mind on the subject, and think it my duty to give my voice in favor of adopting it. It is founded upon the election of the people. If it varies from the former system, or if it is to be altered hereafter, it must be with the consent of the people. This is all the security in favor of liberty that can be expected. Mankind may become corrupt, and give up the cause of freedom; but I believe that love of liberty which prevails among the people of this country will prevent such a direful calamity.

The Constitution effectually secures the states in their several rights. It must secure them for its own sake; for they are the pillars which uphold the general system. The Senate, a constituent branch of the general legislature, without whose assent no public act can be made, are appointed by the states, and will secure the rights of the several states. The other branch of the legislature, the Representatives, are to be elected by the people at large. They will therefore be the guardians of the rights of the great body of the citizens. So well guarded is this Constitution throughout, that it seems impossible that the rights either of the states or of the people should be destroyed.

I do not see the necessity of such a *test* as some gentlemen wish for. The Constitution enjoins an oath upon all the officers of the United States. This is a direct appeal to that God who is the avenger of perjury. Such an appeal to him is a full acknowledgment of his being and providence. An acknowledgment of these great truths is all that the gentleman contends for. For myself, I should be content either with or without that clause in the Constitution which excludes test laws. Knowledge and liberty are so prevalent in this country, that I do not believe that the United States would ever be disposed to establish one religious sect, and lay all others under legal disabilities. But as we know not what may take place hereafter, and any such test would be exceedingly injurious to the rights of free citizens, I cannot think it altogether superfluous to have added a clause, which secures us from the possibility of such oppression. I shall only add, that I give my assent to this Constitution, and am happy to see the states in a fair way to adopt a Constitution which will protect their rights and promote their welfare.

---

## Ratification of the Constitution by the State of Connecticut; January 8, 1788. [\(1\)](#)

In the Name of the People of the State of Connecticut.

We the Delegates of the People of s<sup>d</sup> State in general Convention assembled, pursuant to an Act of the Legislature in October last, Have assented to and ratified, and by these presents do assent to, ratify and adopt the [Constitution](#), reported by the Convention of Delegates in Philadelphia, on the 17th day of September AD. 1787. for the United States of America.

Done in Convention this 8th day of January AD. 1788. In witness whereof we have hereunto set our hands.

MATTHEW GRISWOLD President:	SAM <sup>l</sup> HUNTINGTON
JERE <sup>h</sup> WADSWORTH	JED HUNTINGTON
JESSE ROOT	ISAAC HUNTINGTON
ISAAC LEE	ROBERT ROBBINS,
SELAH HEART	DANTE FOOT
ZEBULON PECK ju <sup>r</sup>	ELI HYDE
ELISHA PITKIN	JOSEPH WOODBRIDGE
ERASTUS WOLCOTT	STEPHEN BILLINGS
JOHN WATSON	ANDREW LEE
JOHN TREADWELL	WILLIAM NOYES
WILLIAM JUDD	JOSHUA RAYMOND Junr
JOSEPH MOSELY	JER <sup>h</sup> HALSEY
WAIT GOODRICH	WHEELER COIT
JOHN CURTISS	CHARLES PHELPS
ASA BARNES	NATHANIEL MINOR
STEPHEN MIX MITCHELL	JONATHAN STURGES
JOHN CHESTER	THADDEUS BURR
OLIV ELLSWORTH	ELISHA WHITTELSEY
ROGER NEWBERRY	JOSEPH MOSS WHITE

ROGER SHERMAN  
PIERPONT EDWARDS  
SAMUEL BEACH  
DANIEL HOLBROOK  
JOHN HOLBROOK  
GIDEON BUCKINGHAM  
LEWIS MALLET J<sup>r</sup>  
JOSEPH HOPKINS  
JOHN WALTON  
RICH<sup>d</sup> LAW  
AMASA LEARNED  
NATHAN DAUCHY  
JAMES DAVENPORT  
JOHN DAVENPORT Jun<sup>r</sup>  
W<sup>m</sup> SAM<sup>l</sup> JOHNSON  
ELISHA MILLS  
ELEPH<sup>t</sup> DYER  
JED<sup>a</sup> ELDERKIN  
SIMEON SMITH  
HENDRICK DOW  
SETH PAINE  
ASA WITTER  
MOSES CLEVELAND  
SAMPSON HOWE  
WILL<sup>m</sup> DANIELSON  
W<sup>m</sup> WILLIAMS  
JAMES BRADFORD  
JOSHUA DUNLOP  
DANIEL LEARNED  
MOSES CAMPBELL  
BENJAMIN DOW  
OLIVER WOLCOTT  
JEDEDIAH STRONG  
MOSES HAWLEY  
CHARLES BURRALL  
NATHAN HALE  
DANIEL MILES  
ASAPH HALL  
ISAAC BURNHAM  
JOHN WILDER  
MARK PRINDLE  
JEDIDIAH HUBBELL  
AARON AUSTIN  
SAMUEL CANFIELD

AMOS MEAD  
JABEZ FITCH  
NEHEMIAH BEARDSLEY  
JAMES POTTER  
JOHN CHANDLER  
JOHN BEACH  
HEZ<sup>h</sup> ROGERS  
LEM<sup>l</sup> SANFORD  
WILLIAM HERON  
PHILIP BURR BRADLEY  
JOSHUA PORTER  
BENJ<sup>n</sup> HINMAN  
EPAPHRAS SHELDON  
ELEAZER CURTISS  
JOHN WHITTLESEY  
DAN<sup>l</sup> NATH<sup>l</sup> BRINSMADE  
THOMAS FENN  
DAVID SMITH  
ROBERT Mc<sup>c</sup>CANE  
DANIEL SHERMAN  
SAMUEL ORTON  
ASHER MILLER  
SAM<sup>l</sup> H. PARSONS  
EBEN<sup>r</sup> WHITE  
HEZ<sup>h</sup> GOODRICH  
DYAR THROOK  
JABEZ CHAPMAN  
CORNELIUS HIGGINS  
HEZEKIAH BRAINERD  
THEOPHILUS MORGAN  
HEZ<sup>h</sup> LANE  
WILLIAM HART  
SAM<sup>l</sup> SHIPMAN  
JEREMIAH WEST  
SAMUEL CHAPMAN  
ICHABOD WARNER  
SAMUEL CARVER  
JEREMIAH RIPLEY  
EPHRAIM ROOT  
JOHN PHELPS  
ISAAC FOOT  
ABIJAH SESSIONS  
CALEB HOLT

DANIEL EVERITT  
HEZ: FITCH

SETH CROCKER

State of Connecticut, ss. Hartford January ninth, Anno Domini one thousand, seven hundred and eighty eight.  
The foregoing Ratification was agreed to, and signed as above, by one hundred and twenty eight, and dissented to by forty Delegates in Convention, which is a Majority of eighty eight.

Certified by MATTHEW GRISWOLD President.

Teste JEDIDIAH STRONG Secretary-

(1) Reprinted from Documentary History of the Constitution, Vol. II (1894), pp. 87-89

A FRAGMENT OF FACTS,  
DISCLOSING THE CONDUCT OF  
THE MARYLAND CONVENTION,  
ON THE  
ADOPTION OF THE FEDERAL CONSTITUTION.  
ADDRESS TO THE PEOPLE OF MARYLAND.

ANNAPOLIS, April 21, 1788.

THE following facts, disclosing the conduct of the late Convention of Maryland, are submitted to the serious consideration of the citizens of the state.

On Monday, the 21st of April, the Convention met in Annapolis, and elected the Hon. George Plater, Esq., president. On Tuesday, they established rules for the conduct of business; and, on the same day, the following question was propounded to the Convention: --

"When a motion is made and seconded, the matter of the motion shall receive a determination by the question, or be postponed, by general consent, or the previous, before any other motion shall be received."

And the following question, viz., --

"Every question shall be entered on the journal; and the yeas and nays may be called for, by any member, on any question, and the name of the member requiring them shall be entered on the journal."

Which two questions the Convention determined in the negative.

On Wednesday, the proposed plan of government was read the first time, and thereupon it was resolved, "That this Convention will not enter into any resolution upon any particular part of the proposed plan of federal government for the United States; but that the whole thereof shall be read through a second time, after which the subject may be fully debated and considered; and then the president shall put the question, "That this Convention do assent to and ratify the same Constitution." On which question, the yeas and nays shall be taken.

On Thursday, the members who were opposed to the ratification of the Constitution, without such previous amendments could be obtained as they thought essentially necessary to secure the liberty and happiness of the people, (being confined, by the last resolution, to consider, in one view, the whole of the plan of government,) stated some of their objections to the Constitution. The Convention met in the evening, when Mr. Paca, member from Hartford, having just taken his seat, rose, and informed the president that he had great objections to the Constitution proposed, in its present form, and meant to propose a variety of amendments, not to prevent, but to accompany the ratification; but, having just arrived, he was not ready to lay them before the house; and requested indulgence, until the morning, for that purpose. The proposal being seconded and the house asked if they would give the indulgence, it was granted without a division; and they adjourned for that purpose. On Friday, at the meeting of the house, Mr. Paca rose, and informed the president, that, in consequence of the permission of the house, given him the preceding evening, he had prepared certain amendments, which he would read in his place, and then lay on the table; when he was interrupted, and one member from each of the following counties, viz., Frederic, Talbot, Charles, Kent, Somerset, Prince George's, Worcester, Queen Anne's, Dorchester, Calvert, and Caroline, and one member from the city of Annapolis,\* and one from Baltimore town, arose in their places, and declared, for themselves and their colleagues, "that they were elected and instructed, by the people they represented, to ratify the proposed Constitution, and that as speedily as possible, and to do no other act; that, after the ratification, their power ceased, and they did not consider themselves as authorized by their constituents to consider any amendments." After this, Mr. Paca was not permitted even to read his amendments. The opponents continued to make their objections to the Constitution until Saturday noon. The advocates of the government, although repeatedly called on, and earnestly requested, to answer the objections, if not just, remained inflexibly silent, and called for the question, that "the Convention assent to and ratify the proposed plan of federal government for the United States;" which was carried in the affirmative, by sixty-three to eleven.

The vote of ratification having thus passed, Mr. Paca again rose, and laid before the Convention his propositions for amending the Constitution thus adopted, which he had prepared by leave of the house; declaring that he had only given his assent to the government under the firm persuasion, and in full confidence that such amendments would be peaceably obtained so as to enable the people to live happy under the government; that the people of the county he represented, and that he himself, would support the government,

with such amendments; but, without them, not a man in the state, and no people, would be more firmly opposed to it than himself and those he represented. Sentiments highly favorable to amendments were expressed, and a general murmur of approbation seemed to arise from all parts of the house, expressive of a desire to consider amendments, either in their characters as members of convention, or in their individual capacities as citizens; and the question was put on the following motion: --

"Resolved, That a committee be appointed to take into consideration, and report to this house on Monday morning next, a draught of such amendments and alterations as may be thought necessary, in the proposed Constitution for the United States, to be recommended to the consideration of the people of this state, if approved of by this Convention; and Mr. Paca, Mr. Johnson, Mr. S Chase, Mr. Potts, Mr. Mercer, Mr. Goldsborough, Mr. Tilghman, Mr. Hanson, Mr. J. T. Chase, Mr. Lee, Mr. W. Tilghman, Mr. M'Henry, and Mr. G. Gale, be appointed a committee for that purpose."

A division was called for on this resolution, when there appeared sixty-six members for, and not more than seven against it. And then it was resolved, "That the amendments proposed to the Constitution by the delegate from Hartford county should be referred to the above committee."

The committee thus appointed, the Convention adjourned to give them time to prepare their propositions; and they proceeded, with every appearance of unanimity, to execute the trust reposed in them.

The following amendments to the proposed Constitution were separately agreed to by the committee, most of them by a unanimous vote, and all of them by a great majority.

1. That Congress shall exercise no power but what is expressly delegated by this Constitution.

By this amendment, the general powers given to Congress by the first and last paragraphs of the 8th sect. of art. 1, and the 2d paragraph of the 6th article, would be in a great measure restrained; those dangerous expressions, by which the bills of rights, and constitutions, of the several states may be repealed by the laws of Congress, in some degree moderated; and the exercise of constructive powers wholly prevented.

2. That there shall be a trial by jury in all criminal cases, according to the course of proceeding in the state where the offence is committed; and that there be no appeal matter of fact, or second trial after acquittal; but this provision shall not extend to such cases as may arise in the government of the land or naval forces.

3. That, in all actions on debts or contracts, and in all other controversies respecting property, of which the inferior federal courts have jurisdiction, the trial of facts shall be by jury, if required by either party; and that it be expressly declared that the state courts, in such cases, have a concurrent jurisdiction with the federal courts, with an appeal from either, only as to matter of law, to the Supreme Federal Court, if the matter in dispute be of the value of \_\_\_\_\_ dollars.

4. That the inferior federal courts shall not have jurisdiction of less than \_\_\_\_\_ dollars; and there may be an appeal, in all cases of revenue, as well to matter of fact as law; and Congress may give the state courts

jurisdiction of revenue cases, for such forms, and in such manner, as they may think proper.

5. That, in all cases of trespasses done within the body of a county, and within the inferior federal jurisdiction, the party injured shall be entitled to trial by jury in (the state where the injury shall be committed; and that it be expressly declared that the state courts, in such cases, shall have concurrent jurisdiction with the federal courts, and there shall be no appeal from either, except on matter of law; and that no person be exempt from such jurisdiction and trial but ambassadors and ministers privileged by the law of nations.

6. That the federal courts shall not be entitled to jurisdiction by fictions or collusion.

7. That the federal judges do not hold any other office of profit, or receive the profits of any other office under Congress, during the time they hold their commission.

The great objects of these amendments were, 1st. To secure the trial by jury in all cases, the boasted birthright of Englishmen and their descendants, and the palladium of civil liberty; and to prevent the appeal from fact, which not only destroys that trial in civil cases, but, by construction, may also elude it in criminal cases -- a mode of proceeding both expensive and burdensome, and which, by blending law with fact, will destroy all check on the judiciary authority, render it almost impossible to convict judges of corruption, and may lay the foundation of that gradual and silent attack on individuals, by which the approaches of tyranny become irresistible. 2d. To give a concurrent jurisdiction to the state courts, in order that Congress may not be compelled, as they will be under the present form, to establish inferior federal courts, which, if not numerous, are very expensive; the circumstances of the people being unequal to the increased expense of double courts and double officers -- an arrangement that will render the law so complicated and confused, that few men can know how to conduct themselves with safety to their persons or property, the great and only security of freemen. 3d. To give such jurisdiction to the state courts that transient foreigners, and persons from other states, committing injuries in this state, may be amenable to the state whose laws they violate and whose citizens they injure. 4th. To prevent an extension of the federal jurisdiction, which may, and in all probability will, swallow up the state jurisdictions, and consequently sap those rules of descent and regulations of personal property, by which men hold their estates. And lastly, to secure the independence of the federal judges, to whom the happiness of the people of this great continent will be so greatly committed by the extensive powers assigned them.

8. That all warrants without oath, or affirmation of a person conscientiously scrupulous of taking an oath, to search suspected places, or seize any person or his property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend any person suspected, without naming or describing the place or person in special, are dangerous, and ought not to be granted.

This amendment was considered indispensable by many of the committee; for, Congress having the power of laying excises, (the horror of a free people,) by which our dwelling houses, those castles considered so sacred by the English law, will be laid open to the insolence and oppression of office,

there could be no constitutional check provided that would prove so effectual a safeguard to our citizens. General warrants, too, the great engine by which power may destroy those individuals who resist usurpation, are also hereby forbidden to those magistrates who are to administer the general government.

9. That no soldier be enlisted for a longer time than four years, except in time of war, and then only during the war.

10. That soldiers be not quartered, in time of peace, upon private houses, without the consent of the owners.

11. That no mutiny bill continue in force longer than two years.

These were the only checks that could be obtained against the unlimited power of raising and regulating standing armies, the natural enemies to freedom; and even with these restrictions, the new Congress will not be under such constitutional restraints as the Parliament of Great Britain -- restraints which our ancestors have bled to establish, and which have hitherto preserved the liberty of their posterity.

12. That the freedom of the press be inviolably preserved.

In prosecutions in the federal courts for libels, the constitutional preservation of this great and fundamental right may prove invaluable.

13. That the militia shall not be subject to martial law, except in time of war, invasion, or rebellion.

This provision to restrain the powers of Congress over the militia, although by no means so ample as that provided by Magna Charta, and the other great fundamental and constitutional laws of Great Britain, (it being contrary to Magna Charta to punish a freeman by martial law, in time of peace, and murder to execute him,) yet it may prove an inestimable check; for all other provisions in favor of the rights of men would be vain and nugatory, if the power of subjecting all men, able to bear arms, to martial law at any moment should remain vested in Congress.

Thus far the amendments were agreed to.

The following amendments were laid before the committee, and negatived by a majority.

1. That the militia, unless selected by lot, or voluntarily enlisted, shall not be marched beyond the limits of an adjoining state, without the consent of their legislature or executive.

2. That the Congress shall have no power to alter or change the time, place, or manner of holding elections for senators or representatives, unless a state shall neglect to make regulations, or to execute its regulations, or shall be prevented by invasion or rebellion; in which cases only, may interfere, until the cause be removed.

3. That, in every law of Congress imposing direct taxes, the collection thereof shall be suspended for a certain reasonable time. therein limited and on payment of the sum by any state, by the time appointed, such taxes shall not be collected.

4. That no standing army shall be kept up in time of, unless with the consent of two thirds of the members present of each branch of Congress.

5. That the President shall not command the army in person, without the consent of Congress.

6. That no treaty shall be effectual to repeal or abrogate the constitutions or bills of rights of the states, or any part of them.

7. That no regulation of commerce, or navigation act, shall be made, unless with the consent of two thirds of the members of each branch of Congress.

8. That no member of Congress shall be eligible to any office of profit under Congress, during the time for which he shall be appointed.

9. That Congress shall have no power to lay a poll tax.

10. That no person conscientiously scrupulous of bearing arms, in any case, shall be compelled personally to serve as a soldier.

11. That there be a responsible council to the President.

12. That there be no national religion established by law; but that all persons be equally entitled to protection in their religious liberty.

13. That all imposts and duties laid by Congress shall be placed to the credit of the state in which the same shall be collected, and be deducted out of such state's quota of common or general expenses of government.

14. That every man hath a right to petition the legislature for the redress of grievances, in a peaceable and orderly manner.

15. That it be declared, that all persons intrusted with the legislative or executive powers of government are the trustees and servants of the public; and, as such, accountable for their conduct. Wherefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to, reform the old, or establish a new government. The doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.

The committee having proceeded thus far, all the members who voted for the ratification declared that they would engage themselves, under every tie of honor, to support the amendments they had agreed to, both in their public and private characters, until they should become a part of the general government; but a great majority of them insisted on this express condition, that none of the propositions rejected, or any others, should be laid before the Convention for their consideration, except those the committee had so agreed to.

The gentlemen of the minority, who had made the propositions which had been rejected, reduced to the necessity of accommodating their sentiments to the majority, through fear of obtaining no security whatever for the people, -- notwithstanding they considered all the amendments as highly important to the welfare and happiness of the citizens of the states, -- yet, to conciliate, they agreed to confine themselves to the first three of those propositions,

and solemnly declared and pledged themselves, that, if these were added, and supported by other gentlemen, they would not only cease to oppose the government, but give all their assistance to carry it into execution so amended. Finally, they only required liberty to take the sense of the Convention on the first three propositions, agreeing that they would hold themselves bound by the decision of a majority of that body.

The first of these objections, concerning the militia, they considered as essential; for, to march beyond the limits of a neighboring state the general militia, which consists of so many poor people that can ill be spared from their families and domestic concerns, by power of Congress, (who could know nothing of their circumstances,) without consent of their own legislature or executive, ought to be restrained.

The second objection, respecting the power of Congress to alter elections, they thought indispensable. Montesquieu says that the rights of elections should be established unalterably by fundamental laws, in a free government.

The third objection, concerning previous requisitions, they conceived highly important: they thought, if the money required by direct taxation could be paid with certainty, and in due time, to Congress, that every good consequence would be secured to the Union, and the people of the state thereby relieved from the great inconvenience and expense of a double collection, and a double set of tax-gatherers, and they might also get rid of those odious taxes by excise and poll, without injury to the general government.

They were, however, again proposed and rejected.

Affirmative. -- Mr. Paca, Mr. Johnson, Mr. Mercer, Mr. J. T. Chase, Mr. S. Chase.

Negative. -- Mr. Lee, Mr. Potts, Mr. Goldsborough, Mr. J. T. Tilghman, Mr. W. Tilghman, Mr. Hanson, Mr. G. Gale, Mr. M'Henry.

Previous to this, a motion was made on Monday, the 29th, in the Convention, while the committee were sitting, in the following words, to wit: --

"Resolved, That this Convention will consider of no propositions for amendment of the federal government, except such as shall be submitted to them by the committee of thirteen."

The committee being sent for by the Convention, the gentlemen of the majority in committee then determined that they would make no report of any amendments whatever, not even of those which they had almost unanimously agreed to; and the committee, under those circumstances, attended the house. Mr. Paca, as chairman, stated to the Convention what had passed in the committee, read the amendments which had there been agreed to, and assigned the reason why no report had been formally made. A member then rose, and proposed that a vote of thanks to the president, which had been once read before the attendance of the committee, should have a second reading; and upon the second reading thereof, the previous question was called for by the members who wished to consider the amendments agreed to by the committee, and such other amendments as might be proposed. The house thereupon divided, and the yeas and nays were called for by the minority; the sense of the Convention was taken thereon; and a majority determined that the yeas and nays should not be taken, nor

would they permit the vote to be entered on the journal, by which the yeas and nays were prohibited; to preclude the consideration of any amendments.

A motion was then made, "that the Convention adjourn without day," on which the yeas and nays were taken, and appeared as follows: --

Affirmative. -- The Hon. the President, Messrs. Barns, Chilton, Sewel, W. Tilghman, Yates, Granger, Chesly, Smith, Brown, Turner, Stone, Goldsborough, Stevens, G. Gale, Waggaman, Stewart, J. Gale, Sulivane, Shaw, Gilpin, Hollingsworth, Heron, Evans, O. Sprigg, Hall, Digges, Hanson, J. Tilghman, Holliday, Hemsley, Morris, Lee, Potts, Faw, J. Richardson, Edmondson, M'Henry, Coulter, T. Sprigg, Stull, Rawlins, Shryoch, Cramphin, Thomas, Deakins, Edwards. 47.

Negative. -- Messrs. Perkins, J. T. Chase, S. Chase, Mercer, Wilkinson, Grahame, Parnham, Ridgely, Cockey, Cromwell, Lloyd, Hammond, Bowie, Carroll, Seney, Chaile, Martin, Done, Johnson, Paca, Love, Pinckney, L. Martin, W. Richardson, Driver, and Harrison. 27.

We consider the proposed form of national government as very defective, and that the liberty and happiness of the people will be endangered if the system be not greatly changed and altered. The amendments agreed to by the committee, and those proposed by the minority, are now laid before you for your consideration, that you may express your sense as to such alterations as you may think proper to be made in the new Constitution.

We remain persuaded that the importance of the alterations proposed, calculated to preserve public liberty by those checks on power which the experience of ages has rendered venerable, and to promote the happiness of the people, by a due attention to their ease and convenience, will justify the steps we have taken, to obtain them, to our constituents and the world.

Having no interest that can distinguish us from the rest of the community, we neither fear censure nor wish applause. Having thus discharged the duty of citizens and trustees of the public, we shall now submit to the people those precautions and securities, which, on mature reflection on this momentous subject, we deem necessary for that safety and happiness.

May the all-wise and omnipotent Being, who made us masters of a fair and fruitful empire, inspire us with wisdom and fortitude to perpetuate to posterity that freedom which we received from our fathers!

Members of the Committee. -- William Paca, Samuel Chase, John F. Mercer, Jeremiah T. Chase.

Members of the Convention. -- John Love, Charles Ridgely, Edward Cockey, Nathan Cromwell, Charles Ridgely, of Wm., Luther Martin Benjamin Harrison, Wm. Pinckney.

-----

\* The member from the city of Annapolis did not give it as his opinion that he was not at liberty to consider amendments, but said he had consulted his colleague, and that his colleague had informed him the citizens were against amendments.

# DEBATES IN THE CONVENTION OF THE COMMONWEALTH OF MASSACHUSETTS, ON THE ADOPTION OF THE FEDERAL CONSTITUTION.

IN CONVENTION, BOSTON, *January 9, 1788.*

ON motion, *Ordered*, That the Hon. Nathaniel Gorham, John Carnes, Esq., Dr. Charles Jarvis, Hon. Tristram Dalton, Hon. Walter Spooner, Hon. Caleb Davis, and Hon. John Taylor, be a committee to receive the returns of the several towns.

*Ordered*, That a committee of five persons be appointed to collect, count, and sort the votes for a secretary; and the Hon. Caleb Davis, Tristram Dalton, Aaron Wood, Eleazer Brooks, and Charles Turner, Esquires, were appointed.

The Convention then proceeded to the choice of a secretary by ballot, and, the votes being taken, it appeared that George Richards Minot, Esq. was chosen, who accepted of the choice, and was duly sworn to qualify him for exercising the duties of that office.

*Voted*, That Mr. Jacob Kuhn, the messenger of the General Court, be appointed messenger to this Convention.

*Voted*, That five monitors be chosen, and the following gentlemen were elected, viz., the Hon. Noah Goodman, Mr. Phanael Bishop, Mr. Daniel Cooley, Hon. Azor Orne, and Mr. Thomas Davis.

*Voted*, That a committee of seven be appointed to prepare rules and orders for the regulation of the Convention. The Hon. Nathaniel Gorham, Dr. Charles Jarvis, Hon. John Taylor, Mr. William Widgery, Hon. Tristram Dalton, Hon. Theodore Sedgwick, and James Bowdoin, Jun., Esq., were then appointed on the said committee.

*Afternoon.* — The Convention proceeded to the choice of a president by ballot, according to assignment; and, a committee of five being appointed to collect, count, and sort the votes, it appeared that his Excellency, John Hancock, was chosen.

*Voted*, That the Convention proceed to the choice of a vice-president. — The Convention then proceeded to the choice of a vice-president accordingly, by ballot; and, a committee being appointed to collect, count, and sort the votes, it appeared that the Hon. William Cushing was chosen; who by request took the chair.

*Voted*, That a committee of five be appointed to wait upon his Excellency, John Hancock, and acquaint him that this Convention have made choice of him for their president, and to request his Excellency's acceptance of that appointment.

On motion of the Hon. Mr. Adams, *Voted*, That the Convention will attend morning prayers, daily, and that the gentlemen of the clergy, of every denomination, be requested to officiate in turn.

The members from Boston were appointed to wait upon them, and acquaint them thereof.

A vote of the church in Brattle Street, in Boston, offering the use of their meeting-house to the Convention, being communicated by the Hon. Mr. Bowdoin, *Voted*, That a committee of nine be appointed, to view the accommodations of the said meeting-house, and report.

Mr. Sedgwick, Mr. Lincoln, Dr. Taylor, Gen. Brooks of Lincoln, Dr. Jarvis, Dr. Holton, Mr. Strong, Mr. Nason, and Mr. Thatcher, were then appointed on said committee

THURSDAY, *January 10.* — The committee appointed to examine the returns of delegates, desired a rule, whereby they might determine whether the towns had exceeded their privilege to send members. After a long debate, a motion was made, that the valuation of the different towns, returned in 1784, should be the rule to determine the number.

An offer having been made, by the church in Brattle Street, of that meeting-house, for the use of the Convention, and a committee having viewed the accommodation, it was voted that when the Convention do adjourn, that it adjourn to meet at three o'clock, at the meeting-house in Brattle Street.

### **FRIDAY, 11<sup>th</sup>.** —

Committees were raised to inquire respecting the contested elections, and enjoined to sit immediately.

*Afternoon.* — The house in which the Convention were sitting, on account of the difficulty of hearing, being found inconvenient, a committee was raised to provide one more suitable, after which it was voted to adjourn to Saturday morning, then to meet in the representatives' chamber.

### **SATURDAY, 12<sup>th</sup>.** —

The Honorable Convention met again in the representatives' chamber, where they decided all the disputed elections in favor of the members returned. The sense of the Convention was twice taken against removing to any other place.

### **MONDAY, *January 14.*** —

The Constitution for the United States of America, as reported by the Convention of delegates, held at Philadelphia, in May last, together with the resolutions of the General Court of this commonwealth, for calling a Convention, agreeably to the recommendation of Congress, were ordered to be read.

On motion of Mr. Strong, *Voted*, That this Convention, sensible how important it is that the great subject submitted to their determination should be discussed and considered with moderation, candor, and deliberation, will enter into a free conversation on the several parts thereof, by paragraphs, until every member shall have had an opportunity to express his sentiments on the same; after which the Convention will consider and debate at large the question whether this Convention will adopt and ratify the proposed Constitution, before any vote is taken expressive of the sense of the Convention, upon the whole or any part thereof.

The resolve of the General Court of this commonwealth, of March, 1787, appointing delegates for the Convention of the states, held at Philadelphia, was ordered to be read.

A motion was made and passed, that the Hon. Elbridge Gerry be requested to take a seat in the Convention, to answer any questions of fact, from time to time, that the Convention may ask, respecting the passing of the Constitution.

*Afternoon.* — *Ordered*, That a committee of three be appointed to wait upon the Hon. Elbridge Gerry, and acquaint him with the vote of this morning, requesting him to take a seat in the Convention, to answer to any questions of fact, from time to time, that the Convention may ask, respecting the passing the Constitution.

Agreeably to the resolution passed in the forenoon, the Convention proceeded to consider the first section of the Constitution, and, after a short conversation, entered upon the discussion of the second section, the first paragraph of which caused a lengthy debate.

The Convention entered upon the consideration of the proposed Constitution, and, having debated thereon through the day, postponed the further consideration thereof to the next morning.

It had been mentioned by some gentlemen, that the introduction of tyranny into several nations had been by lengthening the duration of their parliaments or legislative bodies; and the fate of those nations was urged as a caution against lengthening the period for which Congress is to be chosen.

## **Mr. SEDGWICK**

Wished to know what were the nations which had been thus deprived of their liberties; he believed they were few in number; in fact, he did not recollect any. After showing, by several examples, how nations had been deprived of their liberties, he continued, — Is it not necessary, Mr. President, that the federal representatives should be chosen for two years? Annual elections, in a single state, may be the best for a variety of reasons; but when the great affairs of thirteen states — where their commerce may be extended, and where it is necessary to be restricted — what measures may be most expedient, and best adapted to promote the general prosperity thereof, are to be the objects of deliberation, is not such a period too short? Can a man, called into public life, divest himself of local concerns, and instantly initiate himself into a general knowledge of such extensive and weighty matters? After several other arguments in favor of the section, he begged the indulgence of the Convention while he made a personal observation: "It

has been given out, sir, by several persons, that I have said the Constitution must go down, right or wrong; I beg leave to declare, sir, on my honor, that, so far from having made such a declaration, the idea of it has not ever entered my mind."

### **Mr. G. DENCH**

Wished to know how the representation was secured; as, by the 4th section, Congress were empowered to make or alter the regulation of the times, places, and manner of holding elections. Mr. D. was continuing, but was called to order by Mr. Parsons, who said the subject in debate was the *expediency of biennial elections*, and that an answer to the gentleman from Hopkinton would more properly be given when the 4th section was under consideration.

### **Dr. TAYLOR.**

## **IMPEACH**

Mr. President, I am opposed to *biennial*, and am in favor of *annual* elections. Annual elections have been the practice of this state ever since its settlement, and no objection to such a mode of electing has ever been made. It has, indeed, sir, been considered as the safeguard of the liberties of the people; and the annihilation of it, the avenue through which tyranny will enter. By the Articles of Confederation, annual elections are provided for, though we have additional securities in a right to recall any or all of our members from Congress, and a provision for rotation. In the proposed Constitution, there is no provision for rotation; we have no right by it to recall our delegates. In answer to the observations, that, by frequency of elections, good men will be excluded, I answer, if they behave well, it is probable they will be continued; but if they behave ill, how shall we remedy the evil? It is possible that rulers may be appointed who may wish to root out the liberties of the people. Is it not, Mr. President, better, if such a case should occur, that at a short period they should politically die, than that they should be proceeded against by **impeachment**? These considerations, and others, said the doctor, make me in favor of annual elections; and the further we deviate therefrom, the greater is the evil.

### **The Hon. Mr. SPRAGUE**

Was in favor of the section as it stood. He thought the same principles ought not to guide us when considering the election of a body whose jurisdiction was coextensive with a great continent, as when regulating that of one whose concerns are only those of a single state.

### **Mr. T. DAWES**

After a short exordium, said he had not heard it mentioned by any gentleman who had spoken in the debate, that the right of electing representatives in the Congress, as provided for in the proposed Constitution, will be the acquisition of a new privilege by the people, as it really will be. The people will then be immediately represented in the federal government; at present they are not; therefore it will be in favor of the people, if they are chosen for forty instead of two

years; — and he adduced many reasons to show that it would not conduce to the interests of the United States, or the security of the people, to have them for a shorter period than two years.

### **The Hon. Mr. WHITE**

Said he was opposed to the section; he thought the security of the people lay in frequent elections; for his part, he would rather they should be for six months than for two years; — and concluded by saying he was in favor of annual elections.

Dr. JARVIS, Gen. BROOKS, Gen. HEATH, and Mr. TURNER, each spoke a few words on the subject, when a motion was made to postpone the consideration of the 2d section until the next meeting, which passing, the Convention adjourned.

### **TUESDAY, *January 15.* —**

A motion was made by Mr. DANA, that the vote of yesterday, prescribing the manner of proceeding in the consideration of the Constitution, should be reconsidered, for the purpose of making the following addition thereto, viz.: —

"It is, nevertheless, the opinion of this Convention, that, if any member conceives any other clause or paragraph of the Constitution to be connected with the one immediately under consideration, that he have full liberty to take up such other clause or paragraph for that purpose." And the question of reconsideration, being put, passed in the affirmative.

On the question whether the addition should be made, it was determined in the affirmative.

### **The Hon. Mr. STRONG**

Rose to reply to the inquiry of the Hon. Mr. Adams, why the alteration of *elections* from annual to biennial was made; and to correct an inaccuracy of the Hon. Mr. Gorham, who, the day before, had said that *that* alteration was made to gratify South Carolina. He said he should then have arisen to put his worthy colleague right, but his memory was not sufficiently retentive to enable him immediately to collect every circumstance. He had since recurred to the original plan. When the subject was at first discussed in Convention, some gentlemen were for having the term extended for a considerable length of time; others were opposed to it, as it was contrary to the ideas and customs of the Eastern States; but a majority was in favor of three years, and it was, he said, urged by the Southern States, which are not so populous as the Eastern that the expense of more frequent elections would be great; — and concluded by saying that a general concession produced the term as it stood in the section, although it was agreeable to the practice of South Carolina.

### **Mr. AMES**

I do not regret, Mr. President, that we are not unanimous upon this question. I do not consider the diversity of sentiment which prevails as an impediment in our way to the discovery of truth. In

order that we may think alike upon this subject at last, we shall be compelled to discuss it by ascending to the principles upon which the doctrine of representation is grounded.

Without premeditation, in a situation so novel, and awed by the respect which I feel for this venerable assembly, I distrust extremely my own feelings, as well as my competency to prosecute this inquiry. With the hope of an indulgent hearing, I will attempt to proceed. I am sensible, sir, that the doctrine of frequent elections has been sanctioned by antiquity, and is still more endeared to us by our recent experience and uniform habits of thinking. Gentlemen have expressed their zealous partiality for it. They consider this as a leading question in the debate, and that the merits of many other parts of the Constitution are involved in the decision. I confess, sir, and I declare that my zeal for frequent elections is not inferior to their own. I consider it as one of the first securities for popular liberty, in which its very essence may be supposed to reside. But how shall we make the best use of this pledge and instrument of our safety?

A right principle, carried to an extreme, becomes useless. It is apparent that a declaration for a very short term, as for a single day, would defeat the design of representation. The election, in that case, would not seem to the people to be of any importance, and the person elected would think as lightly of his appointment. The other extreme is equally to be avoided. An election for a very long term of years, or for life, would remove the member too far from the control of the people, would be dangerous to liberty, and in fact repugnant to the purposes of the delegation. The truth, as usual, is placed somewhere between the extremes, and I believe is included in this proposition: The term of election must be so long, that the representative may understand the interest of the people, and yet so limited, that his fidelity may be secured by a dependence upon their approbation.

Before I proceed to the application of this rule, I cannot forbear to premise some remarks upon two opinions, which have been suggested.

Much has been said about the people divesting themselves of power, when they delegate it to representatives; and that all representation is to their disadvantage, because it is but an image, a copy, fainter and more imperfect than the original, the people, in whom the light of power is primary and unborrowed, which is only reflected by their delegates. I cannot agree to either of these opinions. The representation of the people is something more than the people. I know, sir, but one purpose which the people can effect without delegation, and that is to destroy a government. That they cannot erect a government, is evinced by our being thus assembled on their behalf. The people must govern by a majority, with whom all power resides. But how is the sense of this majority to be obtained? It has been said that a pure democracy is the best government for a small people who assemble in person. It is of small consequence to discuss it, as it would be inapplicable to the great country we inhabit. It may be of some use in this argument, how ever, to consider, that it would be very burdensome, subject to faction and violence; decisions would often be made by surprise, in the precipitancy of passion, by men who either understand nothing or care nothing about the subject; or by interested men, or those who vote for their own indemnity. It would be a government not by laws, but by men.

Such were the paltry democracies of Greece and Asia Minor, so much extolled, and so often proposed as a model for our imitation. I desire to be thankful that our people (said Mr. Ames) are

not under any temptation to adopt the advice. I think it will not be denied that the people are gainers by the election of representatives. They may destroy, but they cannot exercise, the powers of government in person, but by their servants *they* govern: they do not renounce their power; they do not sacrifice their rights; they become the true sovereigns of the country when they delegate that power, which they cannot use themselves to their trustees.

I know, sir, that the people talk about the liberty of nature, and assert that we divest ourselves of a portion of it when we enter into society. This is declamation against matter of fact. We cannot live without society; and as to liberty, how can I be said to enjoy that which another may take from me when he pleases? The liberty of one depends not so much on the removal of all restraint from him, as on the due restraint upon the liberties of others. Without such restraint, there can be no liberty. Liberty is so far from being endangered or destroyed by this, that it is extended and secured. For I said that we do not enjoy that which another may take from us. But civil liberty cannot be taken from us, when any one may please to invade it; for we have the strength of the society on our side.

I hope, sir, that these reflections will have some tendency to remove the ill impressions which are made by proposing to divest the people of their power.

That they may never be divested of it, I repeat that I am in favor of frequent elections. They who commend annual elections are desired to consider, that the question is, whether biennial elections are a defect in the Constitution; for it does not follow, because annual elections are safe, that biennial are dangerous; for both may be good. Nor is there any foundation for the fears of those, who say that if we, who have been accustomed to choose for one year only, now extend it to two, the next stride will be to five or seven years, and the next for term of life; for this article, with all its supposed defects, is in favor of liberty. Being inserted in the Constitution, it is not subject to be repealed by law. We are sure that it is the worst of the case. It is a fence against ambitious encroachments, too high and too strong to be passed. In this respect, we have greatly the advantage. of the people of England, and of all the world. The law which limits their Parliaments is liable to be repealed.

I will not defend this article by saying that it was a matter of compromise in the federal Convention. It has my entire approbation as it stands. I think that we ought to prefer, in this article, biennial elections to annual; and my reasons for this opinion are drawn from these sources: —

From the extent of the country to be governed;

The objects of their legislation;

And the more perfect security of our liberty.

It seems obvious that men who are to collect in Congress from this great territory, perhaps from the Bay of Fundy, or from the banks of the Ohio, and the shore of Lake Superior, ought to have a longer term in office, than the delegates of a single state, in their own legislature. It is not by riding post to and from Congress that a man can acquire a just knowledge of the true interests of

the Union. This term of election is inapplicable to the state of a country as large as Germany, or as the Roman empire in the zenith of its power.

If we consider the objects of their delegation, little doubt will remain. It is admitted that annual elections may be highly fit for the state legislature. Every citizen grows up with a knowledge of the local circumstances of the state. But the business of the federal government will be very different. The objects of their power are few and national. At least two years in office will be necessary to enable a man to judge of the trade and interests of the state which he never saw. The time, I hope, will come, when this excellent country will furnish food, and freedom, (which is better than food, which is the food of the soul,) for fifty millions of happy people. Will any man say that the national business can be understood in one year?

Biennial elections appear to me, sir, an essential security to liberty. These are my reasons: —

Faction and enthusiasm are the instruments by which popular governments are destroyed. We need not talk of the power of an aristocracy. The people, when they lose their liberties, are cheated out of them. They nourish factions in their bosoms, which will subsist so long as abusing their honest credulity shall be the means of acquiring power. A democracy is a volcano, which conceals the fiery materials of its own destruction. These will produce an eruption, and carry desolation in their way. The people always mean right; and, if time is allowed for reflection and information, they will do right. I would not have the first wish, the momentary impulse of the public mind, become law; for it is not always the sense of the people, with whom I admit that all power resides. On great questions, we first hear the loud clamors of passion, artifice, and faction. I consider biennial elections as a security that the sober, second thought of the people shall be law. There is a calm review of public transactions, which is made by the citizens who have families and children, the pledges of their fidelity. To provide for popular liberty, we must take care that measures shall not be adopted without due deliberation. The member chosen for two years will feel some independence in his seat. The factions of the day will expire before the end of his term.

The people will be proportionably attentive to the merits of a candidate. Two years will afford opportunity to the member to deserve well of them, and they will require evidence that he has done it.

## IMPEACH

But, sir, the representatives are the grand inquisition of the Union. They are, by **impeachment**, to bring great offenders to justice. One year will not suffice to detect guilt, and to pursue it to conviction; therefore they will escape, and the balance of the two branches will be destroyed, and the people oppressed with impunity. The senators will represent the sovereignty of the states. The representatives are to represent the people. The offices ought to bear some proportion in point of importance. This will be impossible if they are chosen for one year only.

Will the people, then, blind the eyes of their own watchmen? Will they bind the hands which are to hold the sword for their defence? Will they impair their own power by an unreasonable jealousy of themselves?

For these reasons, I am clearly of opinion that the article is entitled to our approbation as it stands; and as it has been demanded, why annual elections were not preferred to biennial, permit me to retort the question, and to inquire, in my turn, what reason can be given, why, if annual elections are good, biennial elections are not better?

The inquiry in the latter part of Mr. Ames's speech being directed to the Hon. Mr. Adams, that gentleman said, he only made the inquiry for information, and that he had heard sufficient to satisfy himself of its propriety.

### **Mr. DENCH**

Said his objections to biennial elections were removed; but he wished to recur to the 4th section, and to inquire, whether *that election was secured*, as, by this section, Congress has power to regulate the time, place, and manner of holding it.

[A question now arose, whether the consideration of the 4th section was in order, and much debate was had thereon; but the propriety, as expressed by a worthy member, of "elucidating scripture by scripture," being generally admitted, the motion made by the Hon. Mr. Dana passed, which put an end to the conversation.]

### **The Hon. Mr. BOWDOIN**

Remarked on the idea suggested by the honorable gentleman from Scituate, [Mr. Turner,] who had said that nature pointed out the propriety of *annual* elections, by the *annual* renewal, *and* observed, that if the revolution of the heavenly bodies is to be the principle to regulate elections, it was not fixed to any period, as in some of the systems it would be very short; and in the last-discovered planet it would be eighty of our years. Gentlemen, he said, who had gone before him in debate, had clearly pointed out the alteration of the election of our federal representatives, from annual to biennial, to be justifiable. Annual elections may be necessary in this state, but in the choice of representatives from the continent, it ought to be longer; nor did he see any danger in its being so. Who, he asked, are the men to be elected? Are they not to be from among us? If they were to be a distinct body, then the doctrine of precaution, which gentlemen use, would be necessary; but, sir, they can make no laws, nor levy any taxes, but those to which they themselves must be subservient; they themselves must bear a part; therefore our security is guarantied by their being thus subject to the laws, if by nothing else.

### **Gen. HEATH**

Mr. President, I consider myself not as an inhabitant of Massachusetts, but as a citizen of the United States. My ideas and views are commensurate with the continent; they extend in length from the St. Croix to the St. Maria, and in breadth from the Atlantic to the Lake of the Woods; for over all this extensive territory is the federal government to be extended.

I should not have risen on this paragraph, had it not been for some arguments which gentlemen have advanced respecting elections, and which, I think, tend to make dangerous impressions on the minds of the rising generation. It has been the general opinion that the liberties of the people

are principally secured by the frequency of elections, and power returning again into their own hands. The first Parliament ever called in Europe was called by Constantine the Third, and to continue for one year. The worthy gentleman from Boston [Mr. Dawes] has mentioned a writer as a good authority, and who, he says, was twenty years compiling his works. I will produce one observation from this celebrated writer, Baron Montesquieu; it is as follows: "The greatness of power must be compensated by the brevity of the duration; most legislators have fixed it to a year; a longer space would be dangerous." Here, sir, we have not only the opinion of this celebrated writer, but he has also mentioned that most legislators were of the like opinion; but I shall come to our own country, where we shall find in what respect annual elections have always been held. This was the wisdom of our ancestors; it has been confirmed by time; therefore, sir, before we change it, we should carefully examine whether it be for the better. Local circumstances may render it expedient; but we should take care not to hold up to the rising generation, that it is a matter of indifference whether elections be annual or not; and this is what induced me to rise.

It is a novel idea, that representatives should be chosen for a considerable time, in order that they may learn their duty. The representative is one who appears in behalf of, and acts for, others; he ought, therefore, to be fully acquainted with the feelings, circumstances, and interests of the persons whom he represents; and this is learnt among them, not at a distant court. How frequently, on momentary occasions, do the members of the British Parliament wish to go home and consult their constituents, before they come to decision! This shows from what quarter they wish to obtain their information. With respect to the obtaining a knowledge of the circumstances and abilities of the other states, in order to an equal taxation, this must be acquired from the returns of the number of inhabitants, &c., which are to be found on the files of Congress; for I know not how length of time could furnish other information, unless the members should go from state to state, in order to find out the circumstances of the different states. I think representatives ought always to have a general knowledge of the interests of their constituents, as this alone can enable them properly to represent them.

But, sir, if there be charms in the paragraph now under consideration, they are these: Congress, at present, are continually sitting; but under the new Constitution, it is intended that Congress shall sit but once annually, for such time as may be necessary, and then adjourn. In this view, every gentleman acquainted with the business of legislation knows that there is much business, in every session, which is taken up and partly considered, but not finished; an adjournment keeps all this business alive; and at the next session it is taken up and completed, to the benefit of the people, in a great saving of expense, which would otherwise be lost; for a new legislature would not see through the eyes of those who went before them; consequently all business partly finished would be time lost, to the injury of the public. Therefore, as it seems to be intended that Congress shall have but two sessions in the two years for which the representatives are to be chosen, this consideration has reconciled me to the paragraph, and I am in favor of biennial elections.

### **Mr. TURNER**

in reply to the Hon. Mr. Bowdoin, said he thought it an important consideration whether the elections were to be for one or for two years. He was, he said, greatly in favor of annual

elections, and be thought, in the present instance, it would be establishing a dangerous precedent to adopt a change; for, says he, the principle may so operate, as, in time, our elections will be as *seldom* as the revolution of the star the honorable gentleman talks of.

### **Mr. DAWES**

In answer to Gen. Heath, said, that the passage quoted from Montesquieu applied to *single* governments, and not to *confederate* ones.

### **Gen. BROOKS, (of Medford,)**

In reply to Gen. Heath, said, he recollected the passage of Montesquieu, but he also recollected that that writer had spoken highly of the British government. He then adverted to the objection to this section of Gen. Thompson and others, that biennial elections were a novelty, and said, we were not to consider whether a measure was new, but whether it was proper. Gentlemen had said that it had been the established custom of this country to elect annually; but, he asked, have we not gone from a colonial to an independent situation? We were then provinces; we are now an independent empire; our measures, therefore, says he, must change with our situation. Under our old government, the objects of legislation were few and divided; under our present, there are many, and must be united; and it appears necessary that, according to the magnitude and multiplicity of the business, the duration should be extended, he did not, he said, undertake to say how far. He then went into a view of the history of Parliaments: the modern northern nations, he said, had Parliaments; but they were called by their kings; and the time, business, &c., of them, depended wholly on their wills.

We can, therefore, says he, establish nothing from these. One general remark was, that, in the reigns of weak princes, the *power* and importance of Parliaments increased; in the reigns of strong and arbitrary kings, they always declined; and, says he, they have been *triennial*, and they have been *septennial*. The general combated the idea *that the liberties of the people depended on the duration of Parliament*, with much ability. Do we hear, asked he, that the people of England are deprived of their liberties? or that they are not as free now as when they had short Parliaments? On the contrary, do not writers agree, that life, liberty, and property, are nowhere better secured than in Great Britain, and that this security arises from their Parliaments being chosen for seven years? As such is the situation of the people of England, and as no instance can be given wherein biennial elections have been destructive to the liberties of the people, he concluded by asking, whether so much danger is to be apprehended from such elections as gentlemen imagined.

### **Gen. THOMPSON**

Sir, gentlemen have said a great deal about the history of old times. I confess I am not acquainted with such history; but I am, sir, acquainted with the history of my own country. I had the honor to be in the General Court last year, and am in it this year. I think, sir, that had the last administration continued one year longer, our liberties would have been lost, and the country involved in blood. Not so much, sir, from their bad conduct, but from the suspicions of the

people of them. But, sir, a change took place; from this change pardons have been granted to the people, and peace is restored. This, sir, I say, is in favor of frequent elections.

[Gen. T. was called to order, on the idea that he reflected on the last administration. A debate ensued, which ended on the Hon. Mr. White's saying, he wished to pat out every spark of the fire that appeared to be kindling; therefore moved to adjourn.]

*Afternoon.* — Dr. TAYLOR opened the conversation of the afternoon, by calling upon Gen. Thompson to proceed.

## **Gen. THOMPSON**

Accordingly said, that, however just, however good, and however upright the administration may be, there was still a great necessity for annual elections.

He thought a change of election was for the best, even if the administration pleased the people. Do the members of Congress, says he, displease us, we call them home, and they obey. Now, where is the difference of their having been elected for one or two years? It is said that the members cannot learn sufficiently in that time. Sir, I hope we shall never send men who are *not learned*. Let these members know their dependence upon the people, and I say it will be a check on them, even if they were not good men. Here the general broke out in the following pathetic apostrophe: "O my country, never give up your annual elections! young men, never give up your jewel!" He apologized for his zeal. He then drew a comparison between the judges, &c., of this country before the revolution, who were dependent on Great Britain for their salaries, and those representatives dependent on the Continent. He concluded by hoping that the representatives would be annually elected, and thereby feel a greater dependence on the people.

## **Mr. GORE**

It has been observed, that, in considering this great and momentous question, we ought to consult the sentiments of wise men, who have written on the subject of government, and thereby regulate our decision on this business. A passage is adduced from Montesquieu, stating that, where the people delegate great power, it ought to be compensated for by the shortness of the duration. Though strictly agreeing with the author, I do not see that it applies to the subject under consideration. This might be perfectly applicable to the ancient governments, where they had no idea of representation, or different checks in the legislature or administration of government; but, in the proposed Constitution, the powers of the whole government are limited to certain national objects, and are accurately defined. The House of Representatives is but one branch of the system, and can do nothing of itself. Montesquieu, in the sentiment alluded to, must have had in his mind the Epistates of Athens, or the Dictators of Rome; but certainly observations drawn from such sources can have no weight in considering things so efficiently different. Again, sir, gentlemen have said that annual elections were necessary to the preservation of liberty, and that, in proportion as the people of different nations have lengthened, beyond the term of a year, the duration of their representatives, they have lost their liberties, and that all writers have agreed in this. I may mistake; but I know no such thing as a representation of the people in any of the ancient republics. In England, from whence we receive many of our ideas on this subject, King

John covenanted with his people to summon certain classes of men to Parliament. By the constitution of that country, the king alone can convoke, and be alone, previous to the revolution, could dissolve, the Parliament; but in the reign of William the Third, the patriots obtained an act limiting the duration of Parliament to three years. Soon after, a Parliament then sitting, and near expiring, a rebellion broke out, and the tories and Jacobites were gaining strength to support the Pretender's claim to the crown. Had they dissolved themselves, and a new Parliament been convoked, probably many of the very opponents to the government might have been elected. In that case they might have effected by law what they in vain attempted by arms.

The Parliament, therefore, extended their duration from triennial to septennial. This was acquiesced in by the people, and the next Parliament sanctioned the act. No evil, but great good, has been supposed to follow from their duration being thus extended; and if Montesquieu and Dr. Adams think the British constitution so perfect, how much greater must be our security, when we reflect that our representation is equal; that the powers of the government are so limited, and the checks so nicely appointed! If there be a representation of the people in any other countries, and annual elections therein have been considered as the basis of their freedom, I pray gentlemen to mention the instances; I confess I know none. People adopt a position which is certainly true, viz., that elections ought to be frequent; but, then, as we have been in the custom of choosing our representatives annually, we have determined annually to be frequent, and that biennial, or any longer term than annual, is not frequent; but if gentlemen will only consider the objects over which this government is to have rule and authority, and the immense and wide-extended tracts of country over which the representatives are to pass before they reach the seat of government, I think they will be convinced that two years is a short time for the representatives to hold their office. Further, sir, we must consider this subject with respect to the general structure of the Constitution. The Senate represents the sovereignty of the states; the House of Representatives the people of the United States. The former have a longer term in their office; it is then necessary that that body which represents the people should have a permanence in their office, to resist any operations of the Senate, which might be injurious to the people. If they were annual, I submit it to the good sense of this house whether they would be able to preserve that weight in the system which the Constitution intended they should have, and which is absolutely necessary for the security of the rights of the people.

### **The Hon. Mr. KING**

Said he would not detain the Convention by any exordium for the purpose of obtaining their attention. He declared, however, that he thought the subject might be freed from certain prejudices connected with its examination, and that thereby the question might receive a fairer decision: this should be the object of his address.

The honorable gentleman observed, that the Convention would do well to lay aside the terms *annual* or *biennial*, and consider the subject as it could be supported by principles. Much had been said of the instruction to be derived from history on this point; he said he presumed to doubt whether this was the case. From the continent of Europe he believed that we could receive no instruction. Their Parliaments, after the overthrow of the Roman empire, were not constructed upon the principle of a representation of the people. The conqueror of a given district of the country was, by the feudal system, the prince or king of the people within his conquered

territories. When he wished the advice of any persons, he summoned usually a number of his principal officers, or the barons of his kingdom, to give him their counsel; but the people, or, as they were degradingly called, the vassals, were never consulted. This certainly cannot be considered as a representation of the people. This mode of assembling a Parliament probably obtained in the early stages of the English history; but those who have written on this subject agree that their information is very imperfect, relative to the origin of English Parliaments; they are not certain who composed the Parliament, how long they held their office, or concerning what points they were consulted.

Nothing clear on this subject appears before the 12th century. Magna Charta is the foundation of the imperfect representation of England. Improvements have since been made in favor of the more equal and certain representation of the people; but it is still extremely imperfect and insecure. Perhaps the people of America are the first, who, by the social compact, ever obtained a right to a full and fair representation, in making the laws of their country.

If, then, [continued Mr. K.,] history can afford little or no instruction on this subject, the Convention must determine the question upon its own principles. It seems proper that the representative should be in office time enough to acquire that information which is necessary to form a right judgment; but that the time should not be so long as to remove from his mind the powerful check upon his conduct, that arises from the frequency of elections, whereby the people are enabled to remove an unfaithful representative, or to continue a faithful one. If the question is examined by this standard, perhaps it will appear that an election for two years is short enough for a representative in Congress. If one year is necessary for a representative to be useful in the state legislature, where the objects of his deliberations are local, and within his constant observation, two years do not appear too long, where the objects of deliberation are not confined to one state, but extend to thirteen states; where the complicated interests of united America are mingled with those of foreign nations; and where the great duties of national sovereignty will require his constant attention. When the representatives of the colony of Massachusetts were first chosen, the country was not settled more than twenty miles from Boston; they then held their offices for one year. The emigrants from Massachusetts, who settled on Connecticut River, appointed the representatives to meet in the General Court of that colony for only six months. Massachusetts, although her settlements have extended over almost her whole territory, has continued to depute representatives for only one year, and Connecticut for only six months; but as, in each of these colonies, when under the British government, the duties of the representatives were merely local, the great duties of sovereignty being vested in their king, so, since the revolution, their duties have continued local, many of the authorities of sovereignty being vested in Congress. It is now proposed to increase the powers of Congress; this will increase the duties of the representatives, and they must have a reasonable time to obtain the information necessary to a right discharge of their office.

It has been said that our ancestors never relinquished the idea of annual elections: this is an error. In 1643, the colonies of Plymouth, Massachusetts, Connecticut, and New Haven, united in a confederacy, which continued about forty years; each colony sent two commissioners as their representatives, and by the articles they were to be annually elected. About the year 1650, the General Court of Massachusetts instructed their commissioners to propose that the elections,

instead of being annual, should be only once in three years. The alteration did not take place, but the anecdote proves that our ancestors have not had a uniform predilection for annual elections.

Mr. K. concluded by observing that, on a candid examination of this question, he presumed that the Constitution would not be objected to on account of the biennial election of the House of Representatives.

### **Judge DANA**

Mr. President, the feeble state of my health will not permit me to enter so largely into the debates of this house, as I should be otherwise inclined to do. The intention of my rising, at present, is to express my perfect acquiescence in the sentiments advanced by the honorable gentleman from Newburyport, [Mr. King,] in favor of *the expediency of biennial elections* of our federal representatives. From my own experience, I think them preferable to *annual* elections. I have, sir, seen gentlemen in Congress, and delegates from this state too, sitting in that honorable body, without a voice; without power to open their mouths, or lift up their hands, when matters of the highest importance to their state have been under consideration. I have seen members in Congress, for the space of three months, without power, sir, waiting for evidence of their reduction. Besides, sir, that the *more frequent* elections are, the oftener states will be exposed to be deprived of their voice and influence in national councils. I think annual elections are too short for so extensive an empire. They keep the members always travelling about; and I am of opinion that elections for two years are in no way subversive of the liberties of the *people*. I, sir, am one of the people, thank God! and am happy in having an opportunity of expressing my personal satisfaction of such elections. For these and a variety of other reasons, Mr. D. suggested that he thought this state ought to be the first to adopt this method of elections.

### **The Hon. Mr. WHITE**

Still thought that Congress might perpetuate themselves, and so reign emperors over us.

### **Hon. Mr. GORHAM**

Observed, (in continuation of Mr. Dana's observation,) that there was not now a Congress; although the time of their meeting had considerably elapsed. Rhode Island, Connecticut, and several other states, had not gone on; that there was now only five states in Congress, when there ought to have been thirteen two months ago.

### **Mr. CARNES**

Rose to confirm it, and accordingly read part of a letter from the Hon. Mr. Otis, the purport of which was, that there was much business to do; that only five states were represented, and that the probability of Indian war, &c., evinced the great necessity of the establishment of an efficient federal government, which will be the result of the adoption of the proposed Constitution.

### **Dr. TAYLOR**

Rose to answer two objections which had been made against annual elections: The *distance of place* was not so great but the delegates might reach Philadelphia in a fortnight; and as they were answerable to the people for their conduct, he thought it would prevent a *vacancy*, and concluded by saying, he did not conceive the arguments in favor of *biennial* elections well founded.

A letter from the Hon. Elbridge Gerry, informing that he would attend the Convention, agreeable to their vote of yesterday, was received and read.

On motion of Mr. NASON, *Ordered*, That a committee be appointed to provide a more convenient place for the Convention to sit in.

### **WEDNESDAY, *January 16.* —**

The 2d part of the 2d section of the 3d article was read at the table a desultory conversation ensued on the mode of conducting the discussion; it was *again* agreed, that, in the debate on any paragraph, gentlemen might discuss any other part they might suppose had relation to that under consideration.

#### **Mr. PIERCE, (from Partridgefield,)**

After reading the 4th section, wished to know the opinion of gentlemen on it, as Congress appeared thereby to have a power to regulate the *time, place, and manner* of holding elections. In respect to the manner, said Mr. P., suppose the legislature of this state should prescribe that the choice of the federal representatives should be in the same manner as that of governor, — a majority of all the votes in the state being necessary to make it such, — and Congress should deem it an improper *manner*, and should order that it be as practised in several of the Southern States, where the highest number of votes make a choice; — have they not power by this section to do so? Again, as to the *place*, continues Mr. P., may not Congress direct that the election for Massachusetts shall be held in Boston? and if so, it is possible that, previous to the election, a number of the electors may meet, agree upon the eight delegates, and propose the same to a few towns in the vicinity, who, agreeing in sentiment, may meet on the day of election, and carry their list by a major vote. He did not, he said, say that this would be the case; but he wished to know if it was not a possible one. As the federal representatives, who are to form the democratical part of the general government, are to be a check on the representatives of the sovereignty, the senate, he thought the utmost caution ought to be used to have their elections as free as possible. He observed that, as men have ever been fond of power, we must suppose they ever will continue so; and concluded by observing, that our caution ought in the present case to be greater, as, by the proposed Constitution, no qualification of property was required in a representative; and it might be in the power of some people thereby to choose a bankrupt for a representative, in order to give such representatives employment, or that he might make laws favorable to such a description of the people.

#### **Gen. PORTER (from Hadley)**

endeavored to obviate the objections of Mr. Pierce, by showing the almost *impossibility* of Congress making a law whereby eight men could be elected, as Mr. Pierce had supposed; and he

thought it equally impossible for the people to choose a person to take care of their property, who had none himself.

### **Mr. BISHOP**

Rose, and observed that, by the 4th section, Congress would be enabled to control the elections of representatives. It has been said, says he, that this power was given in order that refractory states may be made to do their duty. But if so, sir, why was it not so mentioned? If that was the intention, he asked why the clause did not run thus: "The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but," *if any state shall refuse or neglect so to do*, "Congress may," &c. This, he said, would admit of no prevarication. I am, says Mr. B., for giving Congress as much power to do good as possible. It has been said, Mr. President, that the conduct of Rhode Island, in recalling its delegates from Congress, has demonstrated the necessity of such a power being lodged in Congress. I have been informed by people belonging to Rhode Island, sir, that that state never has recalled her delegates from Congress. I do not believe it has. And I call upon the gentleman who mentioned it to authenticate the fact.

### **The Hon. Mr. KING**

rose, and assured the Convention that the state of Rhode Island did, by a solemn resolution, some time since, recall its delegates from Congress.

### **The Hon. Mr. GORHAM**

Confirmed what Mr. K. had said, and added, that, during the session of the federal Convention, when seven states only were represented in Congress, application was made by two companies for the purchase of lands, the sale of which would have sunk seven or eight millions of dollars of the Continental debt, and the most pressing letters were sent on to Rhode Island to send on its delegates; but that state refused: the consequence was, the contract could not then be made.

### **Mr. BISHOP**

Confessed himself convinced of the fact. He proceeded to observe, that, if the states shall refuse to do their duty, then let the power be given to Congress to oblige them to do it. But if they do their duty, Congress ought not to have the power to control elections. In an uncontrolled representation, says Mr. B., lies the security of freedom; and he thought by these clauses, that that freedom was sported with. In fact, says he, the moment we give Congress this power, the liberties of the yeomanry of this country are at an end. But he trusted they would never give it; and he felt a consolation from the reflection.

The 4th section, which provides that the state legislatures shall prescribe the time, place, and manner of holding elections, and that Congress may at any time make or alter them, except in those of senators, [*though not in regular order,*] under deliberation.

## **The Hon. Mr. STRONG**

Followed Mr. Bishop, and pointed out the necessity there is for the 4th section. The power, says he, to regulate the elections of our federal representatives must be lodged somewhere. I know of but two bodies wherein it can be lodged — *the legislatures of the several states, and the general Congress*, If the legislative bodies of the states, who must be supposed to know at what time, and in what place and manner, the elections can best be held, should so appoint them, it cannot be supposed that Congress, by the power granted by this section, will alter them; but if the legislature of a state should refuse to make such regulations, the consequence will be, that the representatives will not be chosen, and the general government will be dissolved. In such case, can gentlemen say that a power to remedy the evil is not necessary to be lodged somewhere? And where can it be lodged but in Congress? I will consider its advantage in another respect. We know, sir, that a negligence in the appointment of rulers is the characteristic of all nations. In this state, and since the establishment of our present constitution, the first officers of government have been elected by less than one tenth part of the electors of the state. We also know that our town meetings, for the choice of officers, are generally attended by an inconsiderable part of the qualified voters. People attend so much to their private interest, that they are apt to neglect this right. Nations have lost their liberties by neglecting their privileges; consequently Congress ought to have an interposing power to awaken the people when thus negligent. Even supposing, sir, the provisional clause suggested by the worthy gentleman from Norton should be added, would not Congress then be the judges whether the elections in the several states were constitutional and proper? If so, it will then stand on the same ground it now does. It appears evident that there must be a general power to regulate general elections. Gentlemen have said, the proposed Constitution was in some places ambiguous. I wish they would point out the particular instances of ambiguity, for my part, I think the whole of it is expressed in the plain, common language of mankind. If any parts are not so explicit as they could be, it cannot be attributed to any design; for I believe a great majority of the men who formed it were sincere and honest men.

## **Mr. BISHOP**

Said the great difficulty with him was, that the power given by the 4th section was unlimited; and he did not yet see that any advantage would arise from its being so.

## **Mr. CABOT, (of Beverly,)**

Not having spoken upon the question of biennial elections of representatives, begged leave to revert to that subject, so far as to add to what had been said by others, that we should consider the particular business which that body will be frequently called upon to transact, especially in the way of revenue. We should consider that, on a question of supplies of money to support a war, or procure a treaty, it will be impossible for those representatives to judge of the expediency or in expediency of such supplies, until they shall have had time to become acquainted with the general system of federal politics, in its connection or relation to foreign powers; because upon the situation of those must depend the propriety or impropriety of granting supplies. If to this be added a due attention to the easiest way of raising such supplies, it must appear that biennial

elections are as frequent as is consistent with using the power of the representatives for the benefit of their constituents.

Mr. C. then turned to the 4th section, now under debate, and said, It gives me pain to see the anxiety of different gentlemen concerning this paragraph under consideration, as it evinces a conviction in their minds of what I believe to be true — *that a free and equal representation is the best, if not the only foundation upon which a free government can be built*; and, consequently, that the greatest care should be taken in laying it. I am, sir, one *of the people*; such I shall continue; and, with their feelings, I hold "that the *right* of electing persons to represent the *people* in the federal government, is an important and sacred right." The opinions that have been offered upon the manner in which the exercise of this right is provided for by the 4th section, satisfies me that we are all solicitous for the same end, and that we only differ as to the means of attaining it; and for my own part, I confess that I prize the 4th section as highly as any in the Constitution; because I consider the *democratic* branch of the national government, the branch chosen immediately for the people, as intended to be a *check* on the *federal* branch, which latter is not an immediate representation of the people of America, and is not chosen by them, but is a representation of the sovereignty of the individual states, and its members delegated by the several state legislatures; and if the state legislatures are suffered to regulate conclusively the elections of the democratic branch, they may, by such an interference, first weaken, and at last destroy, that check, they may at first diminish, and finally annihilate, that control of the general government, which the people ought always to have through their immediate representatives. As one of the *people*, therefore, I repeat, that, in my mind, the 4th section is to be as highly prized as any in the Constitution.

### **Mr. PARSONS**

Contended for vesting in Congress the powers contained in the 4th section, not only as those powers were necessary for preserving the union, but also for securing to the people their equal rights of election. He considered the subject very fully; but we are able to give our readers very imperfectly the heads of his speech. In the Congress, not only the sovereignty of the states is represented in the Senate, but, to balance their power, and to give the people a suitable and efficient check upon them, the federal representatives are introduced into Congress. The legislatures of the several states are the constituents of the Senate, and the people are the constituents of the Representatives. These two branches, therefore, have different constituents, and as they are designed as mutual checks upon each other, and to balance the legislative powers, there will be frequent struggles and contentions between them. The Senate will wish to control, depress, and render inefficient the Representatives; the same disposition in the Representatives towards the Senate, will produce the like exertions on their part. The Senate will call upon their constituents, the legislatures, for aid; the Representatives will look up to the people for support. If, therefore, the power of making and altering the regulations defined in this section, is vested absolutely in the legislature, the Representatives will very soon be reduced to an undue dependence upon the Senate, because the power of influencing and controlling the election of the representatives of the people, will be exerted without control by the constituents of the senators. He further observed, that there was much less danger in trusting these powers in Congress, than in the state legislatures. For if the federal representatives wished to introduce such regulations as would secure to them their places, and a continuance in office, the federal Senate would never

consent, because it would increase the influence and check of the Representatives; and, on the other hand, if the Senate were aiming at regulations to increase their own influence by depressing the Representatives, the consent of the latter would never be obtained; and no other regulations would ever obtain the consent of both branches of the legislature, but such as did not affect their neutral rights and the balance of government; and those regulations would be for the benefit of the people. But a state legislature, under the influence of their senators, who would have their fullest confidence, or under the influence of ambitious or popular characters, or in times of popular commotion, and when faction and party spirit run high, would introduce such regulations as would render the rights of the people insecure and of little value. They might make an unequal and partial division of the states into districts for the election of representatives, or they might even disqualify one third of the electors. Without these powers in Congress, the people can have no remedy; but the 4th section provides a remedy, a controlling power in a legislature, composed of senators and representatives of twelve states, without the influence of our commotions and factions, who will hear impartially, and preserve and restore to the people their equal and sacred rights of election. Perhaps it then will be objected, that from the supposed opposition of interests in the federal legislature, they may never agree upon any regulations; but regulations necessary for the interests of the people can never be opposed to the interests of either of the branches of the federal legislature; because that the interests of the people require that the mutual powers of that legislature should be preserved unimpaired, in order to balance the government. Indeed, if the Congress could never agree on any regulations, then certainly no objection to the 4th section can remain; for the regulations introduced by the state legislatures will be the governing rule of elections, until Congress can agree upon alterations.

### **Mr. WIDGERY**

Insisted that we had a right to be jealous of our rulers, who ought never to have a power which they could abuse. The 4th section ought to have gone further; it ought to have had the provision in it mentioned by Mr. Bishop; there would then be a mutual check. And he still wished it to be further explained. The worthy gentleman contested the similitude made by the honorable gentleman from Newburyport, between the power to be given to Congress by the 4th section, to compel the states to send representatives, and the power given to the legislatures by our own constitution, to oblige towns to send representatives to the General Court, by observing that the case was materially different; as, in the latter, if any town refuses to send representatives, a power of *fining* such towns only is given. It is in vain. said Mr. Widgery, to say that rulers are not subject to passions and prejudices. In the late General Court, of which I was a member, I would willingly have deprived the three western counties from sending delegates to this house, as I *then* thought it necessary. But, sir, what would have been the consequence? A large part of the state would have been deprived of their dearest privileges. I mention this, sir, to show the force of passion and prejudice.

### **The Hon. Mr. WHITE**

Said, we ought to be jealous of rulers. All the godly men we read of have failed; nay, he would not trust a "flock of Moseses." If we give up this section, says he, there is nothing left. Suppose the Congress should say that none should be electors but those worth 50 or a £100 sterling;

cannot they do it? Yes, said he, they can; and if any lawyer (alluding to Mr. Parsons) can beat me out of it, I will give him ten guineas.

### **Col. JONES (of Bristol)**

Thought, by this power to regulate elections, Congress might keep themselves in to all duration.

### **The Rev. Mr. PERLEY**

Wished Mr. Gerry might be asked some questions on this section. [But Mr. Gerry was not in the house.]

### **Mr. J. C. JONES**

Said, it was not right to argue the *possibility of the abuse of any measure* against its adoption. The power granted to Congress by the 4th section, says he, is a *necessary* power; it will provide against *negligence* and *dangerous designs*. The senators and representatives of this state, Mr. President, are now chosen by a small number of electors; and it is likely we shall grow equally negligent of our federal elections; or, sir, a state may *refuse* to send to Congress its representatives, as Rhode Island has done Thus we see its necessity.

To say that the power may be abused, is saying what will apply to all *power*. The federal representatives will represent *the people*; they will be *the people*; and it is not *probable* they will abuse themselves. Mr. J. concluded with repeating, that the arguments against this power could be urged against any power whatever.

### **Dr. JARVIS**

Many gentlemen have inferred from the right of regulating elections, by the 4th section, being invested in the federal head, that the powers of wresting this essential privilege from the people would be equally delegated. But it appeared to him, he said, that there is a very material distinction in the two cases; for, however possible it may be that this controlling authority may be abused, it by no means followed that Congress, in any situation, could strip the people of their right to a direct representation. If he could believe in this, he should readily join in sentiment with gentlemen on the other side of the house, that this section alone would be a sufficient objection to the Constitution itself. The right of election, founded on the principle of equality, was, he said, the basis on which the whole superstructure was erected; this right was inherent in the people; it was unalienable in its nature, and it could not be destroyed without presuming a power to subvert the Constitution, of which this was the principal; and by recurring to the 2d section, it would appear that "*representatives and direct taxes shall be apportioned among the several states according to their respective numbers;*" it equally appeared that 30,000 inhabitants were entitled to send a representative, and that wherever this number was found, they would have a right to be represented in the federal legislature. If it was argued that Congress might abuse their power, and, by varying the places of election, distress the people, it could only be observed, that such a wanton abuse could not be supposed; but, if it could go to the annihilation of the right, he contended the people would not submit. He considered the Constitution as an

elective democracy, in which the sovereignty still rested in the people, and he by no means could believe that this article was so alarming in its nature, or dangerous in its tendency, as many gentlemen had supposed.

### **Mr. HOLMES**

In reply to Dr. Jarvis, said, the worthy gentleman's superstructure must fall to the ground; for the Constitution does not provide that every 30,000 shall send a representative, but that it shall not exceed one for every 30,000.

### **THURSDAY, *January 17.* —**

The 4th section still under deliberation.

### **Hon. Mr. TURNER**

Mr. President, I am pleased with the ingenuity of some gentlemen in defence of this section. I am so impressed with the love of our liberty, so dearly bought, that I heartily acquiesce to compulsory laws, for the people ought to be obliged to attend to their interest. But I do not wish to give Congress a power which they can abuse; and I wish to know whether such a power is not contained in this section? I think it is. I now proceed, sir, to the consideration of an idea, that Congress may alter the place for choosing representatives in the general Congress: they may order that it may be at the extremity of a state, and, by their influence, may there prevail that persons may be chosen, who otherwise would not; by reason that a part of the qualified voters, in part of the state, would be so incommoded thereby, as to be debarred from their right as much as if they were bound at home. If so, such a circumstance would militate against the Constitution, which allows every man to vote. Altering the *place* will put it so far in the power of Congress, as that the representatives chosen will not be the true and genuine representatives of the people, but creatures of the Congress; and so far as they are so, so far are the people deprived of their rights, and the choice will be made in an irregular and unconstitutional manner. When this alteration is made by Congress, may we not suppose whose reëlection will be provided for? Would it not be for those who were chosen before? The great law of self-preservation will prevail. It is true, they might, one time in a hundred, provide for a friend; but most commonly for themselves. But, however honorable the Convention may be who proposed this article, I think it is a genuine power for Congress to perpetuate themselves — a power that cannot be unexceptionably exercised in any case whatever. Knowing the numerous arts that designing men are prone to, to secure their election and perpetuate themselves, it is my hearty wish that a rotation may be provided for. I respect and revere the Convention who proposed this Constitution. In order that the power given to Congress may be more palatable, some gentlemen are pleased to hold up the idea, that we may be blessed with sober, solid, upright men in Congress. I wish that we may be favored with such rulers; but I fear they will not all, if most, be the best moral or political characters. It gives me pain, and I believe it gives pain to others, thus to characterize the country in which I was born. I will endeavor to guard against any injurious reflections against my fellow-citizens. But they must have their true characters; and if I represent them wrong, I am willing to make concessions. I think that the operation of paper money, and the practice of privateering, have produced a gradual decay of morals; introduced pride, ambition, envy, lust of power;

produced a decay of patriotism, and the love of commutative justice; and I am apprehensive these are the invariable concomitants of the luxury in which we are unblessedly involved, almost to our total destruction. In the lower ranks of people, luxury and avarice operate to the want of public duty and the payment of debts. These demonstrate the necessity of an energetic government. As people become more luxurious, they become more incapacitated for governing themselves. And are we not so? Alike people, alike prince. But suppose it should so happen, that the administrators of this Constitution should be preferable to the corrupt mass of the people, in point of manners, morals, and rectitude; power will give a keen edge to the principles I have mentioned. Ought we not, then, to put all checks and controls on governors for the public safety? Therefore, instead of giving Congress powers they may not abuse, we ought to withhold our hands from granting such as must be abused if exercised. This is a general observation. But to the point; at the time of the restoration, the people of England were so vexed and worn down by the *anarchical* and confused state of the nation, owing to the commonwealth not being well digested, that they took an opposite career; they run mad with loyalty, and would have given Charles any thing he could have asked. Pardon me, sir, if I say I feel the want of an energetic government, and the dangers to which this dear country is reduced, as much as any citizen of the United States; but I cannot prevail on myself to adopt a government which wears the face of power, without examining it. Relinquishing a *hair's breadth* in a constitution, is a great deal; for by small degrees has liberty, in all nations, been wrested from the hands of the people. I know great powers are necessary to be given to Congress, but I wish they may be well guarded.

### **Judge SUMNER**

Remarking on Gen. Thompson's frequent exclamation of "*O my country!*" expressed from an apprehension that the Constitution would be adopted, said, that expression might be used with great propriety, should this Convention reject it. The honorable gentleman then proceeded to demonstrate the necessity of the 4th section; the absurdity of the supposition that Congress would remove the places of election to remote parts of the states; combated the idea that Congress would, when chosen, act as bad as possible; and concluded by asking, if a war should take place, (and it was supposable,) if France and Holland should send an army to collect the millions of livres they have lent us in the time of our distresses, and that army should be in possession of the seat of government of any particular state, (as was the case when Lord Cornwallis ravaged Carolina,) and that the state legislature could not appoint electors, — is not a power to provide for such elections necessary to be lodged in the general Congress?

### **Mr. WIDGERY**

Denied the statement of Dr. Jarvis (that every 30,000 persons can elect one representative) to be just, as the Constitution provides that the number *shall not exceed* one to every 30,000; it did not follow, he thought, that the 30,000 shall elect one. But, admitting that they have a right to choose one, — we will suppose Congress should order an election to be in Boston in January, and from the scarcity of money, &c., not a fourth part could attend; would not three quarters of the people be deprived of their right?

### **Rev. Mr. WEST**

I rise to express my astonishment at the arguments of some gentlemen against this section. They have only started *possible* objections. I wish the gentlemen would show us that what they so much deprecate is *probable*. Is it probable that we shall choose men to ruin us? Are we to object to all governments? and because power *may* be abused, shall we be reduced to anarchy and a state of nature? What hinders our state legislatures from abusing their powers? They may violate the Constitution; they may levy taxes oppressive and intolerable, to the amount of all our property. An argument which proves too much, it is said, proves nothing. Some say Congress may remove the place of elections to the state of South Carolina. This is inconsistent with the words of the Constitution, which says, "*that the elections, in each state, shall be prescribed by the legislature thereof,*" &c., and that representation be apportioned according to numbers; it will frustrate the end of the Constitution, and is a reflection on the gentlemen who formed it. Can we, sir, suppose them so wicked, so vile, as to recommend an article so dangerous? Surely, gentlemen who argue these *possibilities*, show they have a very weak cause. That we may all be free from passions, prepossessions, and party spirit, I sincerely hope; otherwise, reason will have no effect. I hope there are none here but who are open to conviction, as it is the surest method to gain the suffrage of our consciences. The honorable gentleman from Scituate has told us that the people of England, at the restoration, *on account of the inconveniences of the confused state of the commonwealth, run mad with loyalty*. If the gentleman means to apply this to us, we ought to adopt this Constitution; for if the people are *running mad* after an energetic government, it is best to stop now, as by this rule they may run farther, and get a worse one; therefore the gentleman's arguments turn right against himself. Is it possible that imperfect men can make a perfect constitution? Is it possible that a frame of government can be devised by such weak and frail creatures, but what must savor of that weakness? Though there are some things that I do not like in this Constitution, yet I think it necessary it should be adopted. For may we not rationally conclude, that the persons we shall choose to administer it will be, in general, good men?

### **Gen. THOMPSON.**

Mr. President, I have frequently heard of the abilities of the learned and reverend gentleman last speaking, and now I am witness to them; but, sir, one thing surprises me: it is, to hear the worthy gentleman insinuate that our federal rulers would undoubtedly be *good men*, and that, therefore, we have little to fear from their being intrusted with all power. This, sir, is quite contrary to the common language of the clergy, who are continually representing mankind as reprobate and deceitful, and that we really grow worse and worse day after day. I really believe we do, sir, and I make no doubt to prove it before I sit down, and from the Old Testament. When I consider the man that slew the lion and the bear, and that he was a man after *God's own heart*, — when I consider his son, blessed with *all wisdom*, and the errors they fell into, — I extremely doubt the infallibility of human nature. Sir, I suspect my own heart, and I shall suspect our rulers.

### **Dr. HOLTON**

Thought this paragraph necessary to a complete system of government. [*But the honorable gentleman spoke so low that he could not be heard distinctly throughout.*]

### **Capt. SNOW**

It has been said, Mr. President, that there is too much power delegated to Congress by the section under consideration. I doubt it; I think power the hinge on which the whole Constitution turns. Gentlemen have talked about Congress moving the place of election from Georgia to the Mohawk River; but I never can believe it. I will venture to conjecture we shall have some honest men in our Congress. We read that there were two who brought a *good report* — Caleb and Joshua. Now, if there are but two in Congress who are honest men, and Congress should attempt to do what the gentlemen say they will, (which will be *high treason*,) they will bring a *report* of it; and I stand ready to leave my wife and family, sling my knapsack, travel westward, to cut their heads off. I, sir, since the war, have had commerce with six different nations of the globe; I have inquired in what estimation America is held; and if I may believe good, honest, credible men, I find this country held in the same light, by foreign nations, as a well-behaved negro is in a gentleman's family. Suppose, Mr. President, I had a chance to make a good voyage, but I tie my captain up to such strict orders, that he can go to no other island to sell my cargo, although there is a certainty of his doing well; the consequence is, he returns, but makes a bad voyage, because he had not power enough to act his judgment; (for honest men do right.) Thus, sir, Congress cannot save us from destruction, because we tie their hands, and give them no power; (I think people have lost their privileges by not improving them;) and I like this power being vested in Congress as well as any paragraph in the Constitution; for, as the man is accountable for his conduct, I think there is no danger. Now, Mr. President, to take all things into consideration, something more must be said to convince me to the contrary.

[Several other gentlemen went largely into the debate on the 4th section, which those in favor of it demonstrated to be necessary; first, as it may be used to correct a negligence in elections; secondly, as it will prevent the dissolution of the government by designing and refractory states; thirdly, as it will operate as a check, in favor of the people, against any designs of the federal Senate, and their constituents, the state legislatures, to deprive the people of their right of election; and fourthly, as it provides a remedy for the evil, should any state, by invasion, or other cause, not have it in its power to appoint a place, where the citizens thereof may meet to choose their federal representatives. Those against it urged that the power is unlimited and unnecessary.]

[The committee appointed to provide a more suitable place for the Convention to sit in, reported that the meeting-house in Long Lane, in Boston, was prepared for that purpose; whereupon, Voted, That when this Convention adjourn, they will adjourn to that place.]

*Afternoon.* — The second paragraph of the 2d section of the 1st article was reverted to, and some debate had thereon.

### **Gen. THOMPSON**

Thought that there should have been some *qualification of property* in a representative; for, said he when men have *nothing to lose*, they have *nothing to fear*.

### **Hon. Mr. SEDGWICK**

Said, that this *objection* was founded on an anti-democratical principle, and was surprised that gentlemen who appeared so strenuously to advocate the rights of the people, should wish to exclude from the federal government a *good* man, because he was not a *rich* one.

### **Mr. KING**

Said, that gentlemen had made it a question, why a qualification of property in a representative is omitted, and that they thought the provision of such a qualification necessary. He thought otherwise; he never knew that *property* was an index to abilities. We often see men, who, though destitute of property, are superior in knowledge and rectitude. The men who have most injured the country have most commonly been rich men. Such a qualification was proposed in Convention; but by the delegates of Massachusetts it was contested that it should not obtain. He observed, that no such qualification is required by the Confederation. In reply to Gen. Thompson's question, why disqualification of age was not added, the honorable gentleman said, that it would not extend to all parts of the continent alike. Life, says he, in a great measure, depends on climate. What in the Southern States would be accounted *long life*, would be but the *meridian* in the Northern; what here is the time of *ripened judgment* is *old age* there. Therefore the want of such a disqualification cannot be made an objection to the Constitution.

The third paragraph of the 2d section being read,

### **Mr. KING**

Rose to explain it. There has, says he, been much misconception of this section. It is a principle of this Constitution, that representation and taxation should go hand in hand. This paragraph states that the number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. These persons are the *slaves*. By this rule are representation and taxation to be apportioned. And it was adopted, because it was the language of all America. According to the Confederation, ratified in 1781, the sums for the general welfare and defence should be apportioned according to the surveyed lands, and improvements thereon, in the several states; but that it hath never been in the power of Congress to follow that rule, the returns from the several states being so very imperfect.

### **Dr. TAYLOR**

Thought that the number of members to be chosen for the House of Representatives was too small. The whole Union was entitled to send but 65; whereas, by the old Confederation, they send 91 — a reduction of 30 per cent. He had heard it objected, that, if a larger number was sent, the house would be unwieldy. He thought our House of Representatives, which sometimes consists of 150, was not unwieldy; and if the number of the federal representatives was enlarged to twice 65, he thought it would not be too large. He then proceeded to answer another objection, "that an increase of numbers would be an increase of expense," and by calculation demonstrated that the salaries of the full number he wished, would, in a year, amount only to £2,980, about one penny on a poll; and by this increase, he thought every part of the commonwealth would be represented. The distresses of the people would thereby be more fully known and relieved.

## Mr. WIDGERY

Asked, if a boy of six years of age was to be considered as a free person.

## Mr. KING

in answer, said, all persons born free were to be considered as freemen; and, to make the idea of *taxation by numbers* more intelligible, said that *five negro children* of South Carolina are to pay as much tax as the three governors of New Hampshire, Massachusetts, and Connecticut.

## Mr. GORHAM

Thought the proposed section much in favor of Massachusetts; and if it operated against any state, it was Pennsylvania, because they have more *white persons bound* than any other. Mr. G. corrected an observation of Dr. Taylor's that the states now send 91 delegates to Congress; which was not the case. The states do not, he said, send near the number, and instanced Massachusetts, which sends but four. He concluded by saying that the Constitution provides for an increase of members as numbers increase, and that in fifty years there will be 360; in one hundred years, 14 or 1500, if the Constitution last so long.

## Judge DANA

remarking on the assertions of Dr. Taylor, that the *number of representatives* was too small; that the whole Union was now entitled to send but 65, whereas by the Confederation they might send 91, — a reduction of 30 per cent., — said, if the Constitution under consideration was in fact what its opposers had often called it, a consolidation of the states, he should readily agree with that gentleman that the representation of the people was much too small; but this was a charge brought against it without any foundation in truth. So far from it, that it must be apparent to every one, that the federal government springs out of, and can alone be brought into existence by, the state governments. Demolish the latter, and there is an end of the former. Had the Continental Convention, then, doubled the representation, agreeably to that gentleman's ideas, would not the people of this Commonwealth have been the first to complain of it as an unnecessary burden laid upon them — that, in addition to their own domestic government, they have been charged with the support of so numerous a national government? Would they not have contended for the demolition of the one or the other, as being unable to support both? Would they have been satisfied by being told that doubling the representation would yearly amount only "to about one penny upon a poll"? Does not the gentleman know that the expense of our own numerous representation has excited much ill-will against the government? Has he never heard it said among the people that our public affairs would be as well conducted by half the number of representatives? If he has not, I have, sir, and believe it to be true. But the gentleman says that there is a reduction of 30 per cent. in the federal representation, as the whole Union can send but 65, when under the Confederation they may send 91. The gentleman has not made a fair calculation. For, if to the 65 representatives under the proposed Constitution we add 2 senators from each state, amounting to 26 in all, we shall have the same number, 91; so that in this respect there is no difference. Besides, this representation will increase with the population of the states, and soon become sufficiently large to meet that gentleman's ideas. I would just observe, that by

the Confederation this state has a right to send seven members to Congress; yet, although the legislature hath sometimes chosen the whole number, I believe at no time have they had, or wished to have, more than four of them actually in Congress. Have any ill consequences arisen from this small representation in the national council? Have our liberties been endangered by it? No one will say they have. The honorable gentleman drew a parallel between the Eastern and Southern States, and showed the injustice done the former by the present mode of apportioning taxes, according to surveyed land and improvements, and the consequent advantage therefrom to the latter, their property not lying in improvements, in buildings, &c.

In reply to the remark of some gentlemen, that the Southern States were favored in this mode of apportionment, by having five of their *negroes* set against *three persons* in the Eastern, the honorable judge observed, that the *negroes* of the Southern States work no longer than when the eye of the driver is on them. Can, asked he, that land nourish like this, which is cultivated by the hands of freemen? and are not *three* of these independent freemen of more real advantage to a state than *five* of those poor slaves? As a friend to equal taxation, he rejoiced that an opportunity was presented, in this Constitution, to change this unjust mode of apportionment. Indeed, concluded he, from a survey of every part of the Constitution, I think it the best that the wisdom of men could suggest.

### **Mr. NASSON**

Remarked on the statement of the Hon. Mr King, by saying that the honorable gentleman should have gone further, and shown us the other side of the question. It is a good rule that works both ways; and the gentleman should also have told us, that *three of our infants in the cradle* are to be rated as *five of the working negroes* of Virginia. Mr. N. adverted to a statement of Mr. King, who had said that five negro children of South Carolina were equally ratable as three governors of New England, and wished, he said, the honorable gentleman had considered this question upon the other side, as it would then appear that this state will pay as great a tax for three children in the cradle, as any of the Southern States will for five hearty, working negro men. He hoped, he said, while we were making a new government, we should make it better than the old one; for, if we had made a bad bargain before, as had been hinted, it was a reason why we should make a better one now.

### **Mr. RANDALL**

Begged leave to answer a remark of the Hon. Mr. Dana, which, he thought, reflected on the barrenness of the Southern States. He spoke from his own personal knowledge, he said, and he could say, that the land in general, in those states, was preferable to any he ever saw.

### **Judge DANA**

Rose to set the gentleman right; he said it was not the *quality* of the land he alluded to, but the manner of tilling it that he alluded to.

**FRIDAY, January 18. —**

The third paragraph of the 2d section of article one still under consideration.

### **Hon. Mr. DALTON**

opened the conversation with some remarks on Mr. Randall's positive assertions of the fertility of the Southern States; who said, from his own observation, and from accounts he had seen, which were better, he could say, that the gentleman's remark was not perfectly accurate. The honorable gentleman showed why it was not so, by stating the inconsiderable product of the land, which, though it might in part be owing to the faithlessness and ignorance of the slaves who cultivate it, he said, was in a greater measure owing to the want of heart in the soil.

### **Mr. RANDALL.**

Mr. President, I rise to make an observation on the suggestion of the honorable gentleman from Newbury. I have, sir, travelled into the Southern States, and should be glad to compare our knowledge on the subject together. In Carolina, Mr. President, if they don't get more than twenty or thirty bushels of corn from an acre, they think it a small crop. On the low lands they sometimes get forty. I hope, sir, these great men of eloquence and learning will not try to *make* arguments to make this Constitution go down, right or wrong. An old saying, sir, is, that "a good thing don't need praising;" but, sir, it takes the best men in the state to gloss this Constitution, which they say is the best that human wisdom can invent. In praise of it we hear the reverend clergy, the judges of the Supreme Court, and the ablest lawyers, exerting their utmost abilities. Now, sir, suppose all this artillery turned the other way, and these great men would speak half as much against it, we might complete our business and go home in forty-eight hours. Let us consider, sir, we are acting for the people, and for ages unborn; let us deal fairly and above board. Every one comes here to discharge his duty to his constituents, and I hope none will be biased by the best orators; because we are not acting for ourselves. I think Congress ought to have power, such as is for the good of the nation; but what it is, let a more able man than I tell us.

### **Mr. DAWES**

said, he was very sorry to hear so many objections raised against the paragraph under consideration. He thought them wholly unfounded; that the *black inhabitants* of the Southern States must be considered either as slaves, and as so much *property*, or in the character of so many freemen; if the former, why should they not be wholly represented? Our own state laws and constitution would lead us to consider these blacks as freemen, and so indeed would our own ideas of natural justice. If, then, they are freemen, they might form an equal basis for representation as though they were all white inhabitants. In either view, therefore, he could not see that the Northern States would suffer, but directly to the contrary. He thought, however, that gentlemen would do well to connect the passage in dispute with another article in the Constitution, that permits Congress, in the year 1808, wholly to prohibit the importation of slaves, and in the mean time to impose a duty of ten dollars a head on such blacks as should be imported before that period. Besides, by the new Constitution, every particular state is left to its own option totally to prohibit the introduction of slaves into its own territories. What could the Convention do more? The members of the Southern States, like ourselves, have *their* prejudices. It would not do to abolish slavery, by an act of Congress, in a moment, and so destroy what our

southern brethren consider as property. But we may say, that, although slavery is not smitten by an apoplexy, yet it has received a mortal wound, and will die of a consumption.

Mr. D. said, the paragraph in debate related only to the *rule* of apportioning internal taxes; but the gentleman had gone into a consideration of the question, whether Congress should have the power of laying and collecting such *taxes*; which, he thought, would be more properly discussed under the section relative to the *powers* of Congress; but as objections had been suggested, the answers might be hinted as we went along. By the old articles, said he, Congress have a right to ascertain what are necessary for the Union, and to appropriate the same, but have no authority to draw such moneys from the states. The states are under an *honorary* obligation to raise the moneys; but Congress cannot compel a compliance with the obligation. So long as we withhold that authority from Congress, so long we may be said to give it to other nations. Let us contemplate the loan we have made with the Dutch. Our ambassador has bound us all, jointly and severally, to pay the money borrowed. When pay-day shall come, how is the money to be raised? Congress cannot collect it. If any one state shall disobey a requisition, the Dutch are left, in such a case, to put their own demand in force for themselves. They must raise by arms what we are afraid Congress shall collect by the law of peace. There is a prejudice, said Mr. Dawes, against direct taxation, which arises from the manner in which it has been abused by the errors of the old Confederation. Congress had it not in their power to draw a revenue from commerce, and therefore multiplied their requisitions on the states. Massachusetts, willing to pay her part, made her own trade law, on which the trade departed to such of our neighbors as made no such impositions on commerce; thus we lost what little revenue we had, and our only course was, to a direct taxation. In addition to this, foreign nations, knowing this inability of Congress, have on that account been backward in their negotiations, and have lent us money at a premium which bore some proportion to the risk they had of getting payment; and this extraordinary expense has fallen at last on the land.

Some gentlemen have said, that Congress may draw their revenue wholly by direct taxes; but they cannot be induced so to do; it is easier for them to have resort to the impost and excise; but as it will not do to overburden the impost, (because that would promote smuggling, and be dangerous to the revenue,) therefore Congress should have the power of applying, in extraordinary cases, to direct taxation. War may take place, in which case it would not be proper to alter those appropriations of impost which may be made for peace establishments. It is inexpedient to divert the public funds; the power of direct taxation would, in such circumstances, be a very necessary power. As to the rule of apportioning such taxes, it must be by the quantity of lands, or else in the manner laid down in the paragraph under debate. But the quantity of lands is an uncertain rule of wealth. Compare the lands of different nations of Europe, some of them have great comparative wealth and less quantities of lands, whilst others have more land and less wealth. Compare Holland with Germany. The rule laid down in the paragraph is the best that can be obtained for the apportionment of the little direct taxes which Congress will want.

*Afternoon.* — Messrs. King, Gore, Parsons, and Jones, of Boston, spoke of the advantage to the *Northern States* the rule of apportionment in the third paragraph (still under debate) gave to them; as also the

**Hon. Judge DANA,**

The sketch of whose speech is as follows: —

The learned judge began with answering some objections to this paragraph, and urging the necessity of Congress being vested with power to levy *direct taxes* on the states, and it was not to be supposed that they would levy such, unless the impost and excise should be found insufficient in case of a war. If, says he, a part of the Union is attacked by a foreign enemy, and we are disunited, how is it to defend itself? Can it by its own internal force? In the late war, this state singly was attacked, and obliged to make the first defence. What has happened may happen again. The state oppressed must exert its whole power, and bear the whole charge of the defence; but common danger points out for common exertion; and this Constitution is excellently designed to make the danger equal. Why should one state expend its blood and treasure for the whole? Ought not a controlling authority to exist, to call forth, if necessary, the whole force and wealth of all the states? If disunited, the time may come when we may be attacked by our natural enemies. Nova Scoria and New Brunswick, filled with tories and refugees, stand ready to attack and devour these states, one by one. This will be the case, if we have no power to draw forth the wealth and strength of the whole, for a defence of a part. Then shall we, continued the honorable gentleman, see, but too late, the necessity of a power being vested somewhere, that could command that wealth and strength when wanted. I speak with earnestness, said he, but it is for the good of my native country. By God and nature made equal, it is with remorse I have heard it suggested by some, that those gentlemen who have had the superior advantages of education, were enemies to the rights of their country. Are there any among this honorable body, who are possessed of minds capable of such narrow prejudices? If there are, it is in vain to reason with them; we had better come to a decision, and go home.

After dilating on this matter a short time, the learned judge begged gentlemen to look around them, and see who were the men that composed the assembly. Are they not, he asked, men who have been foremost in the cause of their country, both in the cabinet and in the field? and who, with halts about their necks, boldly and intrepidly advocated the rights of America, and of humanity, at home and in foreign countries? And are they not to be trusted? Direct *taxation* is a tremendous idea; but may not necessity dictate it to be unavoidable? We all wish to invest Congress with more power. We disagree only in the quantum, and manner, in which Congress shall levy taxes on the states. A capitation tax is abhorrent to the feelings of human nature, and, I venture to trust, will never be adopted by Congress. The learned judge pointed out, on various grounds, the utility of the power to be vested in the Congress, and concluded by observing, that the proposed Constitution was the best that could be framed; that, if adopted, we shall be a great and happy nation; if rejected, a weak and despised one; we shall fall as the nations of ancient times have fallen; that this was his firm belief; and, said he, I would rather be annihilated than give my voice for, or sign my name to, a constitution which in the least should betray the liberties or interests of my country.

### **Mr. WIDGERY.**

I hope, sir, the honorable gentleman will not think hard of it, if we ignorant men cannot see as clear as he can. The strong must bear with the infirmities of the weak; and it must be a weak mind indeed that could throw such illiberal reflections against gentlemen of education, as the honorable gentleman complains of. To return to the paragraph. If Congress, continued Mr W.,

have this power of taxing directly, it will be in their power to enact a poll tax. Can gentlemen tell why they will not attempt it, and by this method make the poor pay as much as the rich?

### **Mr. DENCH**

Was at a loss to know how Congress could levy the tax, in which he thought the difficulty of money consisted; yet had no doubt but that Congress would direct that these states should pay it *in their own way*.

### **The Hon. Mr. FULLER**

Begged to ask Mr. Gerry, "why, in the last requisition of Congress, the portion required of this state was thirteen times as much as of Georgia; and yet we have but eight representatives in the general government, and Georgia has three." Until this question was answered, he was at a loss to know how taxation and representation went hand in hand.

[It was then voted that this question be asked Mr. Gerry. A long and desultory debate ensued on the manner in which the answer should be given: it was at last voted that Mr. G. reduce his answer to writing.]

**SATURDAY, January 19, 1788, A. M. —**

### **The Hon. Mr. SINGLETARY**

Thought we were giving up all our privileges, as there was no provision that men in power should have any *religion*; and though he hoped to see Christians, yet, by the Constitution, a Papist, or an Infidel, was as eligible as they. It had been said that men had not degenerated; he did not think men were better now than when men after God's own heart did wickedly. He thought, in this instance, we were giving great power to we know not whom.

**Gen. BROOKS, (of Medford.) —**

## **IMPEACH**

If good men are appointed, government will be administered well. But what will prevent bad men from mischief, is the question. If there should be such in the Senate, we ought to be cautious of giving power; but when that power is given, with proper checks, the danger is at an end. When men are answerable, and within the reach of responsibility, they cannot forget that their political existence depends upon their good behavior. The Senate can frame no law but by consent of the Representatives, and is answerable to that house for its conduct. If that conduct excites suspicion, they are to be **impeached**, punished, (or prevented from holding any office, which is great punishment.) If these checks are not sufficient, it is impossible to devise such as will be so.

[Mr. Gerry's answer to Mr. Fuller's question was read. The purport is, that Georgia had increased in its numbers by emigration; and if it had not then, would soon be entitled to the proportion assigned her.]

## Hon. Mr. KING.

It so happened that I was both of the Convention and Congress at the same time; and if I recollect right, the answer of Mr. G. does not materially vary. In 1778, Congress required the states to make a return of the houses and lands surveyed; but one state only complied therewith — New Hampshire. Massachusetts did not. Congress consulted no rule: it was resolved that the several states should be taxed according to their ability, and if it appeared any state had paid more than her just quota, it should be passed to the credit of that state, with lawful interest.

## Mr. DALTON

said we had obtained a great deal by the new Constitution. By the Confederation each state had an equal vote. Georgia is now content with three eighths of the voice of Massachusetts.

## Col. JONES, (of Bristol,)

Objected to the length of time. If men continue in office four or six years, they would forget their dependence on the people, and be loath to leave their places. Men elevated so high in power, they would fall heavy when they came down.

## Mr. AMES

Observed, that an objection was made against the Constitution, because the senators are to be chosen for *six years*. It has been said, that they will be removed too far from the control of the people, and that, to keep them in proper dependence, they should be chosen annually. It is necessary to premise, that no argument against the new plan has made a deeper impression than this, that it will produce a consolidation of the states. This is an effect which all good men will deprecate. For it is obvious, that, if the state powers are to be destroyed, the representation is too small. The trust, in that case, would be too great to be confided to so few persons. The objects of legislation would be so multiplied and complicated, that the government would be unwieldy and impracticable. The state governments are essential parts of the system, and the defence of this article is drawn from its tendency to their preservation. The *senators* represent the *sovereignty of the states*; in the other house, individuals are represented. The Senate may not originate bills. It need not be said that they are principally to direct the affairs of wars and treaties. They are in the quality of ambassadors of the states, and it will not be denied that some permanency in their office is necessary to a discharge of their duty. Now, if they were chosen yearly, how could they perform their trust? If they would be brought by that means more immediately under the influence of the people, then they will represent the state legislatures less, and become the representatives of individuals. This belongs to the other house. The absurdity of this, and its repugnancy to the federal principles of the Constitution, will appear more fully, by supposing that they are to be chosen by the people at large. If there is any force in the objection to this article, this would be proper. But whom, in that case, would they represent? — Not the legislatures of the states, but the people. This would totally obliterate the federal features of the Constitution. What would become of the state governments, and on whom would devolve the duty of defending them against the encroachments of the federal government? A consolidation of the states would ensue, which, it is conceded, would subvert the new Constitution, and against

which this very article, so much condemned, is our best security. Too much provision cannot be made against a consolidation. The state governments represent the wishes, and feelings, and local interests, of the people. They are the safeguard and ornament of the Constitution; they will protract the period of our liberties; they will afford a shelter against the abuse of power, and will be the natural avengers of our violated rights.

A very effectual *check* upon the power of the Senate is provided. A third part is to retire from office every two years. By this means, while the senators are seated for six years, they are admonished of their responsibility to the state legislatures. If one third new members are introduced, who feel the sentiments of their states, they will awe that third whose term will be near expiring. This article seems to be an excellence of the Constitution, and affords just ground to believe that it will be, in practice as in theory, a *federal* republic.

*Afternoon.* — The third section respecting the *construction of the Senate* under debate, —

### **Col. JONES**

Said his objections still remained — that *senators* chosen for so long a time will forget their duty to their constituents. We cannot, said he, recall them. The choice of representatives was too long; the Senate was much worse; it is, said he, a bad precedent, and is unconstitutional.

### **Mr. KING**

said, as the Senate preserved the equality of the states, their appointment is equal. To the objection to this branch, that it is chosen for too long a period, he observed, if the principle of classing them is considered, although it appears long, it will not be found so long as it appears. One class is to serve two years, another four years, and another *six years*; the average, therefore, is four years. The senators, said Mr. K., will have a powerful check in those men who wish for their seats, who will watch their whole conduct in the general government, and will give the alarm in case of misbehavior. And the state legislatures, if they find their delegates erring, can and will instruct them. Will not this be a check? When they hear the voice of the people solemnly dictating to them their duty, they will be bold men indeed to act contrary to it. These will not be *instructions* sent them in a private letter, which can be put in their pockets; they will be public instructions, which all the country will see, and they will be hardy men indeed to violate them. The honorable gentleman said, the powers to control the Senate are as great as ever was enjoyed in any government; and that the members, therefore, will be found not to be chosen for too long a time. They are, says he, to assist the executive in the designation and appointment of officers; and they ought to have time to mature their judgments. If for a shorter period, how can they be acquainted with the rights and interests of nations, so as to form advantageous treaties? To understand these rights is the business of education. Their business being naturally different, and more extensive, than the other branch, they ought to have different qualifications; and their duration is not too long for a right discharge of their duty.

### **Dr. TAYLOR**

Said, he hoped the honorable gentleman did not mean to deceive us, by saying, that the Senate are not to be chosen for six years; for they really are to be chosen for six years; and as to the idea of classing, he did not know who, when chosen for that time, would go out at a shorter. He remarked on Mr. King's idea of checks, and observed, that such indeed were the Articles of Confederation, which provide for delegates being chosen annually; for rotation, and the right of recalling. But in this, they are to be chosen for six years; but a shadow of rotation provided for, and no power to recall; and concluded by saying, that if they are once chosen, they are chosen forever.

### **Mr. STRONG**

Mentioned the difficulty which attended the construction of the Senate in the Convention; and that a committee, consisting of one delegate from each state, was chosen to consider the subject, who reported as it now stands; and that Mr. Gerry was on the committee from Massachusetts.

### **Mr. GERRY**

Rose, and informed the president that he was then preparing a letter on the subject in debate; and would set the matter in its true light; and which he wished to communicate. This occasioned considerable conversation, which lasted until the Convention adjourned.

### **MONDAY, *January 21.* —**

Fourth section considered in its order.

### **Mr. AMES**

Rose to answer several *objections*. He would forbear, if possible, to go over the ground which had been already well trodden. The fourth section had been, he said, well discussed, and he did not mean to offer any formal argument or new observations upon it. It had been said, the power of regulating *elections* was given to Congress. He asked, if a motion was brought forward in Congress, on that particular, subjecting the states to any inconvenience, whether it was probable such a motion could obtain. It has been also said, that our federal legislature would endeavor to perpetuate themselves in office; and that the love of power was predominant. Mr. Ames asked how the gentlemen prevailed on themselves to trust the state legislature. He thought it was from a degree of confidence that was placed in them. At present we trust Congress with power; nay, we trust the representatives of Rhode Island and Georgia. He thought it was better to trust the general government than a foreign state. Mr. A. acknowledged he came with doubts of the fourth section. Had his objections remained, he would have been obliged to vote against the Constitution; but now he thought, if all the Constitution was as clear as this section, it would meet with little opposition.

### **Judge DANA.**

This section, Mr. President, has been subject to much dispute and difficulty. I did not come here approving of every paragraph of this Constitution. I supposed this clause dangerous; it has been amply discussed; and I am now convinced that this paragraph is much better as it stands, than with the amendment, which is, that Congress be restricted in the appointing of "*time, place, &c.*," unless when the state legislatures refuse to make them. I have altered my opinion on this point; these are my reasons: — It is apparent, the intention of the Convention was to set Congress on a different ground; that a part should proceed directly from the people, and not from their substitutes, the legislatures; therefore the legislature ought not to control the elections. The legislature of Rhode Island has lately formed a plan to alter their representation to corporations, which ought to be by numbers. Look at Great Britain, where the injustice of this mode is apparent. Eight tenths of the people there have no voice in the elections. A borough of but two or three cottages has a right to send two representatives to *Parliament*, while Birmingham, a large and populous manufacturing town, lately sprung up, cannot send one. The legislature of Rhode Island are about adopting this plan, in order to deprive the towns of Newport and Providence of their weight, and that thereby the legislature may have a power to counteract the will of a majority of the people.

### **Mr. COOLEY (of Amherst)**

Thought Congress, in the present instance, would, from the powers granted by the Constitution, have authority to control elections, and thereby endanger liberty.

### **Dr. TAYLOR**

Wished to ask the gentleman from Newburyport, whether the two branches of Congress could not agree to play into each other's hands; and, by making the *qualifications* of electors £100 by their power of regulating elections, fix the matters of elections so as to keep themselves in.

### **Hon. Mr. KING**

Rose to pursue the inquiry why the "*place and manner*" of holding elections were omitted in the section under debate. It was to be observed, he said, that, in the Constitution of Massachusetts and other states, the *manner and place* of elections were provided for; the manner was by ballot, and the places, towns; for, said he, we happened to settle originally in townships. But it was different in the Southern States: he would mention an instance. In Virginia, there are but fifteen or twenty towns, and seventy or eighty counties; therefore no rule could be adopted to apply to the whole. If it was practicable, he said, it would be necessary to have a district the fixed place; but this is liable to exceptions; as a district that may now be fully settled, may in time be scarcely inhabited; and the back country, now scarcely inhabited, may be fully settled. Suppose this state thrown into eight *districts*, and a member apportioned to each; if the numbers increase, the representatives and districts will be increased. The matter, therefore, must be left subject to the regulation of the state legislature, or the general government. Suppose the state legislature, the circumstances will be the same. It is truly said, that our representatives are but a part of the Union; that they may be subject to the control of the rest; but our representatives make a ninth part of the whole; and if any authority is vested in Congress, it must be in our favor. But to the subject. In Connecticut they do not choose by numbers, but by corporations. Hartford, one of

their largest towns, sends no more delegates than one of their smallest corporations, each town sending two, except latterly, when a town was divided. The same rule is about to be adopted in Rhode Island. The inequality of such representation, where every corporation would have an equal right to send an equal number of representatives, was apparent. In the Southern States, the inequality is greater. By the constitution of South Carolina, the city of Charleston has a right to send thirty representatives to the General Assembly; the whole number of which amounts to two hundred. The back parts of Carolina have increased greatly since the adoption of their constitution, and have frequently attempted an alteration of this unequal mode of representation; but the members from Charleston, having the balance so much in their favor, will not consent to an alteration; and we see that the delegates from Carolina in Congress have always been chosen by the delegates of that city. The representatives, therefore, from that state, will not be chosen *by the people*, but will be the representatives of a faction of that state. If the general government cannot control in this case, how are the people secure? The idea of the honorable gentleman from Douglass, said he, transcends my understanding; for the power of control given by this section extends to the *manner* of election, not the *qualifications* of the electors. The qualifications are age and residence, and none can be preferable.

On motion, *Resolved*, as follows, viz.: —

Whereas there is a publication in "The Boston Gazette, and the Country Journal," of this day, as follows, viz.: —

*"Bribery and Corruption!!!*

"The most diabolical plan is on foot to corrupt the members of the Convention, who oppose the adoption of the new Constitution. Large sums of money have been brought from a neighboring state for that purpose, contributed by the wealthy. If so, is it not probable there may be collections for the same accursed purpose nearer home?

"CENTINEL."

*Resolved*, That this Convention will take measures for inquiring into the subject of the said publication, and for ascertaining the truth or falsehood of the suggestion therein contained.

*Ordered*, That the messenger be directed to request the printers of the said Gazette to appear before this Convention forthwith, to give information respecting the said publication.

*Afternoon*. — The messenger informed the Convention that he had acquainted the printers of the Boston Gazette, &c., of the order of the forenoon respecting them, and was answered that one of them would attend the convention this afternoon.

A letter from Messrs. Benjamin Edes and Son, printers of the Boston Gazette, &c., relative to the publication entered this morning. Read, and committed to Mr. Parsons, Mr. Nasson, Mr. Gorham, Mr. Widgery, Mr. Porter, Mr. Gore, and Mr. Thomas of Plymouth.

The 5th section being read, —

## **Dr. TAYLOR**

Wished to know the meaning of the words "from time to time," in the third paragraph. Does it mean, says he, from year to year, from month to month, or from day to day?

## **The Hon. Mr. KING**

Rose, and explained the term.

## **Mr. WIDGERY**

Read the paragraph, and said, by the words, "except such parts as may require secrecy," Congress might withhold the whole *journals* under this pretence, and thereby the people be kept in ignorance of their doings.

## **The Hon. Mr. GORHAM**

Exposed the absurdity of any public body *publishing* all their *proceedings*. Many things in great bodies are to be kept secret, and records must be brought to maturity before published. In case of treaties with foreign nations, would it be policy to inform the world of the extent of the powers to be vested in our ambassador, and thus give our enemies opportunity to defeat our negotiations? There is no provision in the constitution of this state, or of Great Britain, for any publication of the kind; and yet the people suffer no inconveniency. The printers, no doubt, will be interested to obtain the journals as soon as possible for publication, and they will be published in a book, by Congress, at the end of every session.

## **Rev. Mr. PERLEY**

Described the alarms and anxiety of the people at the commencement of the war, when the whole country, he said, cried with one voice, "Why don't General Washington march into Boston, and drive out the tyrants?" But, said he, Heaven gave us a commander who knew better than to do this. The reverend gentleman said, he was acquainted with the Roman history, and the Grecian too, and he believed there never was, since the creation of the world, a greater general than Washington, except, indeed, Joshua, who was inspired by the Lord of Hosts, the God of the armies of Israel. Would it, he asked, have been prudent for that excellent roan, General Washington, previous to the American army's taking possession of Dorchester Heights, to have published to the world his intentions of doing so? No, says he, it would not.

The first paragraph of the 6th section read.

## **Dr. TAYLOR.**

Mr. President, it has hitherto been customary for the gentlemen of Congress to be *paid* by the several state legislatures out of the state treasury. As no state has hitherto failed paying its delegates, why should we leave the good old path? Before the revolution it was considered as a

grievance that the governors, &c., received their pay from Great Britain. They could not, in that case, feel their dependence on the people, when they received their appointments and salaries from the crown. I know not why we should not pay them now, as well as heretofore.

**Gen. PORTER.**

Have not delegates been retained from Congress, which is virtually recalling them, because they have not been paid? Has not Rhode Island failed to pay their delegates? Should there not be an equal charge throughout the United States, for the payment of the delegates, as there is in this state for the payment of the members of this Convention, met for the general good? Is it not advantageous to the people at large, that the delegates to this Convention are paid out of the public treasury? If any inconvenience, however, can be shown to flow from this plan, I should be glad to hear it.

**Hon. Mr. SEDGWICK**

Hoped gentlemen would consider that the federal officers of government would be responsible for their conduct; and, as they would regard their reputations, will not assess exorbitant *wages*. In Massachusetts, and in every other state, the legislatures have power to provide for their own payment; and, he asked, have they ever established it higher than it ought to be? But, on the contrary, have they not made it extremely inconsiderable? The commons of Great Britain, he said, have the power to assess their own wages; but for two centuries they have never exercised it. Can a man, he asked, who has the least respect for the good opinion of his fellow-countrymen, go home to his constituents, after having robbed them by voting himself an exorbitant salary? This principle will be a most powerful check; and in respect to economy, the power lodged as it is in this section will be more advantageous to the people than if retained by the state legislatures. Let us see what the legislature of Massachusetts have done; they vote the *salaries* of the delegates to Congress, and they have voted them such as have enabled them to live in style suited to the dignity of a respectable state; but these *salaries* have been four times as much, for the same time, as they ever voted themselves. Therefore, concluded the honorable gentleman, if left to themselves to provide for their own payment, as long as they wish for the good opinion of mankind, they will assess no more than they really deserve, as a compensation for their services.

**Hon. Mr. KING**

Said, if the arguments on the 4th section against an undue control, in the state legislatures, over the federal representatives, were in any degree satisfactory, they are so on this.

**Gen. THOMPSON.**

Mr. President, the honorable gentleman means well, and is honest in his sentiments; it is all alike. When we see matters at large, and what it all is, we will know what to do with it.

**Mr. PARSONS.**

In order that the general government should preserve itself, it is necessary it should preserve justice between the several states. Under the Confederation, the power of this section would not be just; for each state has a right to send seven members to Congress, though some of them do not pay one tenth as much of the public expenses as others. It is a mere federal government of states, neither equal nor proportionate. If gentlemen would use the same candor that the honorable gentleman from Topsham (Gen. Thompson) does, considering all the parts as connected with others, the Constitution would receive a better discussion.

The second paragraph of the 6th section read.

### **Mr. GORHAM**

said that this Constitution contained restrictions which were not to be found in any other; and he wished gentlemen who had objected to every paragraph which had been read, would give to the Convention credit for those parts which must meet the approbation of every man.

The 8th section of article 1, containing the *powers of Congress*, being read, —

### **Gen. BROOKS (of Lincoln)**

Said this article contained more matter than any one yet read; and he wished to know whether there are not to be some general restrictions to the general articles.

### **Mr. KING.**

## **NOTE**

Mr. President, it is painful for me to obtrude my sentiments on the Convention so frequently. However, sir, I console myself with the idea that my motives are as good as those of more able gentlemen, who have remained silent. Sir, this is a very important clause, and of the highest consequence to the future fortune of the people of America. It is not my intention to go into any elaborate discussion of the subject. I shall only offer those considerations which have influenced my mind in favor of the article, in the hope that it may tend to reconcile gentlemen to it. It shall not be with a view of exhibiting any particular knowledge of mine; for such is not my intention. Hitherto we have considered the construction of the general government. We now come, sir, to the consideration of the powers with which that government shall be clothed. The introduction to this Constitution is in these words: "*We, the people,*" &c. The language of the Confederation is, "*We, the states,*" &c. The latter is a mere federal government of states. Those, therefore, that assemble under it, have no power to make laws to apply to the individuals of the states confederated; and the attempts to make laws for collective societies necessarily leave a discretion to comply with them or not. In no instance has there been so frequent deviation from first principles, as in the neglect or refusal to comply with the requisitions of general governments for the collection of moneys.

In the ancient governments, this has been the principal defect. In the United Provinces of the Netherlands, it has been conspicuously so. A celebrated political writer — I mean *John Dewitt*, formerly pensioner of Holland — said that, in the confederacy of 1570, though the articles were declared equally binding on the several provinces, yet any one had it in its power to comply with the requisitions of the generality or not; and some provinces, taking advantage of this discretionary power, never paid any thing. During forty years of war with Spain, the province of Holland paid fifty-eight parts of a hundred of all the expenses thereof. Two or three of the provinces never so much as passed a resolution to pay any thing; and *Dewitt* says that two of them paid not a single guilder. What was the consequence? In one instance, Holland compelled a neighboring province to comply with the requisitions, by marching a force into it. This was a great instance of usurpation, made in the time of a war. The Prince of Orange, and the generality, found that they could not continue the war in this manner. What was to be done? They were obliged to resort to the expedient of *doubling* the ordinary requisitions on the states. Some of the provinces were prevailed upon to grant these requisitions fully, in order to induce Holland to do the same. She, seeing the other states appearing thus forward, not only *granted* the requisitions, but *paid* them. The others did not. Thus was a single province obliged to bear almost the whole burdens of the war; and, one hundred years after, the accounts of this war were unsettled. What was the reason? Holland had but one voice in the States-General. That voice was feeble when opposed by the rest.

This fact is true. The history of our own country is a melancholy proof of a similar truth. Massachusetts has paid while other states have been delinquent. How was the war carried on with the paper money? Requisitions on the states for that money were made. Who paid them? Massachusetts and a few others. A requisition of 29,000,000 dollars were quoaded on Massachusetts, and it was paid. This state has paid in her proportion of the old money. How comes it, then, that gentlemen have any of this money by them? Because the other states have shamefully neglected to pay their quotas. Do you ask for redress? You are scoffed at. The next requisition was for 11,000,000 of dollars, 6,000,000 of which were to be paid in facilities, the rest in silver money, for discharging the interest of the national debt. If the legislatures found a difficulty in paying the hard money, why did they not pay the paper? But 1,200,000 dollars have been paid. And six states have not paid a farthing of it.

After mentioning another requisition, equally disregarded, Mr. King said, two states have not paid a single farthing from the moment they signed the Confederation to this day, if my documents are to be depended on, and they are open to the inspection of all. Now, sir, what faith is to be put in requisitions on the states, for moneys to pay our domestic creditors, and discharge our foreign debts, for moneys lent us in the day of difficulty and distress? Sir, experience proves, as well as any thing can be proved, that no dependence can be placed on such requisitions. What method, then, can be devised to compel the delinquent states to pay their quotas? Sir, I know of none. Laws, to be effective, therefore, must not be laid on states, but upon individuals. Sir, it has been objected to the proposed Constitution, that the power is too great, and by this Constitution is to be sacred. But if the want of power is the *defect in the old Confederation*, there is a fitness and propriety in adopting what is here proposed, which gives the necessary power wanted. Congress now have power to call for what moneys, and in what proportion, they please; but they have no authority to compel a compliance therewith. It is an objection in some gentlemen's minds, that Congress should possess the power of the *purse* and the *sword*. But, sir, I would ask,

whether any government can exist, or give security to the people, which is not possessed of this power. The first revenue will be raised from the impost, to which there is no objection, the next from the excise; and if these are not sufficient, direct taxes must be laid. To conclude, sir, if we mean to support an efficient federal government, which, under the old Confederation, can never be the case, the proposed Constitution is, in my opinion, the only one that can be substituted.

### **Hon. Mr. WHITE**

Said, in giving this power, we give up every thing; and Congress, with the purse-strings in their hands, will use the sword with a witness.

### **Mr. DAWES**

Said, he thought the powers in the paragraph under debate should be fully vested in Congress. We have suffered, said he, for want of such authority in the federal head. This will be evident if we take a short view of our agriculture, commerce, and manufactures. Our *agriculture* has not been encouraged by the imposition of national duties on rival produce; nor can it be, so long as the several states may make contradictory laws. This has induced our farmers to raise only what they wanted to consume in their own families; I mean, however, after raising enough to pay their own taxes; for I insist that, upon the old plan, the land has borne the burden; for, as Congress could not make laws, whereby they could obtain a revenue, in their own way, from *impost* or *excise*, they multiplied their requisition on the several states. When a state was thus called on, it would perhaps impose new duties on its own trade, to procure money for paying its quota of federal demands. This would drive the trade to such neighboring states as made no such new impositions; thus the revenue would be lost with the trade, and the only resort would be a direct tax.

As to *commerce*, it is well known that the different states now pursue different systems of duties in regard to each other. By this, and for want of general laws of prohibition through the Union, we have not secured even our own domestic traffic that passes from state to state. This is contrary to the policy of every nation on earth. Some nations have no other commerce. The great and nourishing empire of China has but little commerce beyond her own territories; and no country is better circumstanced than we for an exclusive traffic from state to state; yet even in this we are rivalled by foreigners — by those foreigners to whom we are the least indebted. A vessel from Roseway or Halifax finds as hearty a welcome with its fish and whalebone at the southern ports, as though it was built, navigated, and freighted from Salem or Boston. And this must be the case, until we have laws comprehending and embracing alike all the states in the Union.

But it is not only our coasting trade — our whole *commerce* is going to ruin. Congress has not had power to make even a trade law, which shall confine the importation of foreign goods to the ships of the producing or consuming country. If we had such a law, we should not go to England for the goods of other nations; nor would British vessels be the carriers of American produce from our sister states. In the states southward of the Delaware, it is agreed that three fourths of the produce are exported, and three fourths of the returns are made, in British bottoms. It is said that, for exporting timber, one half the property goes to the carrier; and of the produce in general,

it has been computed that, when it is shipped for London from a southern state, to the value of one million of dollars, the British merchant draws from that sum three hundred thousand dollars under the names of freight and charges. This is money which belongs to the New England states, because we can furnish the ships as well as, and much better than, the British. Our sister states are willing that we should receive these benefits, and that they should be secured to us by national laws; but until this is done, their private merchants will, no doubt, for the sake of long credit, or some other such temporary advantage, prefer the ships of foreigners; and yet we have suffered these ignominious burdens, rather than trust our own representatives with power to help us; and we call ourselves free and independent states! We are independent of each other, hut we are slaves to Europe. We have no uniformity in duties, imposts, excises, or prohibitions. Congress has no authority to withhold advantages from foreigners, in order to obtain advantages from them. By the 9th of the old articles, Congress may enter into treaties and alliances under certain provisoes; but Congress cannot pledge that a single state shall not render the whole treaty of commerce a nullity.

Our manufactures are another great subject, which has received no encouragement by national duties on foreign manufactures, and they never can by any authority in the Confederation. It has been said that no country can produce manufactures until it be overstocked with inhabitants. It is true that the United States have employment, except in the winter, for their citizens in agriculture — the most respectable employment under heaven; but it is now to be remembered, that, since the old Confederation, there is a great emigration of foreign artisans hither, some of whom are left here by the armies of the last war, and others who have more lately sought the new world, from hopes of mending their condition; these will not change their employments. Besides this, the very face of our country leads to manufactures. Our numerous falls of water, and places for mills, where paper, snuff, gunpowder, iron works, and numerous other articles, are prepared, — these will save us immense sums of money, that would otherwise go to Europe. The question is, Have these been encouraged? Has Congress been able, by national laws, to prevent the importation of such foreign commodities as are made from such raw materials as we ourselves raise? It is alleged that the citizens of the United States have contracted debts within the last three years, with the subjects of Great Britain, for the amount of near six millions of dollars, and that consequently our lands are mortgaged for that sum. So Corsica was once mortgaged to the Genoese merchants for articles which her inhabitants did not want, or which they could not have made themselves; and she was afterwards sold to a foreign power. If we wish to encourage our own manufactures, to preserve our own commerce, to raise the value of our own lands, we must give Congress the powers in question.

The honorable gentleman from Norton, last speaking. says, that, if Congress will have the power of laying and collecting *taxes*, they will use the power of the sword. I hold the reverse to be true. The doctrine of requisitions, or of demands upon a whole state, implies such a power; for surely a whole state, a whole community, can be compelled only by an army; but taxes upon an individual imply only the use of a collector of taxes. That Congress, however, will not apply to the power of *direct taxation*, unless in cases of emergency, is plain; because, as thirty thousand inhabit ants will elect a representative, eight tenths of which electors perhaps are yeomen, and holders of farms, it will be their own faults if they are not represented by such men as will never permit the land to be injured by unnecessary taxes.

### **Mr. BODMAN**

Said, that the power given to Congress, to lay and collect duties, taxes, &c., as contained in the section under consideration, was certainly unlimited, and therefore dangerous; and wished to know whether it was necessary to give Congress power to do harm, in order to enable them to do good. It had been said, that the *sovereignty of the states* remains with them; but if Congress has the power to lay taxes, and, in cases of negligence or non-compliance, can send a power to collect them, he thought that the idea of sovereignty was destroyed. This, he said, was an essential point, and ought to be seriously considered. It has been urged that gentlemen were jealous of their rulers. He said, he thought they ought to be so; it was just they should be so; for jealousy was one of the greatest securities of the people in a republic. The power in the 8th section, he said, ought to have been denned; that he was willing to give power to the federal head, but he wished to know what that power was.

### **Mr. SEDGWICK,**

In answer to the gentleman last speaking, said, if he believed the adoption of the proposed Constitution would interfere with the state legislatures, he would be the last to vote for it; but he thought all the sources of revenue ought to be put into the hands of government, who were to protect and secure us; and powers to effect this had always been necessarily unlimited. Congress would necessarily take that which was easiest to the people; the first would be impost, the next excise; and a direct tax will be the last; for, said the honorable gentleman, drawing money from the people, by direct taxes, being difficult and uncertain, it would be the last source of revenue applied to by a wise legislature; and hence, said he, the people may be assured that the delegation of a power to levy them would not be abused. Let us suppose, — and we shall not be thought extravagant in the supposition, — continued Mr. S., that we are attacked by a foreign enemy; that in this dilemma our treasury was exhausted, our credit gone, our enemy on our borders, and that there was no possible method of raising impost or excise; in this case, the only remedy would be a direct tax. Could, therefore, this power, being vested in Congress, lessen the many advantages which may be drawn from it?

### **Mr. SINGLETARY**

Thought no more power could be given to a despot, than to give up the purse-strings of the people.

### **Col. PORTER**

Asked, if a better rule of yielding power could be shown than in the Constitution; for what we do not give, said he, we retain.

### **Gen. THOMPSON.**

Mr. President, I totally abhor this paragraph. Massachusetts has ever been a leading state; now let her give good advice to her sister states. Suppose nine states adopt this Constitution; who shall

touch the other four? Some cry out, Force them. I say, Draw them. We love liberty. Britain never tried to enslave us until she told us we had too much liberty. The Confederation wants amendments; shall we not amend it?

The Convention were sent on to Philadelphia to amend this Confederation; but they made a new creature; and the very setting out of it is unconstitutional. In the Convention, Pennsylvania had more members than all New England, and two of our delegates only were persuaded to sign the Constitution. Massachusetts once shut up the harbors against the British. There, I confess, I was taken in. Don't let us be in a hurry again. Let us wait to see what our sister states will do. What shall we suffer if we adjourn the consideration of it for five or six months? It is better to do this than adopt it so hastily. Take care we don't disunite the states. By uniting we stand, by dividing we fall.

### **Major KINGSLEY.**

Mr. President, after so much has been said on the powers to be given to Congress, I shall say but a few words on the subject. By the Articles of Confederation the people have three checks on their delegates in Congress — the *annual election* of them, their *rotation*, and the power to recall any, or all of them, when they see fit. In view of our federal rulers, they are the servants of the people. In the new Constitution, we are deprived of annual elections, have no rotation, and cannot recall our members; therefore our federal rulers will be masters, and not servants. I will examine what powers we have given to our masters. They have power to lay and collect all taxes, duties, imposts, and excises; raise armies; fit out navies; to establish themselves in a federal town of ten miles square, equal to four middling townships; erect forts, magazines, arsenals, &c. Therefore, should the Congress be chosen of designing and interested men, they can perpetuate their existence, secure the resources of war, and the people will have nothing left to defend themselves with. Let us look into ancient history. The Romans, after a war, thought themselves safe in a government of ten men, called the *decemviri*; these ten men were invested with all power, and were chosen for three years. By their arts and designs, they secured their second election; but, finding, from the manner in which they had exercised their power, they were not able to secure their third election, they declared themselves masters of Rome, impoverished the city, and deprived the people of their rights.

It has been said that there was no such danger here. I will suppose they were to attempt the experiment, after we have given them all our money, established them in a federal town, given them the power of coining money and raising a standing *army*, and to establish their arbitrary government; what resources have the people left? I cannot see any. The Parliament of England was first chosen annually; they afterwards lengthened their duration to three years; and from triennial they became septennial. The government of England has been represented as a good and happy government; but some parts of it their greatest political writers much condemn; especially that of the duration of their Parliaments. Attempts are yearly made to shorten their duration, from septennial to triennial; but the influence of the ministry is so great that it has not yet been accomplished. From this duration, bribery and corruption are introduced. Notwithstanding they receive no pay, they make great interest for a seat in Parliament, one or two years before its dissolution, and give from five to twenty guineas for a vote; and the candidates sometimes expend £10,000 to £30,000. Will a person throw away such a fortune, and waste so much time,

without the probability of replacing such a sum with interest? Or can there be security in such men? Bribery may be introduced here as well as in Great Britain; and Congress may equally oppress the people; because we cannot call them to an account, considering that there is no annual election, no rotation, no power to recall them, provided for.

**TUESDAY, *January 22.* —**

Section 8th still under consideration.

**Judge SUMNER.**

The powers proposed to be delegated in this section are very important, as they will, in effect, place the purse-strings of the citizens in the hands of Congress for certain purposes. In order to know whether such powers are necessary, we ought, sir, to inquire what the design of uniting under one government is. It is that the national dignity may be supported, its safety preserved, and necessary debts paid. Is it not necessary, then, to afford the means by which alone those objects can be attained? Much better, it appears to me, would it be for the states not to unite under one government, which will be attended with some expense, than to unite, and at the same time withhold the powers necessary to accomplish the design of the union. Gentlemen say, *the power to raise money* may be abused. I grant it; and the same may be said of any other delegated power. Our General Court have the same power; but did they ever dare abuse it? Instead of voting themselves 6s. 8d., they might vote themselves £12 a day; but there never was a complaint of their voting themselves more than what was reasonable. If they should make an undue use of their power, they know a loss of confidence in the people would be the consequence, and they would not be reëlected; and this is one security in the hands of the people. Another is, that all *money bills* are to originate with the House of Representatives. And can we suppose the representatives of Georgia, or any other state, more disposed to burden their constituents with taxes, than the representatives of Massachusetts? It is not to be supposed; for, whatever is for the interest of one state, in this particular, will be the interest of all the states, and no doubt attended to by the House of Representatives. But why should we alarm ourselves with imaginary evils? An impost will probably be a principal source of revenue; but if that should be insufficient, other taxes, especially in time of war, ought to supply the deficiency. It is said that requisitions on the states ought to be made in cases of emergency; but we all know there can be no dependence on requisitions. The honorable gentleman from Newburyport gave us an instance from the history of the United Provinces to prove it, by which it appears they would have submitted to the arms of Spain, had it not been for the surprising exertions of one province. But there can be no need of recurring to ancient records, when the history of our country furnishes an instance where requisitions have had no effect. But some gentlemen object further, and say the delegation of these great powers *will destroy the state legislatures*; but I trust this never can take place, for the general government depends on the state legislatures for its very existence. The President is to be chosen by electors under the regulation of the state legislature; the Senate is to be chosen by the state legislatures; and the representative body by the people, under like regulations of the legislative body in the different states. If gentlemen consider this, they will, I presume, alter their opinion; for nothing is clearer than that the existence of the legislatures, in the different states, is essential to the *very being* of the general government. I hope, sir, we shall

all see the necessity of a federal government, and not make objections, unless they appear to us to be of some weight.

### **Mr. GORE.**

This section, Mr. President, has been the subject of many observations, founded on real or pretended jealousies of the powers herein *delegated* to the general government; and, by comparing the proposed Constitution with things in their nature totally different, the mind may be seduced from a just determination on the subject. Gentlemen have compared the authority of Congress to levy and collect taxes from the people of America to a similar power assumed by the Parliament of Great Britain. If we but state the relation which these two bodies bear to America, we shall see that no arguments drawn from one can be applicable to the other. The House of Commons, in the British Parliament, which is the only popular branch of that assembly, was composed of men, chosen exclusively by the inhabitants of Great Britain, in no sort amenable to, or dependent upon, the people of America, and secured, by their local situation, from every burden they might lay on this country. By impositions on this part of the empire, they might be relieved from their own taxes, but could in no case be injured themselves. The Congress of the United States is to be chosen, either mediately or immediately, by the people. They can impose no burdens but what they participate in common with their fellow-citizens. The senators and representatives, during the time for which they shall be elected, are incapable of holding any office which shall be created, or the emoluments thereof be increased, during such time. This is taking from candidates every lure to office, and from the administrators of the government every temptation to create or increase emoluments to such degree as shall be burdensome to their constituents.

Gentlemen, who candidly consider these things, will not say that arguments against the assumption of power by Great Britain can apply to the Congress of the United States. Again, sir, it has been said, that because ten men of Rome, chosen to compile a body of laws for that people, remained in office after the time for which they were chosen, therefore the Congress of America will perpetuate themselves in government. The *decemviri*, in their attainment to their exalted station, had influence enough over the people to obtain a temporary sovereignty, which superseded the authority of the senate and the consuls, and gave them unlimited control over the lives and fortunes of their fellow-citizens. They were chosen for a year. At the end of this period, under pretence of not having completed their business, they, with the alteration of some few of their members, were continued for another year. At the end of the second year, notwithstanding the business for which they were chosen was completed, they refused to withdraw from their station, and still continued in the exercise of their power. But to what was this owing? If history can be credited, it was to an idea universally received by the Roman people, that the power of the magistrate was supposed to determine by his own resignation, and not by expiration of the time for which he was chosen. This is one, among many instances, which might be produced of the small attainments of the Roman people in political knowledge; and I submit it, sir, to the candor of this Convention, whether any conclusions can be fairly drawn against vesting the proposed government with the powers mentioned in this section, because the magistrates of the ancient republics usurped power, and frequently attempted to perpetuate themselves in authority.

Some gentlemen suppose it is unsafe and unnecessary to vest the proposed government with authority to "lay and collect taxes, duties, imposts, and excises." Let us strip the subject of every thing that is foreign, and refrain from likening it with governments, which, in their nature and administration, have no affinity; and we shall soon see that it is not only safe, but indispensably necessary to our peace and dignity, to vest the Congress with the powers described in this section. To determine the necessity of investing that body with the authority alluded to, let us inquire what duties are incumbent on them. To pay the debts, and provide for the common defence and general welfare of the United States; to declare war, &c.; to raise and support armies; to provide and maintain a navy; — these are authorities and duties incident to every government. No one has, or, I presume, will deny, that whatever government may be established over America, ought to perform such duties. The expense attending these duties is not within the power of calculation; the exigencies of government are in their nature illimitable; so, then, must be the authority which can meet these exigencies. Where we demand an object, we must afford the means necessary to its attainment. Whenever it can be clearly ascertained what will be the future exigencies of government, the expense attending them, and the product of any particular tax, duty, or impost, then, and not before, can the people of America limit their government to amount and fund. Some have said, that the impost and excise would be sufficient for all the purposes of government in times of peace; and that, in war, requisitions should be made on the several states for sums to supply the deficiencies of this fund. Those who are best informed suppose this sum inadequate to, and none pretend that it can exceed, the expenses of a peace establishment. What, then, is to be done? Is America to wait until she is attacked, before she attempts a preparation at defence? This would certainly be unwise; it would be courting our enemies to make war upon us. The operations of war are sudden, and call for large sums of money; collections from states are at all times slow and uncertain; and, in case of refusal, the non-complying state must be coerced by arms, which, in its consequences, would involve the innocent with the guilty, and introduce all the horrors of a civil war. But, it is said, we need not fear war; we have no enemies. Let the gentlemen consider the situation of our country; they will find we are circumscribed with enemies from Maine to Georgia. I trust, therefore, that, upon a fair and candid consideration of the subject, it will be found indispensably requisite to peace, dignity, and happiness, that the proposed government should be vested with all the powers granted by the section under debate.

**Hon. Mr. PHILLIPS, (of Boston.)**

I rise to make a few observations on this section, as it contains powers absolutely necessary. If social government did not exist, there would be an end of individual government. Therefore our very being depends on social government. On this article is founded the main pillar of the building; take away this pillar, and where is your government? Therefore, I conceive, in this view of the case, this power is absolutely necessary. There seems to be a suspicion that this power will be abused; but is not all delegation of power equally dangerous? If we have a castle, shall we delay to put a commander into it, for fear he will turn his artillery against us? My concern is for the majesty of the people. If there is no virtue among them, what will the Congress do? If they had the meekness of Moses, the patience of Job, and the wisdom of Solomon, and the people were determined to be slaves, sir, could the Congress prevent them? If they set Heaven at defiance, no arm of flesh can save them. Sir, I shall have nothing to do in this government. But we see the situation we are in. We are verging towards destruction, and every one must be

sensible of it. I suppose the New England States have a treasure offered to them better than the mines of Peru; and it cannot be to the disadvantage of the Southern States. Great Britain and France come here with their vessels, instead of our carrying our produce to those countries in American vessels, navigated by our citizens. When I consider the extensive sea-coast there is to this state alone, so well calculated for commerce, viewing matters in this light, I would rather sink all this continent owes me, than this power should be withheld from Congress. Mention is made that Congress ought to be restricted of the power to keep an army except in time of war. I apprehend that great mischief would ensue from such a restriction. Let us take means to prevent war, by granting to Congress the power of raising an army. If a declaration of war is made against this country, and the enemy's army is coming against us, before Congress could collect the means to withstand this enemy, they would penetrate into the bowels of our country, and every thing dear to us would be gone in a moment. The honorable gentleman from Topsham has made use of the expression, "*O my country!*" from an apprehension that the Constitution should be adopted; I will cry out, "*O my country!*" if it is not adopted. I see nothing but destruction and inevitable ruin if it is not. The more I peruse and study this article, the more convinced am I of the necessity of such a power being vested in Congress. The more I hear said against it, the more I am confirmed in my sentiments of its expediency; for it is like the pure metal — the more you rub it, the brighter it shines. It is with concern I hear the honorable gentleman from Topsham make use of language against the gentlemen of the law. Sir, I look on this order of men to be essential to the liberties and rights of the people, and whoever speaks against them as speaking against an ordinance of Heaven. Mr. President, I hope every gentleman will offer his sentiments candidly on this momentous affair; that he will examine for himself, and consider that he has not only the good of this commonwealth under consideration, but the welfare of the United States.

### **Dr. WILLARD**

entered largely into the field of ancient history, and deduced therefrom arguments to prove that where power had been trusted to men, whether in great or small bodies, they had always abused it, and that thus republics had soon degenerated into aristocracies. He instanced Sparta, Athens, and Rome. The Amphictyonic league, he said, resembled the Confederation of the United States; while thus united, they defeated Xerxes, but were subdued by the gold of Philip, who brought the council to betray the interest of their country.

### **Hon. Mr. GORHAM**

(in reply to the gentleman from Uxbridge) Exposed the absurdity of conclusions and hypotheses, drawn from ancient governments, which bore no relation to the confederacy proposed; for those governments had no idea of representations as we have. He, however, warned us against the evil which had ruined those states, which he thought was the want of an efficient federal government. As much as the Athenians rejoiced in the extirpation of a Lacedemonian, will, if we are disunited, a citizen of Massachusetts at the death of a Connecticut man, or a Yorker. With respect to the proposed government degenerating into an aristocracy, the honorable gentleman observed, that the nature and situation of our country rendered such a circumstance impossible; as, from the great preponderance of the agricultural interest in the United States, that interest would always have it in its power to elect such men as would, he observed, effectually prevent the introduction of any other than a perfectly democratical form of government.

## Hon. Mr. CABOT

Went fully into a continuation of the arguments of the honorable gentleman last up. In a clear and elegant manner, he analyzed the ancient governments mentioned by Dr. Willard, and, by comparing them with the proposed system, fully demonstrated the superiority of the latter, and in a very particular manner the proposed section under debate.

## Mr. RANDALL

Said, the quoting of ancient history was no more to the purpose than to tell how our forefathers dug clams at Plymouth; he feared a *consolidation* of the thirteen states. Our manners, he said, were widely different from the Southern States; their elections were not *so free and unbiased*; therefore, if the states were consolidated, he thought it would introduce manners among us which would set us at continual variance.

## Mr. BOWDOIN

Pointed out other instances of dissimilarity, between the systems of the ancient republics and the proposed Constitution, than those mentioned by the honorable gentlemen from Charlestown and Beverly, in the want of the important checks in the former which were to be found in the latter; to the want of which, in the first, was owing, he said, the usurpation which took place. He instanced the *decemviri*, who, though chosen for a short period, yet, *unchecked*, soon subverted the liberties of the Romans; and concluded with a decided opinion in favor of the Constitution under debate.

*Afternoon.* —

## Mr. SYMMES.

Mr. President, in such an assembly as this, and on a subject that puzzles the oldest politicians, a young man, sir, will scarcely dare to *think* for himself; but, if he venture *to speak*, the effort must certainly be greater. This Convention is the first representative body in which I have been honored with a seat, and men will not wonder that a scene at once so new and so august should confuse, oppress, and almost disqualify me to proceed.

Sir, I wish to bespeak the candor of the Convention — that candor, which, I know, I need but ask, to have it extended to me, while I make a few indigested observations on the paragraph now in debate. I have hitherto attended with diligence, but no great anxiety, to the reasoning of the ablest partisans on both sides of the question. Indeed, I could have wished for a more effectual, and, if I may term it so, a more *feeling* representation in the Lower House, and for a representation of the *people* in the Senate. I have been, and still am, desirous of a rotation in office, to prevent the final perpetuation of power in the same men; and I have not been able clearly to see why the *place* and *manner* of holding elections should be in the disposal of Congress.

But, sir, in my humble opinion, these things are comparative by the lesser things of the law. They, doubtless, have their influence in the grand effect, and so are essential to the system. But, sir, I view the section to which we have at length arrived, as the cement of the fabric, and this clause as the keystone, or (if I may apply the metaphor) the magic talisman, on which the fate of it depends.

Allow me, sir, to recall to your remembrance that *yesterday*, when states were in doubt about granting to Congress a 5 per cent. impost, and the simple power of regulating trade — the time when, so delicate was the patriotic mind, that power was to be transferred with a reluctant, with a sparing hand, and the most obvious utility could scarcely extort it from the people. It appears to me of some importance to consider this matter, and to demand complete satisfaction upon the question, why an unlimited power in the affair of taxation is so soon required. Is our situation so vastly different, that the powers so lately sufficient are now but the dust of the balance? I observe, sir, that many men, who, within a few years past, were strenuous opposers of an augmentation of the power of Congress, are now the warmest advocates of power so large as not to admit of a comparison with those which they opposed. Cannot some of them state their reasons then, and their reasons now, that we may judge of their consistency? or shall we be left to suppose that the opinions of politicians, like those of the multitude, vibrate from one extreme to the other, and that we have no men among us to whom we can intrust the philosophic task of pointing out the golden mean?

At present, Congress have no power to lay taxes, &c., not even to compel a compliance with their requisitions. May we not suppose that the members of the great Convention had severely felt the impotency of Congress, while they were in, and, therefore, were rather too keenly set for an effectual increase of power? that the difficulties they had encountered in obtaining decent requisitions, had wrought in them a degree of impatience, which prompted them to demand the purse-strings of the nation, as if we were insolvent, and the proposed Congress were to compound with our creditors? Whence, sir, can this great, I had almost said, this bold demand have originated? Will it be said that it is but a consistent and necessary part of the general system? I shall not deny these gentlemen the praise of inventing a system completely consistent with itself, and pretty free from contradiction; but I would ask, — I shall expect to be answered, — how a system can be necessary for us, of which this is a consistent and necessary part. But, sir, to the paragraph in hand: Congress, &c. Here, sir, (however kindly Congress may be pleased to deal with us,) is a very good and valid conveyance of all the property in the United States, — to certain uses indeed, but those uses capable of any construction the trustees may think proper to make. This body is not amenable to any tribunal, and therefore this Congress can do no wrong. It will not be denied that they may tax us to any extent; but some gentlemen are fond of arguing that this body never will do any thing but what is for the common good. Let us consider that matter.

Faction, sir, is the vehicle of all transactions in public bodies; and when gentlemen know this so well, I am rather surprised to hear them so sanguine in this respect. The prevalent faction is the body; these gentlemen, therefore, must mean that the prevalent faction will always be right, and that the true patriots will always outnumber the men of less and selfish principles. From this it would follow that no public measure was ever wrong, because it must have been passed by the majority; and so, I grant, no power ever was, or ever will be, abused. In short, we know that all

governments have degenerated, and consequently have abused the powers reposed in them; and why we should imagine better of the proposed Congress than of myriads of public bodies who have gone before them, I cannot at present conceive.

Sir, we ought (I speak it with submission) to consider that what we now grant from certain motives, well grounded at present, will be exacted of posterity as a prerogative, when we are not alive, to testify the tacit conditions of the grant; that the wisdom of this age will then be pleaded by those in power; and that the cession we are now about to make will be actually clothed with the venerable habit of ancestral sanction.

Therefore, sir, I humbly presume we ought not to take advantage of our situation in point of time, so as to bind posterity to be obedient to laws they may very possibly disapprove, nor expose them to a rebellion which, in that period will very probably end only in their further subjugation.

The paragraph in question is an absolute decree of the people. The Congress *shall* have power. It does not say that they shall *exercise* it; but our necessities say they *must*, and the experience of ages say that they *will*; and finally, when the expenses of the nation, by their ambition, are grown enormous, that they will oppress and subject; for, sir, they may lay taxes, duties, imposts, and excises! One would suppose that the Convention, sir, were not at all afraid to multiply words when any thing was to be got by it. By another clause, all imposts or duties on exports and imports, wherever laid, go into the federal chest; so that Congress may not only lay imposts and excises, but all imposts and duties that are laid on imports and exports, by any state, shall be a part of the national revenue; and besides, Congress may lay an impost on the produce and manufactures of the country, which are consumed at home. And all these shall be equal through the states. Here, sir, I raise two objections; first, that Congress should have this power. It is a universal, unbounded permission, and as such, I think, no free people ought ever to consent to it, especially in so important a matter as that of property. I will not descend, sir, to an abuse of the future Congress, until it exists; nor then, until it misbehaves; nor then, unless I dare. But I think that some certain revenue, amply adequate to all necessary purposes, upon a peace establishment, but certain and definite, would have been better; and the collection of it might have been guaranteed by every state to every other. We should then have known to what we were about to subscribe, and should have cheerfully granted it. But now we may indeed grant, but who can *cheerfully* grant he knows not what?

Again, sir, I object to the equality of these duties through the states. It matters not with me, in the present argument, which of them will suffer by this proportion. Some probably *will*, as the consumption of dutied articles will not, if we may judge from experience, be united in all.

But some say, with whom I have conversed, it was for this reason that taxes were provided; that, by their assistance, the defect of duties in some states ought to be supplied. Now, then, let us suppose that the duties are so laid, that, if every state paid in proportion to that which paid most, the duties alone would supply a frugal treasury. Some states will pay but half their proportion, and some will scarcely pay any thing. But those in general who pay the least duty, viz., the inland states, are least of all able to pay a land tax; and therefore I do not see but that this tax would operate most against those who are least able to pay it.

# GUNS

I humbly submit it, sir, whether, if each state had its proportion of some certain gross sum assigned, according to its numbers, and a power was given to Congress to collect the same, in case of default in the state, this would not have been a safer Constitution. For, sir, I also disapprove of the power to collect, which is here vested in Congress. It is a power, sir, to burden us with a standing army of ravenous collectors, — harpies, perhaps, from another state, but who, however, were never known to have bowels for any purpose, but to fatten on the life-blood of the people. In an age or two, this will be the case; and when the Congress shall become tyrannical, these vultures, their servants, will be the tyrants of the village, by whose presence all freedom of speech and action will be taken away.

Sir, I shall be told that these are imaginary evils; but I hold to this maxim, that power was never given, (of this kind especially,) but it was exercised; nor ever exercised but it was finally abused. We must not be amused with handsome probabilities; but we must be assured that *We are in no danger*, and that this Congress *could* not distress us, if they were ever so much disposed.

To pay the debts, &c.

These words, sir, I confess, are an ornament to the page, and very musical words; but they are too general to be understood as any kind of limitation of the power of Congress, and not very easy to be understood at all. When Congress have the purse, they are not confined to rigid economy; and the word *debts*, here, is not confined to debts already contracted; or, indeed, if it were, the term "general welfare" might be applied to any expenditure whatever. Or, if it could not, who shall dare to gainsay the proceedings of this body at a future day, when, according to the course of nature, it shall be too firmly fixed in the saddle to be overthrown by any thing but a general insurrection? — an event not to be expected, considering the extent of this continent; and, if it were to be expected, a sufficient reason in itself for rejecting this or any constitution that would tend to produce it.

This clause, sir, contains the very sinews of the Constitution. And I hope the universality of it may be singular but it may be easily seen, that it tends to produce, in time, as universal powers in every other respect. As the poverty of individuals prevents luxury, so the poverty of public bodies, whether sole or aggregate, prevents tyranny. A nation cannot, perhaps, do a more politic thing than to supply the purse of its sovereign with that parsimony which results from a sense of the labor it costs, and so to compel him to comply with the genius of his people, and to conform to their situation, whether he will or not. How different will be our conduct, if we give the entire disposal of our property to a body as yet almost unknown in theory, in practice quite heterogeneous in its composition, and whose maxims are yet entirely unknown!

Sir, I wish the gentlemen who so ably advocate this instrument would enlarge upon this formidable clause; and I most sincerely wish that the effect of their reasoning may be my conviction. For, sir, I will not dishonor my constituents, by supposing that they expect me to resist that which is irresistible — the force of reason. No, sir; my constituents wish for a firm, efficient Continental government, but fear the operation of this which is now proposed. Let them

be convinced that their fears are groundless, and I venture to declare in their name, that no town in the commonwealth will sooner approve the form, or be better subjects under it.

### **Mr. JONES (of Boston)**

Enlarged on the various checks which the Constitution provides, and which, he said, formed a security for liberty, and prevention against power being abused; the frequency of elections of the democratic branch; representation apportioned to numbers; the publication of the journals of Congress, &c. Gentlemen, he said, had compared the people of this country to those of Rome; but, he observed, the comparison was very erroneous: the Romans were divided into two classes, the nobility and plebeians; the nobility kept all kinds of knowledge to their own class; and the plebeians were, in general, very ignorant, and when unemployed, in time of peace, were ever ready for revolt, and to follow the dictates of any designing patrician. But, continued the worthy gentleman, the people of the United States are an enlightened, well-informed people, and are, therefore, not easily imposed on by designing men. Our right of representation, concluded Mr. J., is much more just and equitable than the boasted one of Great Britain, whose representatives are chosen by corporations or boroughs, and those boroughs, in general, are the property, or at the disposal, of the nobility and rich gentry of the kingdom.

[The vice-president having informed the Convention, in the forenoon, that he had received a long letter from the Hon. Mr. Gerry, the same was read as soon as the Convention proceeded to business in the afternoon. When the vice-president had read the letter, Mr. Gore rose, and objected to the reading a state of facts respecting the construction of the Senate in the federal Convention, which accompanied the letter; not, he said, "from a wish to preclude information from his own mind, or from the minds of the Convention, but from his duty to his constituents, and the desire he had to guard against infringements on the orders of the Convention." Mr. Gore was interrupted, as being out of order, but was proceeding on his objection, when the Hon. Judge Dana begged Mr. Gore's leave to say a few words. which he did; after which he retired from the Convention, until the consideration of the letter should be gone through with.]

**WEDNESDAY, *January 23.* —**

### **Mr. PIERCE**

### **NOTE**

Rose, he said, to make a few observations on the powers of Congress, in this section.

Gentlemen, he said, in different parts of the house, (Messrs. Dalton, Phillips, and Gore,) had agreed that Congress will not lay direct taxes, except in cases of war; for that, to defray the exigencies of peace, the impost and excise would be sufficient; and, as that mode of taxation would be the most expedient and productive, it would undoubtedly be adopted. But it was necessary Congress should have power to lay direct taxes at all times, although they will not use it, because, when our enemies find they have sufficient powers to call forth all the resources of the people, it will prevent their making war, as they otherwise would. As the Hon. Mr. Phillips

used this proverb, "*A stitch in time will save nine*," his meaning, I suppose, was, that we should have war nine times, if Congress had not such powers, where we should once if they had such powers. But these arguments to me are not conclusive; for, if our enemies know they do not use such powers except in a war, although granted to them, what will be the difference if they have the powers only in the time of war? But, Mr. President, if Congress have the powers of direct taxes, in the manner prescribed in this section, I fear we shall have that mode of taxation adopted, in preference to imposts and excises; and the reasons of my fears are these: When the impost was granted to Congress in this state, I, then being a member of court, well remember the gentlemen in trade, almost with one consent, agreed that it was an unequal tax, bearing hard on them; for, although it finally was a tax on the consumer, yet, in the first instance, it was paid by persons in trade; and also that they consumed more than the landed interest of dutied articles; and nothing but necessity induced them to submit to grant said impost, as that was the only way Congress could collect money to pay the foreign debt, under the regulations they were then under; and I fear part of this state's members in Congress, when this Constitution is adopted, will resume their own opinion, when they can lay direct taxes; and, as Rhode Island has always been against an impost, and as they have an equal representation in the Senate, and part of Connecticut will be interested with them, and the Southern States having no manufactures of their own, and consuming much more foreign articles than the Northern, it appears to me, we are not certain of availing ourselves of an impost, if we give Congress power to levy and collect direct taxes in time of peace.

While I am up, Mr. President, I would make some observations on what has been passed over, as I think it is within the orders of the house. The Hon. Mr. Sedgwick said, if I understood him right, that, if he thought that this Constitution consolidated the union of the states, he should be the last man that should vote for it; but I take his meaning to be this, according to the reasoning of Mr. Ames — that it is not a consolidation of the Union, because there are three branches in the Union; and therefore it is not a consolidation of the Union; but, sir, I think I cannot conceive of a sovereignty of power existing within a sovereign power, nor do I wish any thing in this Constitution to prevent Congress being sovereign in matters belonging to their jurisdiction; for I have seen the necessity of their powers in almost all the instances that have been mentioned in this Convention; and also, last winter, in the rebellion, I thought it would be better for Congress to have stilled the people, rather than the people from amongst themselves, who are more apt to be governed by temper than others, as it appeared to me we were, in the disqualifying act, as, in my opinion, we then did not keep strictly to our own constitution; and I believe such a superior power ought to be in Congress. But I would have it distinctly bounded, that every one may know the utmost limits of it; and I have some doubts on my mind, as to those limits, which I wish to have solved. I have also an objection as to the term for which the Senate are to be in office; for, as the democratical branch of the federal legislature is to continue in office two years, and they are the only check on the federal, and they, the Senate, to continue in office six years, they will have an undue influence on the democratic branch; and I think they ought not to continue in office for a longer time than the other; and also, that, if they conduct ill, we may have a constitutional revolution in as short a period as two years, if needed. The Hon. Mr. King said, some days past, that the Senate going out by classes, if rightly considered, were not for but four years; because one third part was never more than six, another four, and a third two; therefore the medium was four; but I think that way of arguing would argue, that if they were all to go out at the end of six years, that they were but *three* years in office; because half their time they were

under the age of three years, and the other half over the age of three years in office; therefore his arguing to me in that respect was not well founded.

### **Col. VARNUM,**

In answer to an inquiry, why a bill of rights was not annexed to this Constitution, said, that, by the constitution of Massachusetts, the legislature have a right to make all laws not repugnant to the Constitution. Now, said he, if there is such a clause in the Constitution under consideration, then there would be a necessity for a bill of rights. In the section under debate, Congress have an expressed power to levy taxes, &c., and to pass laws to carry their requisitions into execution: this, he said, was express, and required no bill of rights. After stating the difference between delegated power and the grant of all power, except in certain cases, the colonel proceeded to controvert the idea that this Constitution went to a consolidation of the Union. He said it was only a consolidation of strength, and that it was apparent Congress had no right to alter the internal relations of a state. The design in amending the Confederation, he said, was to remedy its defects. It was the interest of the whole to confederate against a foreign enemy, and each was bound to exert its utmost ability to oppose that enemy; but it had been done at our expense in a great measure, and there was no way to provide for a remedy, because Congress had not the power to call forth the resources of every state, nor to coerce delinquent states. But under the proposed government, those states which will not comply with equal requisitions, will be coerced; and this, he said, is a glorious provision. In the late war, said the colonel, the states of New Hampshire and Massachusetts, for two or three years, had in the field half the Continental army under General Washington. Who paid those troops? The states which raised them were called on to pay them. How, unless Congress have a power to levy taxes, can they make the states pay their proportion? In order that this and some other states may not again be obliged to pay eight or ten times their proportion of the public exigencies, he said, this power is highly necessary to be delegated to the federal head. He showed the necessity of Congress being enabled to prepare against the attacks of a foreign enemy; and he called upon the gentleman from Andover, (Mr. Symmes,) or any other gentleman, to produce an instance where any government, consisting of three branches, elected by the people, and having checks on each other, as this has, abused the power delegated to them.

### **Mr. CHOATE**

Said, that this clause gives power to Congress to levy duties, excises, imposts, &c., considering the trust delegated to Congress, that they are to "provide for the common defence, promote the general welfare," &c. If this is to be the object of their delegation, the next question is, whether they shall not be vested with powers to prosecute it. And this can be no other than an unlimited power of taxation, if that defence requires it. Mr. C. contended that it was the power of the people centred to a point; that, as all power is lodged in them, this power ought to be supreme. He showed the necessity of its being so, not only for our common defence, but for our advantage in settling commercial treaties. Do we wish to make a treaty with any nation of Europe, we are told we have no stability as a nation. As Congress must provide for the common defence, shall they, asked Mr. C., be confined for the impost and excise? They are alone the judges whether five or one per cent. is necessary or convenient. It has been the practice of all nations to anticipate their resources by loans; this will be the case of the United States in war;

and he asked, if our resources are competent and well established, and that no doubt remained of them, whether, in that case, the individuals who have property will not cheerfully offer it for the general defence. After adverting to the idea of some, of its being a consolidation of the Union, Mr. Choate concluded by a brief display of the several checks contained, and securities for the people to be found, in this system.

### **Gen. THOMPSON.**

Sir, the question is, whether Congress shall have power. Some say that, if this section was left out, the whole would fall to the ground. I think so too, as it is all of a piece. We are now fixing a national consolidation. This section, I look upon it, is big with mischiefs. Congress will have power to keep standing armies. The great Mr. Pitt says, standing armies are dangerous — keep your militia in order — we don't want standing armies. A gentleman said, We are a rich state: I say so too. Then why shall we not wait five or six months, and see what our sister states do? We are able to stand our ground against a foreign power; they cannot starve us out; they cannot bring their ships on the land; we are a nation of healthy and strong men; our land is fertile, and we are increasing in numbers. It is said we owe money: no matter if we do; our safety lies in not paying it — pay only the interest. Don't let us go too fast. Shall not Massachusetts be a mediator? It is my wish she may be one of the four dissenting States; then we shall be on our old ground, and shall not act unconstitutionally. Some people cry, It will be a great charge; but it will be a greater charge, and be more dangerous, to make a new one. Let us amend the old Confederation. Why not give Congress power only to regulate trade? Some say, that those we owe will fall upon us; but it is no such thing: the balance of power in the old countries will not permit it; the other nations will protect us. Besides, we are a brave and happy people. Let us be cautious how we divide the states. By uniting we stand, by dividing we fall. We are in our childhood yet: don't let us grow too fast, lest we grow out of shape. I have proved that we are a respectable people, in possession of liberty, property, and virtue, and none in a better situation to defend themselves. Why all this racket? Gentlemen say we are undone if we cannot stop up the Thames; but, Mr. President, nations will mind their own interest, and not ours. Great Britain has found out the secret to pick the subjects' pockets, without their knowing of it: that is the very thing Congress is after. Gentlemen say this section is as clear as the sun, and that all power is retained which is not given. But where is the bill of rights which shall check the power of this Congress; which shall say, *Thus far shall ye come, and no farther*. The safety of the people depends on a bill of rights. If we build on a sandy foundation, is it likely we shall stand? I apply to the feelings of the Convention. There are some parts of this Constitution which I cannot digest; and, sir, shall we swallow a large bone for the sake of a little meat? Some say, Swallow the whole now, and pick out the bone afterwards. But I say, Let us pick off the meat, and throw the bone away.

This section, sir, takes the purse-strings from the people. England has been quoted for their fidelity; but did their constitution ever give such a power as is contained in this Constitution? Did they ever allow Parliament to vote an army but for one year? But here we are giving Congress power to vote an army for two years — to tax us without limitation; no one to gainsay them, and no inquiry yearly, as in Britain; therefore, if this Constitution is got down, we shall alter the system entirely, and have no checks upon Congress.

### **Rev. Mr. NILES**

Wished the honorable gentleman would point out the limits to be prescribed to the powers given in this section.

**Hon. Mr. BOWDOIN.**

## **NOTE**

Mr. President, on the subject of government, which admits of so great a variety in its parts and combinations, a diversity of opinions is to be expected; and it was natural to suppose that, in this Convention, respectable for its numbers, but much more so for the characters which compose it, there would be a like diversity concerning the federal Constitution, that is now the subject of our consideration.

In considering it, every gentleman will reflect how inadequate to the purposes of the Union the Confederation has been. When the plan of the Confederation was formed, the enemy were invading us; and this inspired the several states with such a spirit of union and mutual defence, that a mere requisition or recommendation of Congress was sufficient to procure the needful aids, without any power of coercion; and for that reason, among others, no such power was given by the Confederation. But since that reason had ceased, and the idea of danger being removed by the peace, the requisitions of Congress have, in most of the states, been little regarded, notwithstanding they solemnly pledged their faith to comply with them.

This non-compliance has compelled Congress to increase the foreign debt of the Union, by procuring further loans to pay the interest and instalments due on former loans; and in that way to preserve the public faith, which had been pledged to foreign powers. It has compelled them, in order to prevent the consequences of a breach of faith, as relative to those powers, to enter repeatedly into those ruinous negotiations, by which "the United States jointly, and each of them in particular, together with all their lands, chattels, revenues, and products, and also the imposts and taxes already laid and raised in the same, or in time to come to be laid and raised, are for the whole," mortgaged for the repayment of those loans by instalments, and for the payment of the interest on them annually. These debts *must* be paid, *bona fide*, according to contract, or be further increased by procuring, if procurable, further loans; which, ruinous as the measure is, must be continued, unless the states empower Congress to raise money for the discharging those debts. It will not be in the power of the United States, and I am sure it will not be in their inclination, to rid themselves of those debts in the same base and ignominious manner in which a faction, in one of them, are endeavoring to get rid of theirs. To the same cause (a non-compliance with congressional requisitions) are owing the repeated but necessary breaches of public faith in regard to the payment of the federal domestic debt. And hence, as relative to the joint consolidated debt, the inefficiency of the public finances, and the bankrupt state of the federal treasury, which can never be remedied without empowering Congress to levy adequate duties and taxes. Without such a power, the accumulating debt will never be paid, but by a forcible collection, which our foreign creditors know how, and are able to apply, if, unhappily, it should be necessary. The several loans, which by contract are to be paid by instalments, will, in case of the failure of any of the stipulated payments, become, the whole of them, immediately payable; and any of the property of any of the states, whether public or private, that can be most easily come at, will, in that case, be seized and applied for that purpose.

This mode of reimbursement, or reprisal, will be upon the trade and navigation of the United States; and in proportion as ours of this state may be larger and more extensive than the trade and navigation of other states, we shall be the greatest sufferers. This ruin of our trade will involve in it not only the ruin of the mercantile part of the state, and of the numerous body of mechanics dependent upon it, but will most essentially affect every other class of citizens, and operate most extensively to the injury of the commonwealth.

These are some of the consequences, certain and in fallible, that will flow from the denial of that power to Congress. Shall *we* then, *we* of this state, who are so much interested in this matter, deny them *that* power — a power so essential to our political happiness?

But if we attend to our trade, as it is at present, we shall find that the miserable state of it is owing to a like want of power in Congress. Other nations prohibit our vessels from entering their ports, or lay heavy duties on our exports carried thither; and we have no retaliating or regulating power over their vessels and exports, to prevent it. Hence a decrease of our commerce and navigation, and the duties and revenue arising from them. Hence an insufficient demand for the produce of our lands, and the consequent discouragement of agriculture. Hence the inability to pay debts, and particularly taxes, which by that decrease are enhanced. And hence, as the necessary result of all these, the emigration of our inhabitants. If it be asked, How are these evils, and others that might be mentioned, to be remedied? the answer is short — By giving Congress adequate and proper power. Whether such power be given by the proposed Constitution, it is left with the Conventions from the several states, and with us, who compose one of them, to determine.

In determining on this question, every gentleman will, doubtless, consider the importance of cultivating a spirit of union among ourselves, and with the several states. This spirit procured our emancipation from British tyranny; and the same spirit, by uniting us in the necessary means, must secure to us our dear-bought, blood-purchased liberty and independence, and deliver us from evils which, unless remedied, must end in national ruin. The means for effecting these purposes are within our reach; and the adoption of the proposed Constitution will give us the possession of them. Like all other human productions, it may be imperfect; but most of the imperfections imputed to it are ideal and unfounded, and the rest are of such a nature that they cannot be certainly known but by the operations of the Constitution; and if, in its operation, it should in any respect be essentially bad, it will be amended in one of the modes prescribed by it. I say, *will* be amended, because the Constitution is constructed on such principles, that its bad effects, if any such should arise from it, will injure the members of Congress equally with their constituents; and, therefore, both of them must be equally induced to seek for, and effectuate, if possible, the requisite amendments.

There have been many objections offered against the Constitution; and of these the one most strongly urged has been, the great power vested in Congress. On this subject, I beg leave to make a few general observations, which ought to be attended to, as being applicable to every branch of that power.

It may, therefore, be observed, that the investiture of such power, so far from being an objection, is a most cogent reason for accepting the Constitution. The power of Congress, both in the

legislative and executive line, is the power of the people, collected through a certain medium, to a focal point, at all times ready to be exerted for the general benefit, according as circumstances or exigencies may require. If you diminish or annihilate it, you diminish or annihilate the means of your own safety and prosperity; which means, if they were to be measured like mathematical quantities, would be in exact proportion, as the power is greater or less. But this is not the case; for power that does not reach, or is inadequate to the object, is worse than none. An exertion of *such* power would increase the evil it was intended to remove, and at the same time create a further evil, which might be a very great one — the expense of a fruitless exertion.

If we consider the objects of the power, they are numerous and important; and as human foresight cannot extend to many of them, and all of them are in the womb of futurity, the quantum of the power *cannot* be estimated. Less than the whole, as relative to federal purposes, may, through its insufficiency, occasion the dissolution of the Union, and a subjugation or division of it among foreign powers. *Their* attention is drawn to the United States; *their* emissaries are watching our conduct, particularly upon the present most important occasion; and if we should be so unhappy as to reject the federal Constitution proposed to us, and continue much longer our present weak, unenergetic federal government, their policy will probably induce them to plan a division or partition of the states among themselves, and unite their forces to effect it.

But, however *that* may be, *this* is certain — that the respectability of the United States among foreign nations, our commerce with them on the principles of reciprocity, and our forming beneficial treaties with them on those principles, their estimation of our friendship and fear of losing it, our capacity to resent injuries, and our security against interior as well as foreign attacks, must be derived from such a power. In short, the commercial and political happiness, the liberty and property, the peace, safety, and general welfare, both internal and external, of each and all the states, depend on that power; which, as it must be applied to a vast variety of objects, and to cases and exigencies beyond the ken of human prescience, must be very great; and which *cannot* be limited without endangering the public safety.

It will be, and has been said, this great power may be abused, and, instead of protecting, may be employed by Congress in oppressing, their constituents. A possibility of abuse, as it may be affirmed of all delegated power whatever, is by itself no sufficient reason for withholding the delegation. If it were a sufficient one, no power could be delegated; nor could government of any sort subsist. The possibility, however, should make us careful, that, in all delegations of importance, like the one contained in the proposed Constitution, there should be such checks provided as would not frustrate the end and intention of delegating the power, but would, as far as it could be safely done, prevent the abuse of it; and such *checks* are provided in the Constitution. Some of them were mentioned the last evening by one of my worthy colleagues; but I shall here exhibit all of them in one view.

The two capital departments of government, the legislative and executive, in which the delegated power resides, consisting of the President, Vice-President, Senate and Representatives, are directly, and by the respective legislatures and delegates, chosen by the people.

The President, and also the Vice-President, when acting as President, before they enter on the execution of the office, shall each "solemnly swear or affirm, that he will faithfully execute the office of President of the United States, and will, to the best of his ability, preserve, protect, and defend, the Constitution of the United States."

"The senators and representatives before mentioned, and the members of the state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this Constitution."

## IMPEACH +

"The President and Vice-President, and all civil officers of the United States, shall be removed from office, on **impeachment** for, and conviction of, treason, bribery, or other high crimes or misdemeanors."

"No senator or representative shall, during the time for which he was elected, be appointed to any civil office; which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house, during his continuance in office."

"No title of nobility shall be granted by the United States, or by any particular state; and no person holding any office of profit or trust Under the United States shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state."

"The United States shall guaranty to every state in this Union a republican form of government, and shall protect each of them against invasion and domestic violence."

To these great checks may be added several other very essential ones, as, the negative which each house has upon the acts of the other; the disapproving power of the President, which subjects those acts to a revision by the two houses, and to a final negative, unless two thirds of each house shall agree to pass the returned acts, notwithstanding the President's objections; the printing the journals of each house, containing their joint and respective proceedings; and the publishing, from time to time, a regular statement and account of receipts and expenditures of all public money, none of which shall be drawn from the treasury but in consequence of appropriations made by law.

All these checks and precautions, provided in the Constitution, must, in a great measure, prevent an abuse of power, at least in all flagrant instances, even if Congress should consist wholly of men who were guided by no other principle than their own interest. Under the influence of such checks, this would compel them to a conduct which, in the general, would answer the intention of the Constitution. But the presumption is, — and, if the people duly attend to the objects of their choice, it would be realized, — that the President of the United States and the members of Congress would, for the most part, be men, not only of ability, but of a good moral character; in which case, an abuse of power is not to be apprehended, nor any error in the government, but such as every human institution is subject to.

There is a further guard against the abuse of power, which, though not expressed, is strongly implied in the federal Constitution, and, indeed, in the constitution of every government founded on the principles of equal liberty; and that is, that those who make the laws, and particularly laws for the levying of taxes, do, in common with their fellow-citizens, fall within the power and operation of those laws.

As, then, the individuals in Congress will all share in the burdens they impose, and be personally affected by the good or bad laws they make for the Union, they will be under the strongest motives of interest to lay the lightest burdens possible, and to make the best laws, or such laws as shall not unnecessarily affect either the property or the personal rights of their fellow-citizens.

With regard to rights, the whole Constitution is a declaration of rights, which primarily and principally respect the general government intended to be formed by it. The rights of particular states, or private citizens, not being the object or subject of the Constitution, they are only incidentally mentioned. In regard to the former, it would require a volume to describe them, as they extend to every subject of legislation, not included in the powers vested in Congress; and, in regard to the latter, as all governments are founded on the relinquishment of personal rights in a certain degree, there was a clear impropriety in being very particular about them. By such a particularity the government might be embarrassed, and prevented from doing what the private, as well as the public and general, good of the citizens and states might require.

The public good, in which private is necessarily involved, might be hurt by too particular an enumeration; and the private good could suffer no injury from a deficient enumeration, because Congress could not injure the rights of private citizens without injuring their own, as they must, in their public as well as private character, participate equally with others in the consequences of their own acts. And by this most important circumstance, in connection with the checks above mentioned, the several states at large, and each citizen in particular, will be secured, as far as human wisdom can secure them, against the abuse of the delegated power.

In considering the Constitution, we shall consider it, in all its parts, upon those general principles which operate through the whole of it, and are equivalent to the most extensive bill of rights that can be formed.

These observations, which are principally of a general nature, but will apply to the most essential parts of the Constitution, are, with the utmost deference and respect, submitted to your candid consideration; with the hope that, as they have influenced my own mind decidedly in favor of the Constitution, they will not be wholly unproductive of a like influence on the minds of the gentlemen of the Convention.

If the Constitution should be finally accepted and established, it will complete the temple of American liberty, and, like the keystone of a grand and magnificent arch, be the bond of union to keep all the parts firm and compacted together. May this temple, sacred to liberty and virtue, sacred to justice, the first and greatest political virtue, and built upon the broad and solid foundation of perfect union, be dissoluble only by the dissolution of nature; and may this Convention have the distinguished honor of erecting one of its pillars on that lasting foundation!

## **Dr. TAYLOR**

Said, the consideration of the 8th section had taken up a great deal of time; that gentlemen had repeated the same arguments over and over again; and, although the order of the Convention was, that the proposed Constitution should be considered by paragraphs, he was pleased, he said, to observe that the honorable gentleman first speaking had gone into the matter at large, and therefore he hoped that other gentlemen would take the same liberty, and that all further observations might be on the system at large.

## **Mr. PARSONS, (of Newburyport.)**

Mr. President, a great variety of supposed objections have been made against vesting Congress with some of the powers defined in the 8th section. Some of the objectors have considered the powers as unnecessary, and others, that the people have not the proper security that these powers will not be abused. To most of these objections, answers, convincing, in my opinion, to a candid mind, have been given. But as some of the objections have not been noticed, I shall beg the indulgence of the Convention, while I briefly consider them. And, as it is my intention to avoid all repetition, my observations will necessarily be unconnected and desultory.

It has been said that the grant in this section includes all the possessions of the people, and divests them of every thing; that such a grant is impolitic; for, as the poverty of an individual guards him against luxury and extravagance, so poverty in a ruler is a fence against tyranny and oppression. Sir, gentlemen do not distinguish between the government of an hereditary aristocracy, where the interest of the governors is very different from that of the subjects, and a government to be administered for the common good by the servants of the people, vested with delegated powers by popular elections at stated periods. The federal Constitution establishes a government of the last description, and in this case the people divest themselves of nothing; the government and powers which the Congress can administer, are the mere result of a compact made by the people with each other, for the common defence and general welfare. To talk, therefore, of keeping the Congress poor, if it means any thing, must mean a depriving the people themselves of their own resources. But if gentlemen will still insist that these powers are a grant from the people, and consequently improper, let it then be observed, that it is now too late to impede the grant; it is already completed; the Congress, under the Confederation, are invested with it by solemn compact; they have powers to demand what moneys and forces they judge necessary for the common defence and general welfare — powers as extensive as those proposed in this Constitution. But it may be said, as the ways and means are reserved to the several states, they have a check upon Congress, by refusing a compliance with the requisitions. Sir, is this the boasted check? — a check that can never be exercised but by perfidy and a breach of public faith; by a violation of the most solemn stipulations? It is this check that has embarrassed at home, and made us contemptible abroad; and will any honest man plume himself upon a check which an honest man would blush to exercise?

It has been objected that the Constitution provides no religious test by oath, and we may have in power unprincipled men, atheists and pagans. No man can wish more ardently than I do that all our public offices may be filled by men who fear God and hate wickedness; but it must remain with the electors to give the government this security. An oath will not do it. Will an

unprincipled man be entangled by an oath? Will an atheist or a pagan dread the vengeance of the Christian's God, a being, in his opinion, the creature of fancy and credulity? It is a solecism in expression. No man is so illiberal as to wish the confining places of honor or profit to any one sect of Christians; but what security is it to government, that every public officer shall swear that he is a Christian? For what will then be called Christianity? One man will declare that the Christian religion is only an illumination of natural religion, and that he is a Christian; another Christian will assert that all men must be happy hereafter in spite of themselves; a third Christian reverses the image, and declares that, let a man do all he can, he will certainly be punished in another world; and a fourth will tell us that, if a man use any force for the common defence, he violates every principle of Christianity. Sir, the only evidence we can have of the sincerity of a man's religion is a good life; and I trust that such evidence will be required of every candidate by every elector. That man who acts an honest part to his neighbor, will, most probably, conduct honorably towards the public.

It has been objected that we have not as good security against the abuse of power under the new Constitution as the Confederation gives us. It is my deliberate opinion that we have a better security. Under the Confederation, the whole power, executive and legislative, is vested in one body, in which the people have no representation, and where the states, the large and the small states, are equally represented; and all the checks the states have, is a power to remove and disgrace an unfaithful servant, after the mischief is perpetrated. Under this Constitution, an equal representation, immediately from the people, is introduced, who, by their negative, and the exclusive right of originating money bills, have the power to control the Senate, where the sovereignty of the states is represented. But it has been objected that, in the old Confederation, the states could at any time recall their delegates, and there was a rotation. No essential benefit could be derived to the people from these provisions, but great inconveniences will result from them. It has been observed by a gentleman who has argued against the Constitution, that a representative ought to have an intimate acquaintance with the circumstances of his constituents, and, after comparing them with the situation of every part of the Union, so conduct as to promote the common good. The sentiment is an excellent one, and ought to be engraved on the hearts of every representative. But what is the effect of the power of recalling? Your representative, with an operating revocation over his head, will lose all ideas of the general good, and will dwindle to a servile agent, attempting to serve local and partial benefits by cabal and intrigue. There are great and insuperable objections to a rotation. It is an abridgment of the rights of the people, and it may deprive them, at critical seasons, of the services of the most important characters in the nation. It deprives a man of honorable ambition, whose highest duty is the applause of his fellow-citizens, of an efficient motive to great and patriotic exertions. The people, individually, have no method of testifying their esteem but by a reëlection; and shall they be deprived of the honest satisfaction of wreathing for their friend and patriot a crown of laurel more durable than monarchy can bestow?

It has been objected that the Senate are made too dependent upon the state legislatures. No business under the Constitution of the federal Convention could have been more embarrassing than the constructing the Senate; as that body must conduct our foreign negotiations, and establish and preserve a system of national politics, a uniform adherence to which can alone induce other nations to negotiate with and confide in us. It is certain the change of the men who compose it should not be too frequent, and should be gradual. At the same time, suitable checks

should be provided to prevent an abuse of power, and to continue their dependence on their constituents. I think the Convention have most happily extricated themselves from the embarrassment. Although the senators are elected for six years, yet the Senate, as a body composed of the same men, can exist only for two years, without the consent of the states. If the states think proper, one third of that body may, at the end of every second year, be new men. When the Senate act as legislators, they are controllable at all times by the representatives; and in their executive capacity, in making treaties and conducting the national negotiations, the consent of two thirds is necessary, who must be united to a man, (which is hardly possible,) or the new men biennially sent to the Senate, if the states choose it, can control them; and at all times there will also be one third of the Senate, who, at the expiration of two years, must obtain a reëlection, or return to the mass of the people. And the change of men in the Senate will be so gradual as not to destroy or disturb any national system of politics.

It is objected that it is dangerous to allow the Senate a right of proposing alterations or amendments in money bills; that the Senate may by this power increase the supplies, and establish profuse salaries; that for these reasons the lords in the British Parliament have not this power, which is a great security to the liberties of Englishmen. I was much surprised at hearing this objection, and the grounds upon which it was supported. The reason why the lords have not this power, is founded on a principle in the English constitution, that the commons alone represent the whole property of the nation; and as a money bill is a grant to the king, none can make the grant but those who represent the property of the nation; and the negative of the lords is introduced to check the profusion of the commons, and to guard their own property. The manner of passing a money bill is conclusive evidence of these principles; for, after the assent of the lords, it does not remain with the clerk of the Parliament, but is returned to the commons, who, by their speaker, present it to the king as the gift of the commons. But every supposed control the Senate, by this power, may have over money bills, they can have without it; for, by private communications with the representatives, they may as well insist upon the increase of the supplies, or salaries, as by official communications. But had not the Senate this power, the representatives might take any foreign matter to a money bill, and compel the Senate to concur, or lose the supplies. This might be done in critical seasons, when the Senate might give way to the encroachments of the representatives, rather than sustain the odium of embarrassing the affairs of the nation; the balance between the two branches of the legislature would, in this way, be endangered, if not destroyed, and the Constitution materially injured. This subject was fully considered by the Convention for forming the constitution of Massachusetts, and the provision made by that body, after mature deliberation, is introduced into the federal Constitution.

It was objected that, by giving Congress a power of direct taxation, we give them power to destroy the state governments, by prohibiting them from raising any moneys; but this objection is not founded in the Constitution. Congress have only a concurrent right with each state, in laying direct taxes, not an exclusive right; and the right of each state to direct taxation is equally extensive and perfect as the right of Congress; any law, therefore, of the United States, for securing to Congress more than a concurrent right with each state, is usurpation, and void.

It has been objected that we have no bill of rights. If gentlemen who make this objection would consider what are the supposed inconveniences resulting from the want of a declaration of rights, I think they would soon satisfy themselves that the objection has no weight. Is there a single

natural right we enjoy, uncontrolled by our own legislature. that Congress can infringe? Not one. Is there a single political right secured to us by our constitution, against the attempts of our own legislature, which we are deprived of by this Constitution? Not one, that I recollect. All the rights Congress can control we have surrendered to our own legislature; and the only question is, whether the people shall take from their own legislatures a certain portion of the several sovereignties, and unite them in one head, for the more effectual securing of the national prosperity and happiness.

The honorable gentleman from Boston has stated at large most of the checks the people have against usurpation, and the abuse of power, under the proposed Constitution; but from the abundance of his matter, he has, in my opinion, omitted two or three, which I shall mention. The oath the several legislative, executive, and judicial officers of the several states take to support the federal Constitution, is as effectual a security against the usurpation of the general government as it is against the encroachment of the state governments. For an increase of the powers by usurpation is as clearly a violation of the federal Constitution as a diminution of these powers by private encroachment; and that the oath obliges the officers of the several states as vigorously to oppose the one as the other. But there is another check, founded in the nature of the Union, superior to all the parchment checks that can be invented. If there should be a usurpation, it will not be on the farmer and merchant, employed and attentive only to their several occupations; it will be upon thirteen legislatures, completely organized, possessed of the confidence of the people, and having the means, as well as inclination, successfully to oppose it. Under these circumstances, none but madmen would attempt a usurpation. But, sir, the people themselves have it in their power effectually to resist usurpation, without being driven to an appeal to arms. An act of usurpation is not obligatory; it is not law; and any man may be justified in his resistance. Let him be considered as a criminal by the general government, yet only his own fellow-citizens can convict him; they are his jury, and if they pronounce him innocent, not all the powers of Congress can hurt him; and innocent they certainly will pronounce him, if the supposed law he resisted was an act of usurpation.

*Afternoon.* —

As soon as the Convention met this afternoon, Mr. NASON, in a short speech, introduced a motion to this effect: "That this Convention so far reconsider their former vote to discuss the Constitution by paragraphs, as to leave the subject at large open for consideration." This motion met with a warm opposition from several parts of the house.

### **Mr. WALES**

Said, that the time which had been spent in the discussion had been well spent, and that he was much surprised to see gentlemen thus wishing to hurry the matter.

### **Mr. WIDGERY**

Said, that necessity compelled them to hurry.

### **Mr. DALTON.**

Mr. President, we have been but six or seven days in the discussion of the Constitution. Sir, has not paragraph after paragraph been considered and explained? Has not great light been thrown upon the articles we have considered? For my part, I profess to have received much light on them. We are now discussing the powers of Congress, sir; shall we pass them over? Shall we pass over the article of the judiciary power, without examination? — I hope, sir, it will be particularly inquired into. I am sorry to hear gentlemen allege that they have been a long time from home, and that the want of money necessitates them to wish for an early decision. Sir, have not the General Court provided for the payment of the members of this Convention? and the treasurer, I am informed, is collecting money to comply with that provision. There are many parts which ought to be explained. I hope we shall attend to them with deliberation, and that, for the sake of saving a little money, we may not pass over the Constitution without well considering it.

### **Judge SUMNER**

Wished the motion might be withdrawn.

### **Mr. NASON**

Said, he would withdraw his motion for the present, but mentioned his intention of again making it at ten o'clock to-morrow morning.

### **THURSDAY, *January 24.* —**

### **Mr. NASON**

renewed his motion for reconsidering a former vote to discuss the Constitution by paragraphs, so that the whole may be taken up.

### **The Hon. Mr. ADAMS**

Said, he was one of those who had had difficulties and doubts respecting some parts of the proposed Constitution. He had, he said, for several weeks after the publication of it, laid by all the writings in the public papers on the subject, in order to be enabled leisurely to consider them. He had, he said, still more difficulties on his mind; but that he had chosen rather to be an auditor than an objector, and he had particular reasons therefor. As this was the case with him, and others, he believed, were in a similar situation, he was desirous to have a full investigation of the subject; that thereby such might be confirmed, either in favor or against the Constitution; and was, therefore, against the motion. We ought not, he said, to be stingy of our time, or the public money, when so important an object demanded them; and the public expect that we will not. He was sorry, he said, for gentlemen's necessities; but he would rather support the gentlemen who were so necessitated, or lend them money to do it, than they should hurry so great a subject. He, therefore, hoped that the question would be put, and that we should proceed as we began.

### **Mr. PITTS**

Said, it was impossible to consider the whole until the parts had been examined. Our constituents, said he, have a right to demand of us the reasons which shall influence us to vote as we shall do. He must, he said, therefore oppose the motion.

The Hon. Mr. KING, Col. SMITH, and several other gentlemen, spoke against the motion.

### **Mr. WIDGERY**

Opposed the motion's being winked out of sight. He wished, he said, the question might be put, that the sense of the Convention respecting it might be taken.

### **Gen. THOMPSON**

Said, it was not essential how the matter was considered; but he wished to have the whole subject at large open to discussion, so that every body might speak to it. A member, says he, gets up and speaks, but he is called to order, as not confining himself to the particular paragraph under debate; and this puts him out. In his opinion, he said, the Constitution, and the reasons which induced gentlemen to frame it, ought to have been sent to the several towns to be considered by them. My town, said he, considered it seven hours, and after this there was not one in favor of it. If this had been done, we should have known the minds of the people on it; and should we dare, he asked, to act different from the sense of the people? It is strange, he said, that a system, which its planners say is so plain, *that he that runs may read it*, should want so much explanation.

[The question being generally called for, the motion was put, and negatived, without a return of the house. The endeavors of gentlemen to hush to silence a small buzz of congratulation, among a few citizens in the gallery, being mistaken by some of the members for a hiss, created a momentary agitation in the Convention, which, however, after a short conversation, subsided.]

The eighth section was again read.

### **The Hon. Mr. SEDGWICK**

Went into a general answer to the objections which had been started against the powers to be granted to Congress by this section. He showed the absolute necessity there was that the body which had the security of the whole for their object, should have the necessary means allowed them to effect it; and in order to secure the people against the abuse of this power, the representatives and people, he said, are equally subject to the laws, and can, therefore, have but one and the same interest; that they would never lay unnecessary burdens, when they themselves must bear a part of them; and from the extent of their objects, their power ought necessarily to be illimitable. Men, said he, rarely do mischief for the sake of being mischievous. With respect to the power, in this section, to raise armies, the honorable gentleman said, although gentlemen had thought it a dangerous power, and would be used for the purpose of tyranny, yet they did not object to the Confederation in this particular; and by this, Congress could have kept the whole of the late army in the field, had they seen fit. He asked, if gentlemen could think it possible that the legislature of the United States should raise an army unnecessarily, which, in a short time, would be under the control of other persons; for, if it was not to be under their control, what object

could they have in raising it? It was, he said, a chimerical idea to suppose that a country like this could ever be enslaved. How is an army for that purpose to be obtained from the freemen of the United States? They certainly, said he, will know to what object it is to be applied. Is it possible, he asked, that an army could be raised for the purpose of enslaving themselves and their brethren? or, if raised, whether they could subdue a nation of freemen, who know how to prize liberty, and who have arms in their hands? He said, it was a deception in gentlemen to say that this power could be thus used. The honorable gentleman said, that in the Constitution every possible provision against an abuse of power was made; and if gentlemen would candidly investigate for themselves, they would find that the evils they lament cannot ensue therefrom.

**Mr. DAWES**

## **GUNS**

Observed, upon the authority of Congress to raise and support armies, that all the objections which had been made by gentlemen against *standing* armies, were inapplicable to the present question, which was, that, as there must be an authority somewhere to raise and support armies, whether that authority ought to be in Congress. As Congress are the *legislature* upon the proposed plan of government, in them only, said he, should be lodged the power under debate. Some gentlemen seem to have confused ideas about *standing armies*: that the legislature of a country should not have power to raise armies, is a doctrine he had never heard before. Charles II., in England, kept in pay an army of five thousand men, and James II. augmented them to thirty thousand. This occasioned a great and just alarm through the nation; and, accordingly, when William III. came to the throne, it was declared unconstitutional to raise or keep a standing army, in time of peace, *without the consent of the legislature*. Most of our own state constitutions have borrowed this language from the English declaration of rights, but none of them restrain their legislatures from raising and supporting armies. Those who never objected to such an authority in Congress, as vested by the old Confederation, surely ought not to object to such a power in Congress, where there is to be a new branch of representation, arising immediately from the people, and which branch alone must originate those very grants that are to maintain an army. When we consider that this branch is to be elected every two years, there is great propriety in its being restrained from making any grants in support of the army for a longer space than that of their existence. If the election of this popular branch were for seven years, as in England, the men who would make the, first grant, might also be the second and third, for the continuance of the army; and such an acquaintance might exist between the representatives in Congress and the leaders of the army as might be unfavorable to liberty. But the wisdom of the late Convention has avoided this difficulty. The army must expire of itself in two years after it shall be raised, unless renewed by representatives, who, at that time, will have just come fresh from the body of the people. It will share the same fate as that of a temporary law, which dies at the time mentioned in the act itself, unless revived by some future legislature.

**Capt. DENCH**

Said, it had been observed, and he was not convinced that the observation was wrong, that the grant of the powers in this section would produce a consolidation of the states, and the moment it begins, a dissolution of the state governments commences. If mistaken, he wished to be set right.

Afternoon. —

**Dr. TAYLOR**

Asked why there was not to be a *federal town*, over which Congress is to exercise exclusive legislation.

**Hon. Mr. STRONG**

Said, every gentleman must think that the erection of a federal town was necessary, wherein Congress might remain protected from insult. A few years ago, said the honorable gentleman, Congress had to remove, because they were not protected by the authority of the state in which they were then sitting. He asked whether this Convention, though convened for but a short period, did not think it was necessary that they should have power to protect themselves from insult; much more so must they think it necessary to provide for Congress, considering they are to be a permanent body.

**Hon. Mr. DAVIS (of Boston)**

Said it was necessary that Congress should have a permanent residence; and that it was the intention of Congress, under the Confederation, to erect a federal town. He asked, Would Massachusetts, or any other state, wish to give to New York, or the state in which Congress shall sit, the power to influence the proceedings of that body, which was to act for the benefit of the whole, by leaving them liable to the outrage of the citizens of such states?

**Dr. TAYLOR**

Asked, why it need be *ten miles square*, and whether one mile square would not be sufficient.

**Hon. Mr. STRONG**

**NOTE**

Said, Congress was not to exercise jurisdiction over a district of ten miles, but one not *exceeding ten miles square*.

**Rev. Mr. STILLMAN**

**NOTE**

Said, that, whatever were the limits of the district, it would depend on the cession of the legislature of one of the states.

**Mr. DENCH**

## NOTE

Said, that he wished further light on the subject; but that from the words, "We, the people," in the first clause, ordaining this Constitution, he thought it was an actual consolidation of the states, and that, if he was not mistaken, the moment it took place, a dissolution of the state governments will also take place.

**Gen. BROOKS (of Lincoln)**

## NOTE EXCLUSIVE

Rose, he said, to consider the idea suggested by the gentleman last speaking, that this Constitution would produce a dissolution of the state governments, or a consolidation of the whole; which, in his opinion, he said, was ill founded — or rather a loose idea. In the first place, says he, the Congress, under this Constitution, cannot be organized without repeated acts of the legislatures of the several states; and, therefore, if the creating power is dissolved, the body to be created cannot exist. In the second place, says the general, it is impossible the general government can exist, unless the governments of the several states are forever existing; as the qualifications of the electors of the federal representatives are to be the same as those of the electors of the most numerous branch of the state legislatures. It was, therefore, he said, impossible that the state governments should be annihilated by the general government, and it was, he said, strongly implied, from that part of the section under debate which gave Congress power to exercise exclusive jurisdiction over the federal town, that they shall have it over no other place. When we attend to the Constitution, we shall see, says the general, that the powers to be given to Congress amount only to a consolidation of the strength of the Union, and that private rights are not consolidated. The general mentioned the rights which Congress could not infringe upon, and said that their power to define what was treason was much less than is vested in the legislature of this state by our own constitution; as it was confined, in the third section of article third, to levying war, or adhering to and comforting enemies, only. He mentioned the restraint upon Congress in the punishment of treason, and compared it with the extended powers lodged in the Parliament of Great Britain on like crimes; and concluded by observing, that, as the United States guaranty to *each state* a republican form of government, the state governments were as effectually secured as though this Constitution should never be in force.

**Hon. Mr. KING**

Said, in reply to the inquiry respecting a federal town, that there was now no place for Congress to reside in, and that it was necessary that they should have a permanent residence, where to establish proper archives, in which they may deposit treaties, state papers, deeds of cession, &c.

**Hon. Mr. SINGLETARY**

Said, that all gentlemen had said about a bill of rights to the Constitution, was, that what is written is written; but he thought we were giving up all power, and that the states will be like towns in this state. Towns, said he, have a right to lay taxes, to raise money, and the states

possibly may have the same. We have now, said he, a good republican Constitution, and we do not want it guarantied to us. He did not understand what gentlemen meant by Congress guarantying a republican form of government; he wished they would not play round the subject with their fine stories, like a fox round a trap, but come to it. Why don't they say that Congress will guaranty our state constitution?

**Gen. THOMPSON**

Said, Congress only meant to guaranty a *form* of government.

**Hon. Mr. KING**

Asked whether, if the present constitution of this state had been guarantied by the United States, the honorable gentleman from Sutton would not have considered it as a great defect in the proposed Constitution, as it must have precluded the state from making any alteration in it, should they see fit so to do at the time mentioned in the Constitution.

[Several other gentlemen spoke, in a desultory conversation, on various parts of the Constitution; in which several articles from the constitution of this state, and the Confederation, were read; many questions asked the honorable gentlemen who framed the Constitution, to which answers apparently satisfactory were given.]

**FRIDAY, *January 25.* —**

The 8th section still under debate; but the conversation continued desultory; and much attention was paid to the inquiries of gentlemen on different parts of the Constitution, by those who were in favor of it.

**Mr. AMES,**

In a short discourse, called on those who stood forth in 1775 to stand forth now; to throw aside all interested and party views; to have one purse and one heart for the whole; and to consider that, as it was necessary then, so was it necessary now, to unite, — or die we must.

**Hon. Mr. SINGLETARY.**

Mr. President, I should not have troubled the Convention again, if some gentlemen had not called on them that were on the stage in the beginning of our troubles, in the year 1775. I was one of them. I have had the honor to be a member of the court all the time, Mr. President, and I say that, if any body had proposed such a constitution as this in that day, it would have been thrown away at once. It would not have been looked at. We contended with Great Britain, some said for a threepenny duty on tea; but it was not that; it was because they claimed a right to tax us and bind us in all cases whatever. And does not this Constitution do the same? Does it not take away all we have — all our property? Does it not lay *all* taxes, duties, imposts, and excises? And what more have we to give? They tell us Congress won't lay dry taxes upon us, but collect all the

money they want by impost. I say, there has always been a difficulty about impost. Whenever the General Court was going to lay an impost, they would tell us it was more than trade could bear, that it hurt the fair trader, and encouraged smuggling; and there will always be the same objection: they won't be able to raise money enough by impost, and then they will lay it on the land, and take all we have got. These lawyers, and men of learning, and moneyed men, that talk so finely, and gloss over matters so smoothly, to make us poor illiterate people swallow down the pill, expect to get into Congress themselves; they expect to be the managers of this Constitution, and get all the power and all the money into their own hands, and then they will swallow up all us little folks, like the great *Leviathan*, Mr. President; yes, just as the whale swallowe'd up *Jonah*. This is what I am afraid of; but I won't say any more at present, but reserve the rest to another opportunity.

### **Hon. Mr. SMITH.**

Mr. President, I am a plain man, and get my living by the plough. I am not used to speak in public, but I beg your leave to say a few words to my brother ploughjoggers in this house. I have lived in a part of the country where I have known the worth of good government by the want of it. There was a black cloud that rose in the east last winter, and spread over the west. [Here Mr. Widgery interrupted. Mr. President, I wish to know what the gentleman means by the east.] I mean, sir, the county of Bristol; the cloud rose there, and burst upon us, and produced a dreadful effect. It brought on a state of anarchy, and that led to tyranny. I say, it brought anarchy. People that used to live peaceably, and were before good neighbors, got distracted, and took up arms against government. [Here Mr. Kingsley called to order, and asked, what had the history of last winter to do with the Constitution. Several gentlemen, and among the rest the Hon. Mr. Adams, said the gentleman was in order — let him go on in his own way.] I am going, Mr. President, to show you, my brother farmers, what were the effects of anarchy, that you may see the reasons why I wish for good government. People I say took up arms; and then, if you went to speak to them, you had the musket of death presented to your breast. They would rob you of your property; threaten to burn your houses; oblige you to be on your guard night and day; alarms spread from town to town; families were broken up; the tender mother would cry, "O, my son is among them! What shall I do for my child!" Some were taken captive, children taken out of their schools, and carried away. Then we should hear of an action, and the poor prisoners were set in the front, to be killed by their own friends. How dreadful, how distressing was this! Our distress was so great that we should have been glad to snatch at any thing that looked like a government. Had any person, that was able to protect us, come and set up his standard, we should all have flocked to it, even if it had been a monarch; and that monarch might have proved a tyrant; — so that you see that anarchy leads to tyranny, and better have one tyrant than so many at once.

Now, Mr. President, when I saw this Constitution, I found that it was a cure for these disorders. It was just such a thing as we wanted. I got a copy of it, and read it over and over. I had been a member of the Convention to form our own state constitution, and had learnt something of the checks and balances of power, and I found them all here. I did not go to any lawyer, to ask his opinion; we have no lawyer in our town, and we do well enough without. I formed my own opinion, and was pleased with this Constitution. My honorable old daddy there [pointing to Mr. Singletary] won't think that I expect to be a Congress-man, and swallow up the liberties of the people. I never had any post, nor do I want one. But I don't think the worse of the Constitution

because lawyers, and men of learning, and moneyed men, are fond of it. I don't suspect that they want to get into Congress and abuse their power. I am not of such a jealous make. They that are honest men themselves are not apt to suspect other people. I don't know why our constituents have not a good right to be as jealous of us as we seem to be of the Congress; and I think those gentlemen, who are so very suspicious that as soon as a man gets into power he turns rogue, had better look at home.

We are, by this Constitution, allowed to send ten members to Congress. Have we not more than that number fit to go? I dare say, if we pick out ten, we shall have another ten left, and I hope ten times ten; and will not these be a check upon those that go? Will they go to Congress, and abuse their power, and do mischief, when they know they must return and look the other ten in the face, and be called to account for their conduct? Some gentlemen think that our liberty and property are not safe in the hands of moneyed men, and men of learning? I am not of that mind.

Brother farmers, let us suppose a case, now: Suppose you had a farm of 50 acres, and your title was disputed, and there was a farm of 5000 acres joined to you, that belonged to a man of learning, and his title was involved in the same difficulty; would you not be glad to have him for your friend, rather than to stand alone in the dispute? Well, the case is the same. These lawyers, these moneyed men, these men of learning, are all embarked in the same cause with us, and we must all swim or sink together; and shall we throw the Constitution overboard because it does not please us alike? Suppose two or three of you had been at the pains to break up a piece of rough land, and sow it with wheat; would you let it lie waste because you could not agree what sort of a fence to make? Would it not be better to put up a fence that did not please every one's fancy, rather than not fence it at all, or keep disputing about it until the wild beasts came in and devoured it? Some gentlemen say, Don't be in a hurry; take time to consider, and don't take a leap in the dark. I say, Take things in time; gather fruit when it is ripe. There is a time to sow and a time to reap; we sowed our seed when we sent men to the federal Convention; now is the harvest, now is the time to reap the fruit of our labor; and if we won't do it now, I am afraid we never shall have another opportunity.

## **Mr. PARSONS**

considered the several charges of ambiguity which gentlemen had laid to the Constitution, and, with a great deal of accuracy, stated the obvious meaning of the clauses thus supposed to be ambiguous. He concluded his explanation by saying, that no compositions, which men can pen, could be formed, but what would be liable to the same charge.

*Afternoon.* —

## **Hon. Mr. DALTON.**

Mr. President, it has been demanded by some gentlemen in opposition to this Constitution, why those who were opposed to the augmentation of the powers of Congress a few years since, should now be the warmest advocates for the powers to be granted by the section under debate. Sir, I was opposed to the five per cent. impost being granted to Congress; and I conceived that such a grant, under the Confederation, would produce great difficulties and embarrassments. But,

sir, as Congress is, by the proposed Constitution, to be differently constructed, as a proportionate voice of the states in that body is to be substituted for the present equal (or rather unequal) one, my objections will be removed. In my opinion, the delegating of power to a government in which the people have so many checks, will be perfectly safe, and consistent with the preservation of their liberties.

### **Mr. AMES**

Said, that, in the course of the debates, gentlemen had justified the Confederation; but he wished to ask whether there was any danger in this Constitution which is not in the Confederation. If gentlemen are willing to confederate, why, he asked, ought not Congress to have the powers granted by this section? In the Confederation, said Mr. A., the checks are wanting which are to be found in this Constitution. And the fears of gentlemen that this Constitution will provide for a permanent aristocracy are therefore ill-founded; for the rulers will always be dependent on the people, like the insects of a sunshiny day, and may, by the breath of their displeasure, be annihilated.

### **Mr. WIDGERY.**

Mr. President, enough has, I think, been said on the 8th section. It has been repeated, over and over again, that the adoption of the Constitution will please all ranks; that the present inefficiency of the Confederation is obvious; and that blessed things will surely be the result of this Constitution. Many say, Ask the mechanics, ask the yeomanry. But they do not tell us what the answer of these will be. All we hear is, that the merchant and farmer will flourish, and that the mechanics and tradesmen are to make their fortunes directly, if the Constitution goes down. Is it, sir, because the seat of government is to be carried to Philadelphia? Who, sir, is to pay the debts of the yeomanry and others? Sir, when oil will quench fire, I will believe all this, and not till then. On the contrary, I think the adopting this Constitution makes against them, though it may be something in favor of the merchants. Have not Congress power to tax polls, — for there is no other way of levying a dry tax, — and by this means the poor will pay as much as the rich. Gentlemen say we are undone, and that there is no resource, unless this Constitution is adopted. I cannot see why we need, for the sake of a little meat, swallow a great bone, which, if it should happen to stick in our throats, can never be got out. Some gentlemen have given out, that we are surrounded by enemies, that we owe debts, and that the nations will make war against us, and take our shipping, &c. Sir, I ask, Is this a fact? Or whether gentlemen think as they say? I believe they do not; for I believe they are convinced that the nations we owe do not wish us at present to pay more than the interest.

Mr. W., after considering some other observations which had dropped from gentlemen in the course of the debates on the 8th section, concluded by saying, that he could not see the great danger that would arise from rejecting the Constitution.

### **The Hon. Mr. GORHAM**

Adverted to the suggestion of some gentlemen, that, by granting the impost to Congress, this state would pay more than its proportion, and said that it could be made an objection as much

against one government as another. But he believed gentlemen would accede that the impost was a very proper tax. As to the tax on polls, which the gentleman from New Gloucester had said would take place, he saw, he said, no article in the Constitution which warranted the assertion; it was, he said, a distressful tax, and would never be adopted. By impost and excise, the man of luxury will pay; and the middling and the poor parts of the community, who live by their industry, will go clear; and as this would be the easiest mode of raising a revenue, it was the most natural to suppose it would be resorted to. Twenty per cent., he said, may as well be paid for some luxuries as five; nay, one hundred per cent. impost on some articles might be laid on, as is done in England and France. How often, observed the honorable gentleman, has Mr. Adams tried to accomplish a commercial treaty with England, with but feeble power! They prohibit our oil, fish, lumber, pot and pearl ashes, from being imported into their territories, in order to favor Nova Scotia, for they know we cannot make general retaliating laws. They have a design in Nova Scotia to rival us in the fishery, and our situation at present favors their design. From the abundance of our markets, we could supply them with beef, butter, pork, &c., but they lay what restrictions on them they please, which they durst not do, were there an adequate power lodged in the general government to regulate commerce.

Mr. JONES, Col. PORTER, and Col. VARNUM, said a few words in favor of the article, when the Convention proceeded to the consideration of the 9th section.

### **Mr. NEAL (from Kittery)**

Went over the ground of objection to this section, on the idea that the slave trade was allowed to be continued for twenty years. His profession, he said, obliged him to bear witness against any thing that should favor the making merchandise of the bodies of men, and, unless his objection was removed, he could not put his hand to the Constitution. Other gentlemen said, in addition to this idea, that there was not even a proposition that the negroes ever shall be free; and Gen. THOMPSON exclaimed, Mr. President, shall it be said that, after we have established our own independence and freedom, we make *slaves* of others? O! Washington, what a name has he had! How he has immortalized himself! But he holds those in slavery who have as good a right to be free as he has. He is still for self; and, in my opinion, his character has sunk fifty per cent.

On the other side, gentlemen said, that the step taken in this article towards the abolition of slavery was one of the beauties of the Constitution. They observed, that in the Confederation there was no provision whatever for its being abolished; but this Constitution provides that Congress may, after twenty years, totally annihilate the slave trade; and that, as all the states, except two, have passed laws to this effect, it might reasonably be expected that it would then be done. In the interim, all the states were at liberty to prohibit it.

### **SATURDAY, *January 26.* —**

[The debate on the 9th section still continued desultory, and consisted of similar objections, and answers thereto, as had before been used. Both sides deprecated the slave trade in the most pointed terms; on one side, it was most pathetically lamented by Mr. Nason, Major Lusk, Mr. Neal, and others, that this Constitution provided for the continuation of the slave trade for twenty

years; and on the other, the Hon. Judge Dana, Mr. Adams, and others, rejoiced that a door was now to be opened for the annihilation of this odious, abhorrent practice, in a certain time.]

The paragraph which provides that "the privilege of the writ of *habeas corpus* shall not be suspended, unless in cases of rebellion or invasion," was read, when

### **Gen. THOMPSON**

Asked the president to please to proceed. We have, said he, read the book often enough; it is a consistent piece of inconsistency.

### **Hon. Mr. ADAMS,**

In answer to an inquiry of the Hon. Mr. Taylor, said, that this power given to the general government to suspend this privilege in cases of rebellion and invasion, did not take away the power of the several states to suspend it, if they shall see fit.

### **Dr. TAYLOR**

Asked, why this darling privilege was not expressed in the same manner it was in the Constitution of Massachusetts. [Here the honorable gentleman read the paragraph respecting it, in the constitution of that state, and then the one in the proposed Constitution.] He remarked on the difference of expression, and asked why the time was not limited.

### **Judge DANA**

Said, the answer, in part, to the honorable gentleman, must be, that the same men did not make both Constitutions; that he did not see the necessity or great benefit of limiting the *time*. Supposing it had been, as in our constitution, "not exceeding twelve months," yet, as our legislature can, so might the Congress, continue the suspension of the writ from time to time, or from year to year. The safest and best restriction, therefore, arises from the nature of the cases in which Congress are authorized to exercise that power at all, namely, in those of rebellion or invasion. These are clear and certain terms, facts of public notoriety, and whenever these shall cease to exist, the suspension of the writ must necessarily cease also. He thought, the citizen had a better security for his privilege of the writ of *habeas corpus* under the federal than under the state constitution; for our legislature may suspend the writ as often as they judge "*the most urgent and pressing occasions*" call for it. He hoped these short observations would satisfy the honorable gentleman's inquiries; otherwise, he should be happy in endeavoring to do it by going more at large into the subject.

### **Judge SUMNER**

Said, that this was a restriction on Congress, that the writ of *habeas corpus* should not be suspended, except in cases of rebellion or invasion. The learned judge then explained the nature of this writ. When a person, said he, is imprisoned, he applies to a judge of the Supreme Court;

the judge issues his writ to the jailer, calling upon him to have the body of the person imprisoned before him, with the crime on which he was committed. If it then appears that the person was legally committed, and that he was notailable, he is remanded to prison; if illegally confined, he is enlarged. This privilege, he said, is essential to freedom, and therefore the power to suspend it is restricted. On the other hand, the state, he said, might be involved in danger; the worst enemy may lay plans to destroy us, and so artfully as to prevent any evidence against him, and might ruin the country, without the power to suspend the writ was thus given. Congress have only power to suspend the privilege to persons committed by their authority. A person committed under the authority of the states will still have a right to this writ.

### **MONDAY, *January 28.* —**

This and the two following days were taken up in considering the several sections of the second and third articles, every one of which was objected to by those who were opposed to the Constitution; and the objections were obviated by gentlemen in favor of it. We do not think it essential to go into a minute detail of the conversation; as, in the speeches on the grand question, the field is again gone over. We can only say that, with the utmost attention, every objection, however trifling, was answered, and that the unremitted endeavors of gentlemen who advocated the Constitution, to convince those who were in error, were not without effect. The main objections to the judiciary power are contained in the following speech delivered on

### **WEDNESDAY, *January 30.* —**

#### **Mr. HOLMES.**

Mr. President, I rise to make some remarks on the paragraph under consideration, which treats of the judiciary power.

It is a maxim universally admitted, that the safety of the subject consists in having a right to a trial as free and impartial as the lot of humanity will admit of. Does the Constitution make provision for such a trial? I think not; for in a criminal process, a person shall not have a right to insist on a trial in the vicinity where the fact was committed, where a jury of the peers would, from their local situation, have an opportunity to form a judgment of the *character* of the person charged with the crime, and also to judge of the *credibility* of the witnesses. There a person must be tried by a jury of strangers; a jury who *may be* interested in his conviction; and where he *may*, by reason of the distance of his residence from the place of trial, be incapable of making such a defence as he is, in justice, entitled to, and which he could avail himself of, if his trial was in the same county where the crime is said to have been committed.

These circumstances, as horrid as they are, are rendered still more dark and gloomy, as there is no provision made in the Constitution to prevent the attorney-general from filing information against any person, whether he is indicted by the grand jury or not; in consequence of which the most innocent person in the commonwealth may be taken by virtue of a warrant issued in consequence of such information, and dragged from his home, his friends, his acquaintance, and confined in prison, until the next session of the court, which has jurisdiction of the crime with which he is charged, (and how frequent those sessions are to be we are not yet informed of,) and

after long, tedious, and painful imprisonment, though acquitted on trial, may have no possibility to obtain any kind of satisfaction for the loss of his liberty, the loss of his time, great expenses, and perhaps cruel sufferings.

But what makes the matter still more alarming is, that the mode of criminal process is to be pointed out by Congress, and they have no constitutional check on them, except that the trial is to be by a *jury*: but who this jury is to be, how qualified, where to live, how appointed, or by what rules to regulate their procedure, we are ignorant of as yet: whether they are to live in the county where the trial is; whether they are to be chosen by certain districts, or whether they are to be appointed by the sheriff *ex officio*; whether they are to be for one session of the court only, or for a certain term of time, or for good behavior, or during pleasure, are matters which we are entirely ignorant of as yet.

The mode of trial is altogether indetermined; whether the criminal is to be allowed the benefit of counsel; whether he is to be allowed to meet his accuser face to face; whether he is to be allowed to confront the witnesses, and have the advantage of cross-examination, we are not yet told.

These are matters of by no means small consequence; yet we have not the smallest constitutional security that we shall be allowed the exercise of these privileges, neither is it made certain, in the Constitution, that a person charged with the crime shall have the privilege of appearing before the court or jury which is to try him.

On the whole, when we fully consider this matter, and fully investigate the powers granted, explicitly given, and specially delegated, we shall find Congress possessed of powers enabling them to institute judicatories little less inauspicious than a certain tribunal in Spain, which has long been the disgrace of Christendom: I mean that diabolical institution, the *Inquisition*:

What gives an additional glare of horror to these gloomy circumstances is the consideration, that Congress have to ascertain, point out, and determine, what kind of punishments shall be inflicted on persons convicted of crimes. They are nowhere restrained from inventing the most cruel and unheard-of punishments, and annexing them to crimes; and there is no constitutional check on them, but that *racks* and *gibbets* may be amongst the most mild instruments of their discipline.

There is nothing to prevent Congress from passing laws which shall compel a man, who is accused or suspected of a crime, to furnish evidence against himself, and even from establishing laws which shall order the court to take the charge exhibited against a man for truth, unless he can furnish evidence of his innocence.

I do not pretend to say Congress *will* do this; but, sir, I undertake to say that Congress (according to the powers proposed to be given them by the Constitution) *may* do it; and if they do not, it will be owing *entirely* — I repeat it, it will be owing *entirely* — to the goodness of the men, and not in the *least degree* owing to the goodness of the Constitution.

The framers of our state constitution took particular care to prevent the General Court from authorizing the judicial authority to issue a warrant against a man for a crime, unless his being guilty of the crime was supported by oath or affirmation, prior to the warrant being granted; why

it should be esteemed so much more safe to intrust Congress with the power of enacting laws, which it was deemed so unsafe to intrust our state legislature with, I am unable to conceive.

### **Mr. GORE**

Observed, in reply to Mr. Holmes, that it had been the uniform conduct of those in opposition to the proposed form of government, to determine, in every case where it was possible that the administrators thereof could do wrong, that they would do so, although it were demonstrable that such wrong would be against their own honor and interest, and productive of no advantage to themselves. On this principle alone have they determined that the trial by jury would be taken away in civil cases; when it had been clearly shown, that no words could be adopted, apt to the situation and customs of each state in this particular. Jurors are differently chosen in different states, and in point of qualification the laws of the several states are very diverse; not less so in the causes and disputes which are entitled to trial by jury. What is the result of this? That the laws of Congress may and will be conformable to the local laws in this particular, although the Constitution could not make a universal rule equally applying to the customs and statutes of the different states. Very few governments (certainly not this) can be interested in depriving the people of trial by jury, in questions of *meum et tuum*. In criminal cases alone are they interested to have the trial under their own control; and, in such cases, the Constitution expressly stipulates for trial by jury; but then, says the gentleman from Rochester, (Mr. Holmes,) to the safety of life it is indispensably necessary the trial of crimes should be in the vicinity; and the vicinity is construed to mean county; this is very incorrect, and gentlemen will see the impropriety, by referring themselves to the different local divisions and districts of the several states. But further, said the gentleman, the idea that the jury coming from the neighborhood, and knowing the character and circumstances of the party in trial, is promotive of justice, on reflection will appear not founded in truth. If the jury judge from any other circumstances but what are part of the cause in question, they are not impartial. The great object is to determine on the real merits of the cause, uninfluenced by any personal considerations; if, therefore, the jury could be perfectly ignorant of the person in trial, a just decision would be more probable. From such motives did the wise Athenians so constitute the famed Areopagus, that, when in judgment, this court should sit at midnight, and in total darkness, that the decision might be on the thing, and not on the person. Further, said the gentleman, it has been said, because the Constitution does not expressly provide for an indictment by grand jury in criminal cases, therefore some officer under this government will be authorized to file informations, and bring any man to jeopardy of his life, and indictment by grand jury will be disused. If gentlemen who pretend such fears will look into the constitution of Massachusetts, they will see that no provision is therein made for an indictment by grand jury, or to oppose the danger of an attorney-general filing informations; yet no difficulty or danger has arisen to the people of this commonwealth from this defect, if gentlemen please to call it so. If gentlemen would be candid, and not consider that, wherever Congress may possibly abuse power, they certainly will, there would be no difficulty in the minds of any in adopting the proposed Constitution.

### **Mr. DAWES**

Said, he did not see that the right of trial by jury was taken away by the article. The word *court* does not, either by a popular or technical construction, exclude the use of a jury to try facts.

When people, in common language, talk of a trial at the *Court* of Common Pleas, or the Supreme Judicial *Court*, do they not include all the branches and members of such court — the *jurors* as well as the judges? They certainly do, whether they mention the jurors expressly or not. Our state legislators have construed the word *court* in the same way; for they have given appeals from a justice of peace to the Court of Common Pleas, and from thence to the Supreme Court, without saying any thing of the jury; but in cases which, almost time out of mind, have been tried without jury, there the jurisdiction is given expressly to the justices of a particular court, as may be instanced by suits upon the absconding act, so called.

Gentlemen have compared the article under consideration to that power which the British claimed, and we resisted, at the revolution; namely, the power of trying the Americans without a jury. But surely there was no parallel in the cases; it was criminal cases in which they attempted to make this abuse of power. Mr. D. mentioned one example of this, which, though young, he well remembered; and that was the case of Nickerson, the pirate, who was tried without a jury, and whose judges were the governors of Massachusetts and of some neighboring provinces, together with Admiral Montague, and some gentlemen of distinction. Although this trial was without a jury, yet, as it was a trial upon the civil law, there was not so much clamor about it as otherwise there might have been; but still it was disagreeable to the people, and was one of the then complaints. But the trial by jury was not attempted to be taken from civil causes. It was no object of power, whether one subject's property was lessened, while another's was increased; nor can it be now an object with the federal legislature. What interest can they have in constituting a judiciary, to proceed in civil causes without a trial by jury? In criminal causes, by the proposed government, there must be a jury. It is asked, Why is not the Constitution as explicit in securing the right of jury in civil as in criminal cases? The answer is, Because it was out of the power of the Convention. The several states differ so widely in their modes of trial, some states using a jury in causes wherein other states employ only their judges, that the Convention have very wisely left it to the federal legislature to make such regulations as shall, as far as possible, accommodate the whole. Thus our own state constitution authorizes the General Court to erect judicatories, but leaves the nature, number, and extent of them, wholly to the discretion of the legislature. The bill of rights, indeed, secures the trial by jury, in civil causes, except in cases where a contrary practice has obtained. Such a clause as this some gentlemen wish were inserted in the proposed Constitution, but such a clause would be abused in that Constitution, as has been clearly stated by the honorable gentleman from Charlestown, (Mr. Gorham,) because the "exception of all cases where a jury have not heretofore been used," would include almost all cases that could be mentioned, when applied to all the states, for they have severally differed in the kinds of causes where they have tried without a jury.

### **Gen. HEATH.**

Mr. President, by my indisposition and absence, I have lost several important opportunities. I have lost the opportunity of expressing my sentiments with a candid freedom, on some of the paragraphs of the system, which have lain heavy on my mind. I have lost the opportunity of expressing my warm approbation on some of the paragraphs. I have lost the opportunity of asking some questions for my own information, touching some of the paragraphs, and which naturally occurred, as the system unfolded. I have lost the opportunity of hearing those judicious, enlightening, and convincing arguments, which have been advanced during the investigation of

the system. This is my misfortune, and I must bear it. The paragraph respecting the migration or importation of such persons as any of the states now existing shall think proper to admit, &c., is one of those considered during my absence, and I have heard nothing on the subject, save what has been mentioned this morning; but I think the gentlemen who have spoken have carried the matter rather too far on both sides. I apprehend that it is not in our power to do any thing for or against those who are in slavery in the Southern States. No gentleman, within these walls, detests every idea of slavery more than I do: it is generally detested by the people of this commonwealth; and I ardently hope that the time will soon come when our brethren in the Southern States will view it as we do, and put a stop to it; but to this we have no right to compel them. Two questions naturally arise: If we ratify the Constitution, shall we do any thing by our act to hold the blacks in slavery? or shall we become the partakers of other men's sins? I think, neither of them. Each state is sovereign and independent to a certain degree, and the states have a right, and they will regulate their own internal affairs as to themselves appears proper; and shall we refuse to eat, or to drink, or to be united, with those who do not think, or act, just as we do? Surely not. We are not, in this case, partakers of other men's sins; for in nothing do we voluntarily encourage the slavery of our fellow-men. A restriction is laid on the federal government, which could not be avoided, and a union take place. The federal Convention went as far as they could. The migration or importation, &c., is confined to the states now *existing only*; new states cannot claim it. Congress, by their ordinance for erecting new states, some time since, declared that the new states shall be republican, and that there shall be no slavery in them. But whether those in slavery in the Southern States will be emancipated after the year 1808, I do not pretend to determine. I rather doubt it.

After the 5th article was read at the table, —

### **The Hon. Mr. KING**

Observed, that he believed gentlemen had not, in their objections to the Constitution, recollected that this article was a part of it; for many of the arguments of gentlemen were founded on the idea of future amendments being impracticable. The honorable gentleman observed on the superior excellence of the proposed Constitution in this particular, and called upon gentlemen to produce an instance, in any other national constitution, where the people had so fair an opportunity to correct any abuse which might take place in the future administration of the government under it.

### **Dr. JARVIS.**

Mr. President, I cannot suffer the present article to be passed, without rising to express my entire and perfect approbation of it. Whatever may have been my private opinion of any other part, or whatever faults or imperfections I have remarked, or fancied I have seen, in any other instance, here, sir, I have found complete satisfaction: this has been a resting place, on which I have reposed myself in the fullest security, whenever a doubt has occurred, in considering any other passage in the proposed Constitution. The honorable gentleman last speaking has called upon those persons who are opposed to our receiving the present system, to show another government, in which such a wise precaution has been taken to secure to the people the right of making such alterations and amendments, in a peaceable way, as experience shall have proved to be

necessary. Allow me to say, sir, as far as the narrow limits of my own information extend, I know of no such example. In other countries, sir, — unhappily for mankind, — the history of their respective revolutions has been written in blood; and it is in this only that any great or important change in our political situation has been effected, without public commotions. When we shall have adopted the Constitution before us, we shall have in this article an adequate provision for all the purposes of political reformation. If, in the course of its operation, this government shall appear to be too severe, here are the means by which this severity may be assuaged and corrected. If, on the other hand, it shall become too languid in its movements, here, again, we have a method designated, by which a new portion of health and spirit may be infused into the Constitution.

There is, sir, another view, which I have long since taken of this subject, which has produced the fullest conviction, in my own mind, in favor of our receiving the government which we have now in contemplation. Should it be rejected, I beg gentlemen would observe, that a concurrence of all the states must be had before a new convention can be called to form another Constitution; but the present article provides, upon nine states' concurring in any alteration or amendment to be proposed either by Congress or any future convention, that this alteration shall be a part of the Constitution, equally powerful and obligatory with any other part. If it be alleged that this union is not likely to happen, will it be more likely that a union of a greater number of concurring sentiments may be had, as must be, in case we reject the Constitution in hopes of a better? But that this is practicable, we may safely appeal to the history of this country as a proof, in the last twenty years. We have united against the British; we have united in calling the late federal Convention; and we may certainly unite again in such alterations as in reason shall appear to be important for the peace and happiness of America.

In the constitution of this state, the article providing for alterations is limited in its operation to a given time; but in the present Constitution, the article is perfectly at large, unconfined to any period, and may admit of measures being taken in any moment after it is adopted. In this point it has undoubtedly the advantage. I shall not sit down, sir, without repeating, that, as it is clearly more difficult for twelve states to agree to another convention, than for nine to unite in favor of amendments, so it is certainly better to receive the present Constitution, in the hope of its being amended, than it would be to reject it altogether, with, perhaps, the vain expectation of obtaining another more agreeable than the present. I see no fallacy in the argument, Mr. President; but, if there is, permit me to call upon any gentleman to point it out, in order that it may be corrected; for, at present, it seems to me of such force as to give me entire satisfaction.

In the conversation on Thursday, on the sixth article which provides that "no religious test shall ever be required as a qualification to any office," &c., several gentlemen urged that it was a departure from the principles of our forefathers, who came here for the preservation of their religion; and that it would admit deists, atheists, &c., into the general government; and, people being apt to imitate the examples of the court, these principles would be disseminated, and, of course, a corruption of morals ensue. Gentlemen on the other side applauded the liberality of the clause, and represented, in striking colors, the impropriety, and almost impiety, of the requisition of a test, as practised in Great Britain and elsewhere. In this conversation, the following is the substance of the observations of the

## Rev. Mr. SHUTE.

Mr. President, to object to the latter part of the paragraph under consideration, which excludes a religious test, is, I am sensible, very popular; for the most of men, somehow, are rigidly tenacious of their own sentiments in religion, and disposed to impose them upon others as the *standard* of truth. If, in my sentiments upon the point in view, I should differ from some in this honorable body, I only wish from them the exercise of that candor, with which true religion is adapted to inspire the honest and well-disposed mind.

To establish a religious test as a qualification for offices in the proposed federal Constitution, it appears to me, sir, would be attended with injurious consequences to some individuals, and with no advantage to the *whole*.

By the injurious consequences to individuals, I mean, that some, who, in every other respect, are qualified to fill some important post in government, will be excluded by their not being able to stand the religious test; which I take to be a privation of part of their civil rights.

Nor is there to me any conceivable advantage, sir, that would result to the whole from such a test. Unprincipled and dishonest men will not hesitate to subscribe to *any thing* that may open the way for their advancement, and put them into a situation the better to execute their base and iniquitous designs. Honest men alone, therefore, however well qualified to serve the public, would be excluded by it, and their country be deprived of the benefit of their abilities.

In this great and extensive empire, there is, and will be, a great variety of sentiments in religion among its inhabitants. Upon the plan of a religious test, the question, I think, must be, Who shall be excluded from national trusts? Whatever answer bigotry may suggest, the dictates of candor and equity, I conceive, will be, *None*.

Far from limiting my charity and confidence to men of my own denomination in religion, I suppose, and I believe, sir, that there are worthy characters among men of every denomination — among the Quakers, the Baptists, the Church of England, the Papists; and even among those who have no other guide, in the way to virtue and heaven, than the dictates of natural religion.

I must therefore think, sir, that the proposed plan of government, in this particular, is wisely constructed; that, as all have an equal claim to the blessings of the government under which they live, and which they support, so none should be excluded from them for being of any particular denomination in religion.

The presumption is, that the eyes of the people will be upon the faithful in the land; and, from a regard to their own safety, they will choose for their rulers men of known abilities, of known probity, of good moral characters. The apostle Peter tells us that God is no respecter of persons, but, in every nation, he that feareth him, and worketh righteousness, is *acceptable* to him. And I know of no reason why men of such a character, in a community of whatever denomination in religion, *caeteris paribus*, with other suitable qualifications, should not be *acceptable* to the people, and why they may not be employed by them with safety and advantage in the important

offices of government. The exclusion of a religious test in the proposed Constitution, therefore, clearly appears to me, sir, to be in favor of its adoption.

**Col. JONES (of Bristol)**

Thought, that the rulers ought to believe in God or Christ, and that, however a test may be prostituted in England, yet he thought, if our public men were to be of those who had a good standing in the church, it would be happy for the United States, and that a person could not be a good man without being a good Christian.

The conversation on the Constitution, by paragraphs, being ended,

**Mr. PARSONS**

Moved, *that this Convention do assent to, and ratify, this Constitution.*

**Mr. NEAL**

Rose, and said, that, as the Constitution at large was now under consideration, he would just remark, that the article which respected the Africans was the one which lay on his mind; and, unless his objections to that were removed, it must, how much soever he liked the other parts of the Constitution, be a sufficient reason for him to give his negative to it.

**Col. JONES**

Said, that one of his principal objections was, the omission of a religious test.

**Rev. Mr. PAYSON.**

Mr. President, after what has been observed, relating to a religious test, by gentlemen of acknowledged abilities, I did not expect that it would again be mentioned, as an objection to the proposed Constitution, that such a test was not required as a qualification for office. Such were the abilities and integrity of the gentlemen who constructed the Constitution, as not to admit of the presumption, that they would have betrayed so much vanity as to attempt to erect bulwarks and barriers to the throne of God. Relying on the candor of this Convention, I shall take the liberty to express my sentiments on the nature of a religious test, and shall endeavor to do it in such propositions as will meet the approbation of every mind.

The great object of religion being God supreme, and the seat of religion in man being the heart or conscience, *i. e.*, the reason God has given us, employed on our moral actions, in their most important consequences, as related to the tribunal of God, hence I infer that God alone is the God of the conscience, and, consequently, attempts to erect human tribunals for the consciences of men are impious encroachments upon the prerogatives of God. Upon these principles, had there been a religious test as a qualification for office, it would, in my opinion, have been a great blemish upon the instrument.

**Gen. HEATH.**

## **NOTE**

Mr. President, after a long and painful investigation of the federal Constitution, by paragraphs, this honorable Convention are drawing nigh to the ultimate question — a question as momentous as ever invited the attention of man. We are soon to decide on a system of government, digested, not for the people of the commonwealth of Massachusetts only — not for the present people of the United States only — but, in addition to these, for all those states which may hereafter rise into existence within the jurisdiction of the United States, and for millions of people yet unborn; a system of government, not for a nation of slaves, but for a people as free and virtuous as any on earth; not for a conquered nation, subdued to our will, but for a people who have fought, who have bled, and who have conquered; who, under the smiles of Heaven, have established their independence and sovereignty, and have taken equal rank among the nations of the earth. In short, sir, it is a system of government for ourselves and for our children, for all that is near and dear to us in life; and on the decision of the question is suspended our political prosperity or infelicity, perhaps our existence as a nation. What can be more solemn? What can be more interesting? Every thing depends on our union. I know that some have supposed, that, although the union should be broken, particular states may retain their importance; but this cannot be. The strongest-nerved state, even the right arm, if separated from the body, must wither. If the great union be broken, our country, as a nation, perishes; and if our country so perishes, it will be as impossible to save a particular state as to preserve one of the fingers of a mortified hand.

By one of the paragraphs of the system, it is declared that the ratifications of the conventions of nine states shall be sufficient for the establishment of the Constitution between the states so ratifying the same. But, sir, how happy will it be, if not only nine, but even all the states, should ratify it! It will be a happy circumstance if only a small majority of this Convention should ratify the federal system; but how much more happy if we could be unanimous! It will be a happy circumstance if a majority of the people of this commonwealth should be in favor of the federal system; but how much more so, if they should be unanimous! and, if there are any means whereby they may be united, every exertion should be made to effect it. I presume, sir, that there is not a single gentleman within these walls who does not wish for a federal government — for an efficient federal government; and that this government should be possessed of every power necessary to enable it to shed on the people the benign influence of a good government. But I have observed, from the first, that many gentlemen appear opposed to the system; and this, I apprehend, arises from their objections to some particular parts of it. Is there not a way in which their minds may be relieved from embarrassment? I think there is; and if there is, no exertions should be spared in endeavoring to do it.

If we should ratify the Constitution, and instruct our first members to Congress to exert their endeavors to have such checks and guards provided as appear to be necessary in some of the paragraphs of the Constitution, communicate what we may judge proper to our sister states, and request their concurrence, — is there not the highest probability that every thing which we wish may be effectually secured? I think there is; and I cannot but natter myself that in this way the gentlemen of the Convention will have the difficulties under which they now labor removed from their minds. We shall be united: the people of this commonwealth and our sister states may

be united. Permit me, therefore, most earnestly to recommend it to the serious consideration of every gentleman in this honorable Convention.

After Gen. Heath sat down, his excellency,

**The PRESIDENT, John Hancock**

## **NOTEZ**

Rose, and observed, that he was conscious of the impropriety, situated as he was, of his entering into the deliberations of the Convention; that, unfortunately, through painful indisposition of body, he had been prevented from giving his attendance in his place, but, from the information he had received, and from the papers, there appeared to him to be a great dissimilarity of sentiments in the Convention. To remove the objections of some gentlemen, he felt himself induced, he said, to hazard a proposition for their consideration; which, with the permission of the Convention, he would offer in the afternoon.

*Afternoon.* —

(When the Convention met in the afternoon, his excellency, the PRESIDENT, observed, that) A motion had been made and seconded, that this Convention do assent to and ratify the Constitution which had been under consideration; and that he had, in the former part of the day, intimated his intention of submitting a proposition to the Convention. My motive, says he, arises from my earnest desire to this Convention, my fellow-citizens, and the public at large, that this Convention may adopt such a form of government as may extend its good influence to every part of the United States, and advance the prosperity of the whole world. His situation, his excellency said, had not permitted him to enter into the debates of this Convention: it, however, appeared to him necessary, from what had been advanced in them, to adopt the form of government proposed; but, observing a diversity of sentiment in the gentlemen of the Convention, he had frequently had conversation with them on the subject, and from this conversation he was induced to propose to them, whether the introduction of some general amendments would not be attended with the happiest consequences. For that purpose, he should, with the leave of the honorable Convention, submit to their consideration a proposition, in order to remove the doubts and quiet the apprehensions of gentlemen; and if, in any degree, the object should be acquired, he should feel himself perfectly satisfied. He should therefore submit them; for he was, he said, unable to go more largely into the subject, if his abilities would permit him; relying on the candor of the Convention to bear him witness that his wishes for a good constitution were sincere. [*His excellency then read his proposition.*] — This, gentlemen, concluded his excellency, is the proposition which I had to make; and I submit it to your consideration, with the sincere wish that it may have a tendency to promote a spirit of union.

[The proposition submitted by his excellency having been committed to a large committee, who reported some amendments, we think it expedient to refer the reader to the form of ratification for it.]

**Hon. Mr. ADAMS.**

Mr. President, I feel myself happy in contemplating the idea that many benefits will result from your excellency's conciliatory proposition to this commonwealth and to the United States; and I think it ought to precede the motion made by the gentleman from Newburyport, and to be at this time considered by the Convention. I have said that I have had my doubts of this Constitution. I could not digest every part of it as readily as some gentlemen; but this, sir, is my misfortune, not my fault. Other gentlemen have had their doubts; but, in my opinion, the proposition submitted will have a tendency to remove such doubts, and to conciliate the minds of the Convention, and the people without doors. This subject, sir, is of the greatest magnitude, and has employed the attention of every rational man in the United States; but the minds of the people are not so well agreed on it as all of us could wish. A proposal of this sort, coming from Massachusetts, from her importance, will have its weight. Four or five states have considered and ratified the Constitution as it stands; but we know there is a diversity of opinion even in these states, and one of them is greatly agitated. If this Convention should particularize the amendments necessary to be proposed, it appears to me it must have weight in other states, where Conventions have not yet met. I have observed the sentiments of gentlemen on the subject as far as Virginia, and I have found that the objections were similar, in the newspapers, and in some of the Conventions. Considering these circumstances, it appears to me that such a measure will have the most salutary effect throughout the Union. It is of the greatest importance that *America* should still be united in sentiment. I think I have not, heretofore, been unmindful of the advantage of such a union. It is essential that the people should be united in the federal government, to withstand the common enemy, and to preserve their valuable rights and liberties. We find, in the great state of Pennsylvania, one third of the Convention are opposed to it: should, then, there be large minorities in the several states, I should fear the consequences of such disunion.

Sir, there are many parts of it I esteem as highly valuable, particularly the article which empowers Congress to regulate commerce, to form treaties, &c. For want of this power in our national head, our friends are grieved, and our enemies insult us. Our ambassador at the court of London is considered as a mere cipher, instead of the representative of the United States. Therefore it appears to me, that a power to remedy this evil should be given to Congress, and the remedy applied as soon as possible.

The only difficulty on gentlemen's minds is, whether it is best to accept this Constitution on conditional amendments, or to rely on amendments in future, as the Constitution provides. When I look over the article which provides for a revision, I have my doubts. Suppose, sir, nine states accept the Constitution without any conditions at all, and the four states should wish to have amendments, — where will you find nine states to propose, and the legislatures of nine states to agree to, the introduction of amendments? Therefore it seems to me that the expectation of amendments taking place at some future time, will be frustrated. This method, if we take it, will be the most likely to bring about the amendments, as the Conventions of New Hampshire, Rhode Island, New York, Maryland, Virginia, and South Carolina, have not yet met. I apprehend, sir, that these states will be influenced by the proposition which your excellency has submitted, as the resolutions of Massachusetts have ever had their influence. If this should be the case, the necessary amendments would be introduced more early and more safely. From these considerations, as your excellency did not think it proper to make a motion, with submission, I move that the paper read by your excellency be now taken under consideration by the Convention.

The motion being seconded, the proposition was read by the secretary at the table.

### **Dr. TAYLOR**

Liked the idea of amendments; but, he said, he did not see any constitutional door open for the introduction of them by the Convention. He read the several authorities which provided for the meeting of Conventions, but did not see in any of them any power given to propose amendments. We are, he said, therefore, treading on unsafe ground to propose them; we must take the whole, or reject the whole. The honorable gentleman was in favor of the adjournment, and, in a speech of some length, deprecated the consequences, which, he said, must arise, if the Constitution was adopted or rejected by a small majority; and that the expenses which would accrue from the adjournment would not exceed fourpence per poll throughout the commonwealth.

### **Hon. Mr. CABOT**

Rose, and observed, on what fell from the honorable gentleman last speaking, that the reason why no provision for the introduction of amendments was made in the authorities quoted by the honorable gentleman, was, that they were provided for in the 5th article of the Constitution.

**FRIDAY, *February 1, 1788.* —**

### **Mr. BOWDOIN (of Dorchester)**

Observed, that he could not but express his hearty approbation of the propositions made by his excellency, as they would have a tendency to relieve the fears, and quiet the apprehensions, of some very respectable and worthy gentlemen, who had expressed their doubts whether some explanation of certain clauses in the Constitution, and some additional reflections on Congress, similar to those proposed by his excellency, were not necessary. But, he said, as the propositions were incorporated with the great and important question, whether this Convention will adopt and ratify the Constitution, he conceived himself in order, and would, with the permission of the Convention, make a few general observations upon the subject, which were as follows: —

It was an answer of *Solon's*, when he was asked what kind of a constitution he had constructed for the Athenians, that he had prepared as good a constitution of government as the people would bear; clearly intimating that a constitution of government should be relative to the habits, manners, and genius of the people intended to be governed by it. As the particular state governments are relative to the manners and genius of the inhabitants of each state, so ought the general government to be an assemblage of the principles of all the governments; for, without this assemblage of the principles, the general government will not sufficiently apply to the genius of the people confederated; and, therefore, by its meeting, in its operation, with a continual opposition, through this circumstance it must necessarily fail in its execution; because, agreeably to the idea of *Solon*, the people would not bear it. It may not, therefore, be improper to examine whether the federal Constitution proposed has a likeness to the different state constitutions, and such alone as to give the spirit and features of the particular governments; for Baron Montesquieu observes, that all governments ought to be relative to their particular principles, and that "a confederative government ought to be composed of states of the same nature, especially

of the republican kind; " and instances that, as "the spirit of monarchy is war and enlargement of dominion, peace and moderation are the spirit of a republic." These two kinds of government cannot naturally subsist in a confederate republic.

From hence it follows that all the governments of the states in the Union ought to be of the same nature — of the republican kind; and that the general government ought to be an assemblage of the spirit and principles of them all. A short comparison, pointing out the likeness of the general to the particular constitutions, may sufficiently elucidate the subject.

All the constitutions of the states consist of three branches, except as to the legislative powers, which are chiefly vested in two. The powers of government are separated in all, and mutually check each other. These are laid down, as fundamental principles, in the federal Constitution. All power is derived, mediately or immediately, from the people, in all the constitutions. This is the case with the federal Constitution. The electors of representatives to the state governments are electors of representatives to the federal government. The representatives are chosen for two years; so are the representatives to the assemblies of some of the states. The equality of representation is determined in nearly all the states by numbers; so it is in the federal Constitution.

The second branch of the legislature, in some of the states, is similar to the federal Senate, having not only legislative, but executive powers; being a legislating, and, at the same time, an advising body to the executive. Such are the assistants of Rhode Island and Connecticut, and the councils of New Jersey and Georgia. The senators of Virginia and New York are chosen for four years, and so elected that a continual rotation is established, by which one quarter of their respective senates is annually elected, and by which (as one of the constitutions observes) there are more men trained to public business; and there will always be found a number of persons acquainted with the proceedings of the foregoing years, and thereby the public business be more consistently conducted. The federal senators are to be chosen for six years, and there is a rotation so established, for the reasons above mentioned, that one third of the Senate is to be chosen every two years.

The President and Vice-President answer to offices of the same name in some of the states, and to the office of governor and lieutenant-governor in most of the states. As this office is of the utmost importance, the manner of choosing, for the better security of the interests of the Union, is to be by delegates, to be expressly chosen for the purpose, in such manner as the different legislatures may direct. This method of choosing was probably taken from the manner of choosing senators under the constitution of Maryland.

The legislative powers of the President are precisely those of the governors of this state and those of New York — rather negative than positive powers, given with a view to secure the independence of the executive, and to preserve a uniformity in the laws which are committed to them to execute.

The executive powers of the President are very similar to those of the several states, except in those points which relate more particularly to the Union, and respect ambassadors, public ministers, and consuls.

Of the genius of the people of the states, as expressed by their different constitutions of government, if the similarity of each, and the general spirit of governments, concur to point out the policy of a confederate government, by comparing the federal Constitution with those of the several states, can we expect one more applicable to the people, to the different states, and to the purposes of the Union, than the one proposed, unless it should be contended that a union was unnecessary?

"If a republic is small," says Baron Montesquieu, "it is destroyed by a foreign force; if it is large, it is ruined by an internal imperfection" — "*Fato potentiae sua vi nixae.*" And if mankind had not contrived a confederate republic, says the same author, "a constitution that has all the internal advantages of a republican, and the external force of a monarchical government," they would probably have always lived under the tyranny of a single person. Admitting this principle of Baron Montesquieu's, the several states are either too small to be defended against a foreign enemy, or too large for republican constitutions of government. If we apply the first position to the different states, which reason and the experience of the late war point out to be true, a confederate government is necessary. But if we admit the latter position, then the several governments, being in their own nature imperfect, will be necessarily destroyed, from their being too extensive for republican governments.

From whence it follows, if the foregoing principles are true, that we ought to adopt a confederation, presuming the different states well calculated for republican governmental; for, if they are not, their corruption will work their destruction separately; and if they are destined for destruction, from their natural imperfection, it will certainly be more advantageous to have them destroyed collectively than separately, as, in that case, we should fall under one great national government.

But, if the advantages of a confederacy, admitting the principles of it to be good, are duly considered, — that is, will give security and permanency to the several states, not only against internal disputes, but wars with one another; if the wars in Europe, arising from jarring and opposing interests, are a public calamity; if it is for the benefit of ourselves, and future generations, to prevent their horrid devastations on this continent, — to secure the states against such calamities, it will be necessary to establish a general government, to adjust the disputes and to settle the differences between state and state; for, without a confederacy, the several states, being distinct sovereignties, would be in a state of nature, with respect to each other; and the law of nature, which is the right of the strongest, would determine the disputes that might arise. To prevent the operation of so unjust a title; to afford protection to the weakest state against the strongest; to secure the rights of all against the encroachments of any of the states; to balance the powers of all the states, by each giving up a portion of its sovereignty, and thereby better to secure the remainder of it, are amongst the main objects of a confederacy.

But the advantages of a union of the states are not confined to mere safety from within or without. They extend not only to the welfare of each state, but even to the interest of each individual of the states.

The manner in which the states have suffered, for the want of a general regulation of trade, is so notorious, that little need be said upon the subject, to prove that the continent has been exhausted

of its wealth, for the want of it, and, if the evil, from the not regulating it, is not speedily remedied, by placing the necessary powers in the hands of Congress, the liberties of the people, or the independence of the states, will be irretrievably lost. The people feeling the inconvenience of systems of government that, instead of relieving, increase their perplexities; instead of regulating trade upon principle; instead of improving the natural advantages of our country, and opening new sources of wealth, our lands have sunk in their value, our trade has languished, our credit has been daily reducing, and our resources are almost annihilated, — can we expect, in such a state, that the people will long continue their allegiance to systems of government, whether arising from the weakness of their administration, or the insufficiency of their principles, which entail on them so many calamities? I presume not. The well-being of trade depends on a proper regulation of it; on the success of trade depends wealth; on wealth, the value of lands; the strength, the welfare, and happiness of a country, upon the numbers, the ease, and independence of its yeomanry. For the want of this have our taxes most oppressively fallen upon the most useful of all our citizens — our husbandmen; while trade, for the want of its being confined to proper objects, has served rather to ruin than to enrich those that have carried it on.

Shall we, then, let causeless jealousies arise, and distract our councils? shall we let partial views and local prejudices influence our decisions? or shall we, with a becoming wisdom, determine to adopt the federal Constitution proposed, and thereby confirm the liberty, the safety, and the welfare of our country?

I might go on, sir, and point out the fatal consequences of rejecting the Constitution; but, as I have already intruded too much upon the time and patience of the Convention, I shall, for the present, forbear any further observations, requesting the candor of the Convention for those I have already made.

**Hon. Mr. ADAMS.**

## **NOTE**

As your excellency was pleased yesterday to offer, for the consideration of this Convention, certain propositions intended to accompany the ratification of the Constitution before us, I did myself the honor to bring them forward by a regular motion, not only from the respect due to your excellency, but from a clear conviction, in my own mind, that they would tend to effect the salutary and important purposes which you had in view — "the removing the fears and quieting the apprehensions of many of the good people of this commonwealth, and the more effectually guarding against an undue administration of the federal government."

I beg leave, sir, more particularly to consider those propositions, and, in a very few words, to express my own opinion, that they must have a strong tendency to ease the minds of gentlemen, who wish for the immediate operation of some essential parts of the proposed Constitution, as well as the most speedy and effectual means of obtaining alterations in some other parts of it, which they are solicitous should be made. I will not repeat the reasons I offered when the motion was made, which convinced me that the measure now under consideration will have a more speedy as well as a more certain influence, in effecting the purpose last mentioned, than the measure proposed in the Constitution before us.

Your excellency's first proposition is, "that it be explicitly declared, that all powers not expressly delegated to Congress are reserved to the several states, to be by them exercised." This appears, to my mind, to be a summary of a bill of rights, which gentlemen are anxious to obtain. It removes a doubt which many have entertained respecting the matter, and gives assurance that, if any law made by the federal government shall be extended beyond the power granted by the proposed Constitution, and inconsistent with the constitution of this state, it will be an error, and adjudged by the courts of law to be void. It is consonant with the second article in the present Confederation, that each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not, by this Confederation, expressly delegated to the United States in Congress assembled. I have long considered the watchfulness of the people over the conduct of their rulers the strongest guard against the encroachments of power; and I hope the people of this country will always be thus watchful.

Another of your excellency's propositions is calculated to quiet the apprehensions of gentlemen lest Congress should exercise an unreasonable control over the state legislatures, with regard to the time, place, and manner of holding elections, which, by the 4th section of the 1st article, are to be prescribed in each state by the legislature thereof, subject to the control of Congress. I have had my fears lest this control should infringe the freedom of elections, which ought ever to be held sacred. Gentlemen who have objected to this controlling power in Congress have expressed their wishes that it had been restricted to such states as may neglect or refuse that power vested in them, and to be exercised by them if they please. Your excellency proposes, in substance, the same restriction, which, I should think, cannot but meet with their full approbation.

The power to be given to Congress to lay and collect taxes, duties, imposts, and excises, has alarmed the minds of some gentlemen. They tell you, sir, that the exercise of the power of laying and collecting direct taxes might greatly distress the several states, and render them incapable of raising moneys for the payment of their respective state debts, or for any purpose. They say the impost and excise may be made adequate to the public emergencies in the time of peace, and ask why the laying direct taxes may not be confined to a time of war. You are pleased to propose to us that it be a recommendation, that "Congress do not lay direct taxes, but when the moneys arising from the impost and excise shall be insufficient for the public exigencies." The prospect of approaching war might necessarily create an expense beyond the productions of impost and excise. How, then, would the government have the necessary means of providing for the public defence? Must they not have recourse to other resources besides impost and excise? The people, while they watch for their own safety, must and will have a just confidence in a legislature of their own election. The approach of war is seldom, if ever, without observation: it is generally observed by the people at large; and I believe no legislature of a free country would venture a measure which should directly touch the purses of the people, under a mere pretence, or unless they could show, to the people's satisfaction, that there had been, in fact, a real public exigency to justify it.

Your excellency's next proposition is, to introduce the indictment of a grand jury, before any person shall be tried for any crime, by which he may incur infamous punishment, or loss of life; and it is followed by another, which recommends a trial by Jury in civil actions between citizens of different states, if either of the parties shall request it. These, and several others which I have mentioned, are so evidently beneficial as to need no comment of mine. And they are all, in every

particular, of so general a nature, and so equally interesting to every state, that I cannot but persuade myself to think they would all readily join with us in the measure proposed by your excellency, if we should now adopt it. Gentlemen may make additional propositions if they think fit. It is presumed that we shall exercise candor towards each other; and that whilst, on the one hand, gentlemen will cheerfully agree to any proposition intended to promote a general union, which may not be inconsistent with their own mature judgment, others will avoid the making such as may be needless, or tend to embarrass the minds of the people of this commonwealth and our sister states, and thereby not only frustrate your excellency's wise intention, but endanger the loss of that degree of reputation, which, I flatter myself, this commonwealth has justly sustained.

### **Mr. NASON.**

Mr. President, I feel myself happy that your excellency has been placed, by the free suffrage of your fellow-citizens, at the head of this government. I also feel myself happy that your excellency has been placed in the chair of this honorable Convention; and I feel a confidence that the proposition submitted to our consideration yesterday, by your excellency, has for its object the good of your country. But, sir, as I have not had an opportunity leisurely to consider it, I shall pass it over, and take a short view of the Constitution at large, which is under consideration; though my abilities, sir, will not permit me to do justice to my feelings or to my constituents. Great Britain, sir, first attempted to enslave us, by declaring her laws supreme, and that she had a right to bind us in all cases whatever. What, sir, roused the Americans to shake off the yoke preparing for them? It was this measure, the power to do which we are now about giving to Congress. And here, sir, I beg the indulgence of this honorable body to permit me to make a short apostrophe to Liberty. O Liberty! thou greatest good! thou fairest property! with thee I wish to live — with thee I wish to die! Pardon me if I drop a tear on the peril to which she is exposed; I cannot, sir, see this brightest of jewels tarnished — a jewel worth ten thousand worlds; and shall we part with it so soon? O no. Gentlemen ask, "Can it be supposed that a Constitution so pregnant with danger could come from the hands of those who framed it?" Indeed, sir, I am suspicious of my own judgment, when I contemplate this idea — when I see the list of illustrious names annexed to it; but, sir, my duty to my constituents obliges me to oppose the measure they recommended, as obnoxious to their liberty and safety.

When, sir, we dissolved the political bands which connected us with Great Britain, we were in a state of nature. We then formed and adopted the Confederation, which must be considered as a sacred instrument. This confederates us under one head, as sovereign and independent states. Now, sir, if we give Congress power to dissolve that Confederation, to what can we trust? If a nation consent thus to treat their most solemn compacts, who will ever trust them? Let us, sir, begin with this Constitution, and see what it is. And first, "We, the people of the United States, do," &c. If this, sir, does not go to an annihilation of the state governments, and to a perfect consolidation of the whole Union, I do not know what does. What! shall we consent to this? Can ten, twenty, or a hundred persons in this state, who have taken the oath of allegiance to it, dispense with this oath? Gentlemen may talk as they please of dispensing, in certain cases, with oaths; but, sir, with me they are sacred things. We are under oath: we have sworn that Massachusetts is a sovereign and independent state. How, then, can we vote for this Constitution, that destroys that sovereignty?

## **Col. VARNUM**

Begged leave to set the worthy gentleman right. The very oath, he said, which the gentleman had mentioned, provides an exception for the power to be granted to Congress.

## **Mr. NASON**

Well, continued Mr. NASON, to go on. Mr. President, let us consider the Constitution without a bill of rights. When I give up any of my natural rights, it is for the security of the rest; but here is not one right secured, although many are neglected.

With respect to biennial elections, the paragraph is rather loosely expressed. I am a little in favor of our ancient custom. Gentlemen say they are convinced that the alteration is necessary: it may be so; when I see better, I will join with them.

To go on. Representation and taxation to be apportioned according to numbers. This, sir, I am opposed to: it is unequal. I will show an instance in point. We know for certainty that, in the town of Brookline, persons are better able to pay their taxes than in the parts I represent. Suppose the tax is laid on polls: why, the people of the former place will pay their tax ten times as easy as the latter — thus helping that part of the community which stands in the least need. of help. On this footing, the poor pay as much as the rich; and in this a way is laid, that five slaves shall be rated no more than three children. Let gentlemen consider this: a farmer takes three small orphans, on charity, to bring up; they are bound to him: when they arrive at twenty-one years of age, he gives each of them a couple of suits of clothes, a cow, and two or three young cattle: we are rated as much for these as a farmer in Virginia is for five slaves, whom he holds for life — they and their posterity — the males and the she ones too. The Senate, Mr. President, are to be chosen two from each state. This, sir, puts the smaller states on a footing with the larger, when the states have to pay according to their numbers. New Hampshire does not pay a fourth part as much as Massachusetts. We must, therefore, to support the dignity of the Union, pay four times as much as New Hampshire, and almost fourteen times as much as Georgia, who, we see, are equally represented with us.

The term, sir, for which the Senate is chosen, is a grievance. It is too long to trust any body of men with power. It is impossible but that such men will be tenacious of their places; they are to be raised to a lofty eminence, and they will be loath to come down; and, in the course of six years, may, by management, have it in their power to create officers, and obtain influence enough to get in again, and so for life. When we felt the hand of British oppression upon us, we were so Jealous of rulers, as to declare them eligible but for three years in six. In this constitution we forget this principle. I, sir, think that rulers ought, at short periods, to return to private life, that they may know how to feel for and regard their fellow-creatures. In six years, sir, and at a great distance, they will quite forget them; —

"For time and absence cure the purest love."

We are apt to forget our friends, except when we are conversing with them.

We now come, sir, to the 4th section. Let us see: the time, place, and manner of holding elections, shall be prescribed in each state by the legislature thereof. No objections to this: but, sir, after *the flash of lightning comes the peal of thunder*. "But Congress may at any time alter them," &c. Here it is, Mr. President: this is the article which is to make Congress omnipotent. Gentlemen say, this is the greatest beauty of the Constitution; this is the greatest security for the people; this is the all in all. Such language have I heard in this house; but, sir, I say, by this power Congress may, if they please, order the election of federal representatives for Massachusetts to be at Great Barrington or Machias; and at such a time, too, as shall put it in the power of a few artful and designing men to get themselves elected at their pleasure.

## GUNS

The 8th section, Mr. President, provides that Congress shall have power to lay and collect taxes, duties, imposts, excises, &c. We may, sir, be poor; we may not be able to pay these taxes, &c.; we must have a little meal, and a little meat, whereon to live, and save a little for a rainy day. But what follows? Let us see. To raise and support armies. Here, sir, comes the key to unlock this cabinet; here is the mean by which you will be made to pay taxes! But will ye, my countrymen, submit to this? Suffer me, sir, to say a few words on the fatal effects of standing armies, that bane of republican governments. A standing army! Was it not with this that Caesar passed the *Rubicon*, and laid prostrate the liberties of his country? By this have seven eighths of the once free nations of the globe been brought into bondage! Time would fail me, were I to attempt to recapitulate the havoc made in the world by standing armies. Britain attempted to enforce her arbitrary measures by a standing army. But, sir, we had patriots then who alarmed us of our danger; who showed us the serpent, and bade us beware of it. Shall I name them? I fear I shall offend your excellency, but I cannot avoid it. I must. We had a Hancock, an Adams, and a Warren. Our sister states, too, produced a Randolph, a Washington, a Greene, and a Montgomery, who led us in our way. Some of these have given up their lives in defence of the liberties of their country; and my prayer to God is, that, when this race of illustrious patriots shall have bid adieu to the world, from their dust, as from the sacred ashes of the phoenix, another race may arise, who shall take our posterity by the hand, and lead them on to trample on the necks of those who shall dare to infringe on their liberties. Sir, had I a voice like Jove, I would proclaim it throughout the world; and had I an arm like Jove, I would hurl from the globe those villains that would dare attempt to establish in our country a standing army. I wish, sir, that the gentlemen of Boston would bring to their minds the fatal evening of the 5th of March, 1770, when by standing troops they lost five of their fellow-townsmen. I will ask them, What price can atone for their lives? What money can make satisfaction for the loss? The same causes produce the same effects. An army may be raised on pretence of helping a friend; or many pretences might be used. That night, sir, ought to be a sufficient warning against standing armies, except in cases of great emergency. They are too frequently used for no other purpose than dragooning the people into slavery. But I beseech you, my countrymen, for the sake of your posterity, to act like those worthy men who have stood forth in defence of the rights of mankind, and show to the world that you will not submit to tyranny. What occasion have we for standing armies? We fear no foe. If one should come upon us, we have a militia, which is our bulwark. Let Lexington witness that we have the means of defence among ourselves. If, during the last winter, there was not much alacrity shown by the militia in turning out, we must consider that they were going to fight their countrymen. Do you, sir, suppose that, had a British army invaded us at that time, such

supineness would have been discovered? No, sir; to our enemies' dismay and discomfort, they would have felt the contrary; but against deluded, infatuated men they did not wish to exert their valor or their strength. Therefore, sir, I am utterly opposed to a standing army in time of peace.

The paragraph that gives Congress power to suspend the writ of *habeas corpus* claims a little attention. This is a great bulwark — a great privilege indeed. We ought not, therefore, to give it up on any slight pretence. Let us see: how long is it to be suspended? As long as rebellion or invasion shall continue. This is exceeding loose. Why is not the time limited, as is our Constitution? But, sir, its design would then be defeated. It was the intent, and by it we shall give up one of our greatest privileges. Mr. N. concluded by saying, he had much more to say, but, as the house were impatient, he should sit down for the present, to give other gentlemen an opportunity to speak.

### **Judge SUMNER**

Adverting to the pathetic apostrophe of the gentleman last speaking, said, he could with as much sincerity apostrophize — O Government! thou greatest good! thou best of blessings! with thee I wish to live — with thee I wish to die! Thou art as necessary to the support of the political body as meat and bread are to the natural body. The learned judge then turned his attention to the proposition submitted by the president, and said, he sincerely hoped that it would meet the approbation of the Convention, as it appeared to him a remedy for all the difficulties which gentlemen, in the course of the debates, had mentioned. He particularized the objections which had been started, and showed that their removal was provided for in the proposition; and concluded by observing, that the probability was very great, that, if the amendments proposed were recommended by this Convention, they would, on the meeting of the first Congress, be adopted by the general government,

### **Mr. WIDGERY**

Said, he did not see the probability that these amendments would be made, if we had authority to propose them. He considered, he said, that the Convention did not meet for the purpose of recommending amendments, but to adopt or reject the Constitution. He concluded by asking, whether it was probable that those states who had already adopted the Constitution would be likely to submit to amendments.

*Afternoon.* [When the Convention met, a short conversation ensued on the time when the grand question should be taken. It was agreed that it should not be until Tuesday. After this conversation subsided, another took place on the division of the motion, in order that the question of ratifying might be considered separately from the amendments; but nothing final was determined upon.]

### **Judge DANA**

Advocated the proposition submitted by his excellency, the president. It contained, he said, the amendments generally wished for, as they were not of a local nature, but extended to every part of the Union. If they were recommended to be adopted by this Convention, it was very probable

that two thirds of the Congress would concur in promising them; or that two thirds of the legislatures of the Several states would apply for the call of a convention to consider them, agreeably to the mode pointed out in the Constitution; and said he did not think that gentlemen would wish to reject the whole of the system, because some part of it did not please them. He then went into consideration of the advantages which would ensue, from its adoption, to the United States, to the individual states, and to the several classes of citizens, and concluded by representing, in a lively manner, the evils to the whole continent, and to the Northern States in particular, which must be the unavoidable attendants on the present system of general government.

### **Mr. RUSSELL**

Rose, he said, with diffidence, to offer his sentiments on the subject in debate; but he could not, he said, forbear to give his sentiments on the advantage which he apprehended must result from the adoption of the proposed Constitution to this state, and to the United States, in the advancement of their commerce. Mr. R. said, he believed it had always been the policy of trading nations to secure to themselves the advantages of their carrying trade. He observed how tenacious France, Holland, and England, were in this particular, and how beneficial it had proved to them. He then went into an accurate and interesting statement of the quantities of produce which were exported from the several states, and showed the ability of the states to furnish, from among themselves, shipping fully sufficient for the transportation of this produce; which, he observed, if confined, by the general government, to American vessels, — while the restriction would not increase the rates of freightage to the Southern States, as the Northern and Middle States could produce a surplusage of shipping, and a spirit of competition would call forth their resources, — would greatly increase our navigation; furnish us with a great nursery of seamen; give employment not only to the mechanics, in constructing the vessels, and the trades dependent thereon, but to the husbandmen, in the cutting down of trees for timber, and transporting them to the places of building; increase the demand for the products of the land, and for our beef, our pork, our butter, &c.; and give such life and spirit to our commerce as would extend it to all the nations of the world. These, he said, were some of the blessings he anticipated from the adoption of the federal Constitution; and so convinced was he of its utility and necessity, that, while he wished that, on the grand question being put, there might not be one dissenting voice, if he was allowed, he would hold up both hands in favor of it; and he concluded, if his left hand was unwilling to be extended with his right, in this all-important decision, he would cut it off, as unworthy of him, and lest it should infect his whole body.

### **Mr. PIERCE.**

Mr. President, the amendments proposed by your excellency are very agreeable to my opinion, and I should wish to add several more, but will mention but one; and that is, that the Senate should not continue in office more than two years. But, sir, I think that, if the want of these amendments were sufficient for me to vote against the Constitution, the addition, in the manner proposed by your excellency, will not be sufficient for me to vote for it, as it appears to me to be very uncertain whether they ever are a part of the Constitution.

Several gentlemen said a few words each, on the proposition of amendments, which it was acceded to, by gentlemen opposed to the Constitution, was good, but that it was not probable it would be interwoven in the Constitution. Gentlemen on the other side said there was a great probability that it would, from its nature, be also recommended by the several conventions which have not yet convened.

**SATURDAY, *February 2.* —**

**The Hon. Mr. STRONG**

Went into a particular discussion of the several amendments recommended in the proposition submitted by his excellency, each of which he considered with much attention. He anticipated the good effect it must have in conciliating the various sentiments of gentlemen on the subject, and expressed his firm belief that, if it was recommended by the Convention, it would be inserted in the Constitution.

**Gen. THOMPSON**

Said, we have no right to make amendments. It was not, he said, the business we were sent for. He was glad, he said, that gentlemen were now convinced it was not a perfect system, and that it wanted amendments. This, he said, was different from the language they had formerly held. However, as to the amendments, he could not say amen to them, but they might be voted for by some men — he did not say Judases.

Mr. PARSONS, Col. ORNE, Mr. PHILLIPS, the Rev. Mr. NILES, and several other gentlemen, spoke in favor of the proposition, as a conciliatory measure, and the probability of the amendments being adopted. Mr. NASSON, Dr. TAYLOR, Mr. THOMAS, (of Middleboro') and others, though in sentiment with gentlemen on the propriety of their being admitted into the Constitution, did not think it was probable they would be inserted.

Before the Convention adjourned, Gen. Whitney moved that a committee, consisting of two from each county, should be raised, to consider the amendments, or any other that might be proposed, and report thereon. Hon. Mr. Sedgwick seconded the motion.

**Hon. Mr. DALTON.**

Mr. President, I am not opposed to the motion; but, sir, that gentlemen may not again say, as has been the case this day, that the gentlemen who advocate the measure of the proposition were now convinced that amendments to the Constitution are indispensable, I, sir, in my place, say, that I am willing to accept the Constitution as it is; and I am in favor of the motion of proposing amendments, only as it is of a conciliating nature, and not as a concession that amendments are necessary.

The motion was put, and carried unanimously. The following gentlemen were then appointed on the said committee, viz.: —

Hon. Mr. Bowdoin, Mr. Southworth, Mr. Parsons, Hon Mr. Hutchinson — Hon. Mr. Dana, Mr. Winn — Hon. Mr. Strong, Mr. Bodman — Hon. Mr. Turner, Mr. Thomas, of Plymouth — Dr. Smith, Mr. Bourn — Hon. Mr. Spooner, Mr. Bishop — Rev. Dr. Hemmenway, Mr. Barrell — Mr. May-hew, Hon. Mr. Taylor, Hon. Mr. Sprague — Mr. Fox, Mr. Longfellow — Mr. Sewall, Mr. Sylvester — Mr. Lusk, Hon. Mr. Sedgwick.

**MONDAY, *February 4*, P. M. —**

**Rev. Mr. THACHER.**

## **NOTE**

Mr. President, while the different paragraphs of the proposed Constitution have been debated, I have not troubled this honorable Convention with any observations of my own upon the subject. Conscious that there were men of deeper political knowledge, and of better abilities, than myself, I conceived it my duty to attend to their instruction, that, having heard with attention, I might decide with integrity. I view the object before us as of greater moment than ever was known within the memory of man, or that hath been recorded by the historic page. Were we, Mr. President, this day to decide on the lives and fortunes of a hundred of the best citizens of this commonwealth, solemn would that province he; but much more interesting is the present question; for, in this case, not a single city, not a single state, but a continent, wide and extended, may be happy or wretched, according to our judgment; and posterity will either bless us for laying the foundation of a wise and equal government, or curse us for neglecting their important interests, and for forging chains for them, when we disdained to wear them ourselves. Having, therefore, as I trust, a full view of the magnitude of the object, I hope I shall be pardoned if I offer my sentiments with freedom. I am sensible of the prejudices that subsist against the profession to which I belong; but yet, intrusted by my constituents with a solemn charge, I think they have a right to expect from me the reasons why I shall finally consent to ratify the proposed form of government.

There are three circumstances which deserve notice in considering the subject. These are, the necessity that all the states have of some general bond of union; the checks upon the government in the form offered for our adoption; and, lastly, the particular disadvantages to which we shall be exposed if we reject it.

With respect to the first of these considerations, I trust there is no man in his senses, but what will own, that the whole country hath largely felt the want of energy in the general government. While we were at war with Britain, common danger produced a common union; but, the cause being removed, the effect ceased also. Nay, I do not know but we may safely add, that that union, produced by uniform danger, was still inadequate to general and national purposes. This commonwealth, with a generous, disinterested regard to the good of the whole, appeared foremost in the day of danger. At the conclusion of the late war, two thirds of the Continental army were from Massachusetts; their provision and their clothing proceeded, also, in a great measure, from our extraordinary exertions. The people did this in the fullest confidence, that, when peace and tranquillity were restored, from the honor and justice of our sister states our

supernumerary expenses would be abundantly repaid. But, alas! how much hath our expectation been blasted! The Congress, though willing, yet had no power to do us justice. The small district of Rhode Island put a negative upon the collected wisdom of the continent. This was done, not by those who are the patrons of their present infamous system of paper currency, but by that part of them who now call themselves honest men. We have made exertions to stop the importation of foreign luxuries. Our brethren in the neighboring states, from the view of local advantages, have taken occasion to distress us upon the same account. They have encouraged where we have prohibited; and by those iniquitous measures have made our virtue and public spirit an additional cause of our calamity. Nor have our calamities been local; they have reached to all parts of the United States, and have produced dissipation and indigence at home, and contempt in foreign countries. On the one hand, the haughty Spaniard has deprived us of the navigation of the River Mississippi; on the other, the British nation are, by extravagant duties, ruining our fishery. Our sailors are enslaved by the pirates of Algiers. Our credit is reduced to so low an ebb, that American faith is a proverbial expression for perfidy, as Punic faith was among the Romans. Thus have we suffered every species of infamy abroad, and poverty at home. Such, in fact, have been our calamities, as are enough to convince the most skeptical among us of the want of a general government, in which energy and vigor should be established, and at the same time, the rights and liberties of the people preserved.

A Constitution hath been presented to us, which was composed and planned by men, who, in the council and field, have, in the most conspicuous offices, served their country in the late war. It comes authenticated by a man who, without any pecuniary reward, commanded our army, and who retired to a private station with more pleasure than he left it. I do not say, Mr. President, that this proves the form of government to be perfect, or that it is an unanswerable argument that we should adopt it; but it is a reason why we should examine it with care and caution, and that we ought not rashly and precipitately to reject it.

It will be objected, "There are more powers granted than are necessary, and that it tends to destroy the local governments of the particular states, and that it will eventually end either in aristocracy or despotism." To answer the objection, two considerations should be taken into view — the situation of the continent when a Constitution was formed, and the impossibility of preserving a perfect sovereignty in the states, after necessary powers were ceded to a supreme council of the whole. As to the first, let us candidly examine the state of these republics from New Hampshire to Georgia, and see how far vigor and energy were required. During the session of the late Convention, Massachusetts was on the point of civil war. In Vermont and New Hampshire, a great disaffection to their several governments prevailed among the people. New York absolutely refused complying with the requisitions of Congress. In Virginia, armed men endeavored to stop the courts of justice. In South Carolina, creditors, by law, were obliged to receive barren and useless land for contracts made in silver and gold. I pass over the instance of Rhode Island: their conduct was notorious. In some states, laws were made directly against the treaty of peace; in others, statutes were enacted which clashed directly against any federal union — new lands sufficient to discharge a great part of the Continental debt intruded upon by needy adventurers — our frontier settlements exposed to the ravages of the Indians — while the several states were unable or unwilling to relieve their distress. Lay all those circumstances together, and you will find some apology for those gentlemen who framed this Constitution. I trust you may

charitably assign other motives for their conduct, than a design to enslave their country, and to parcel out for themselves its honors and emoluments.

The second consideration deserves its weight. Can these local governments be sufficient to protect us from foreign enemies, or from disaffection at home? Thirteen states are formed already. The same number are probably to be formed from the lands not yet cultivated.

Of the former, yet smaller divisions may be made. The province of Maine hath desired a separation; in time, a separation may take place. Who knows but what the same may happen with respect to the old colony of Plymouth. Now, conceive the number of states increased, their boundaries lessened, their interests clashing; how easy a prey to a foreign power! how liable to war among themselves!

Let these arguments be weighed, and I dare say, sir, there is no man but what would conceive that a coercive power over the whole, searching through all parts of the system, is necessary to the preservation and happiness of the whole people.

But I readily grant all these reasons are not sufficient to surrender up the essential liberties of the people. But do we surrender them? This Constitution hath been compared, both by its defenders and opponents, to the British government. In my view of it, there is a great difference. In Britain, the government is said to consist of three forms — monarchy, aristocracy, and democracy; but, in fact, is but a few removes from absolute despotism. In the crown is vested the power of adding at pleasure to the second branch; of nominating to all the places of honor and emolument; of purchasing, by its immense revenues, the suffrages of the House of Commons. The voice of the people is but the echo of the king; and their boasted privileges lie entirely at his mercy. In this proposed form, each branch of power is derived, either mediately or directly, from the people. The lower house are elected directly by those persons who are qualified to vote for the representatives of the state; and, at the expiration of two years, become private men, unless their past conduct entitles them to a future election. The Senate are elected by the legislatures of the different states, and represent their sovereignty.

These powers are a check on each other, and can never be made either dependent on one another, or independent of the people. The President is chosen by the electors, who are appointed by the people. The high courts of justice arise from the President and Senate; but yet the ministers of them can be removed only upon bad behavior. The independence of judges is one of the most favorable circumstances to public liberty; for when they become the slaves of a venal, corrupt court, and the hirelings of tyranny, all property is precarious, and personal security at an end; a man may be stripped of all his possessions, and murdered, without the forms of law. Thus it appears that all parts of this system arise ultimately from the people, and are still independent of each other. There are other restraints, which, though not directly named in this Constitution, yet are evidently discerned by every man of common observation. **These are, the government of the several states, and the spirit of liberty in the people.** Are we wronged or injured, our immediate representatives are those to whom we ought to apply. Their power and influence will still be great. But should any servants of the people, however eminent their stations, attempt to enslave them, from this spirit of liberty such opposition would arise as would bring them to the scaffold. But, admitting that there are dangers in accepting this general government; yet are there not

greater hazards in rejecting it? Such is, Mr. President, the state of our affairs, that it is not in our power to carve for ourselves. To avoid the greatest and choose the least of these two evils, is all that we can do. What, then, will be the probable effects if this Constitution be rejected? Have we not reason to fear new commotions in this commonwealth? If they arise, can we be always certain that we shall be furnished with a citizen, who, though possessed of extensive influence and the greatest abilities, will make no other use of them than to quiet the tumult of the people, to prevent civil war, and to restore the usual course of law and justice? Are we not in danger from other states, when their interests or prejudices are opposite to ours? And in such scenes of hostile contention, will not some Sylla drench the land in blood, or some Cromwell or Caesar lay our liberties prostrate at his feet? Will not foreign nations attack us in our weak, divided condition, and once more render us provinces to some potentate of Europe? Or will those powers to whom we are indebted lie quiet? They certainly will not. They are now waiting for our decision; but when they once see that our union is broken, and that we are determined to neglect them, they will issue out letters of marque and reprisal, and entirely destroy our commerce.

If this system is broken up, will thirteen, or even nine states, ever agree to another? And will Providence smile on a people who despise the privileges put into their hands, and who neglect the plainest principles of justice and honesty? After all, I by no means pretend that there is complete perfection in this proposed Constitution. Like all other human productions, it hath its faults. Provision is made for an amendment, whenever, from practice, it is found oppressive. I would add, the proposals which his excellency hath condescended to lay before this honorable Convention, respecting future alterations, are real improvements for the better; and we have no reason to doubt but they will be equally attended to by other states, as they lead to common security and preservation.

Some of the gentlemen in the opposition have quoted ancient history, and applied it to the question now under debate. They have shown us the danger which arises from vesting magistrates with too much power. I wish they had gone on to tell the whole truth. They might have shown how nearly licentiousness and tyranny are allied; that they who will not be governed by reason must submit to force: that demagogues, in all free governments, have at first held out an idea of extreme liberty, and have seized on the rights of the people under the mask of patriotism. They might have shown us a republic in which wisdom, virtue, and order, were qualities for which a man was liable to banishment; and, on the other hand, boasting, sedition, and falsehood, the sure road to honor and promotion.

I am sorry that it hath been hinted by some gentlemen in this house, as if there were a combination of the rich, the learned, and those of liberal professions, to establish and support an arbitrary form of government. Far be it from me to retort so uncharitable and unchristian a suggestion. I doubt not but the gentlemen who are of different sentiments from myself, are actuated by the purest motives. Some of them I have the pleasure to be particularly acquainted with, and can safely pronounce them to be men of virtue and honor. They have, no doubt, a laudable concern for the liberties of their country; but I would beg them to remember that extreme jealousy and suspicion may be as fatal to freedom as security and negligence.

With respect to myself, I am conscious of no motive which guides me in this great and solemn question, but what I could justify to my own heart, both on the bed of death, and before the

tribunal of omnipotence. I am a poor man; I have the feelings of a poor man. If there are honors and emoluments in this proposed Constitution, I shall, by my profession and circumstances in life, be forever excluded from them. It is my wish and prayer, that, in the solemn verdict we are very soon to pronounce, we may be directed to that measure which will be for the glory, freedom, and felicity of my country.

I shall trouble this house no further than by joining sincerely in the wish of the honorable gentleman from Tops-ham, that the people, in their day, may know the things which belong to their peace.

[The committee appointed, on Saturday, to consider his excellency's propositions, by their chairman, honorable Mr. Bowdoin, reported a few alterations to the amendments submitted to them; and that, at the decision, the committee consisted of twenty-four, fifteen of whom agreed in the report, seven were against it, one was absent, and one declined giving his opinion. For the report, see the form of ratification, at the end of the debates.]

## **Major LUSK**

Concurred in the idea already thrown out in the debate, that, although the insertion of the amendments in the Constitution was devoutly wished, yet he did not see any reason to suppose they ever would be adopted. Turning from the subject of amendments, the major entered largely into the consideration of the 9th section, and, in the most pathetic and feeling manner, described the miseries of the poor natives of Africa, who are kidnapped and sold for slaves. With the brightest colors he painted their happiness and ease on their native shores, and contrasted them with their wretched, miserable, and unhappy condition, in a state of slavery. From this subject he passed to the article dispensing with the qualification of a religious test, and concluded by saying, that he shuddered at the idea that Roman Catholics, Papists, and Pagans might be introduced into office, and that Popery and the Inquisition may be established in America.

## **Rev. Mr. BACKUS.**

Mr. President, I have said very little in this honorable Convention; but I now beg leave to offer a few thoughts upon some points in the Constitution proposed to us, and I shall begin with the exclusion of any religious test. Many appear to be much concerned about it; but nothing is more evident, both in reason and the Holy Scriptures, than that religion is ever a matter between God and individuals; and, therefore, no man or men can impose any religious test, without invading the essential prerogatives of our Lord Jesus Christ. Ministers first assumed this power under the Christian name; and then Constantine approved of the practice, when he adopted the profession of Christianity, as an engine of state policy. And let the history of all nations be searched from that day to this, and it will appear that the imposing of religious tests hath been the greatest engine of tyranny in the world. And I rejoice to see so many gentlemen, who are now giving in their rights of conscience in this great and important matter. Some serious minds discover a concern lest, if all religious tests should be excluded, the Congress would hereafter establish Popery, or some other tyrannical way of worship. But it is most certain that no such way of worship can be established without any religious test.

Much, sir, hath been said about the importation of *slaves* into this country. I believe that, according to my capacity; no man abhors that wicked practice more than I do; I would gladly make use of all lawful means towards the abolishing of slavery in all parts of the land. But let us consider where we are, and what we are doing. In the Articles of Confederation, no provision was made to hinder the importation of slaves into any of these states; but a door is now open hereafter to do it, and each state is at liberty now to abolish slavery as soon as they please. And let us remember our former connection with Great Britain, from whom many in our land think we ought not to have revolted. How did they carry on the slave trade? I know that the bishop of Gloucester, in an annual sermon in London, in February, 1776, endeavored to justify their tyrannical claims of power over us by casting the reproach of the slave trade upon the Americans. But at the close of the war, the bishop of Chester, in an annual sermon, in February, 1783, ingenuously owned that their nation is the most deeply involved in the guilt of that trade of any nation in the world; and, also, that they have treated their slaves in the West Indies worse than the French or Spaniards have done theirs. Thus slavery grows more and more odious through the world; and, as an honorable gentleman said some days ago, "Though we cannot say that slavery is struck with an apoplexy, yet we may hope it will die with a consumption." And a main source, sir, of that iniquity, hath been an abuse of the covenant of circumcision, which gave the seed of Abraham to destroy the inhabitants of Canaan, and to take their houses, vineyards, and all their estates, as their own; and also to buy and hold others as servants. And, as Christian privileges are greater than those of the Hebrews were, many have imagined that they have a right to seize upon the lands of the heathen, and to destroy or enslave them as far as they could extend their power. And from thence the mystery of iniquity carried many into the practice of making merchandise of slaves and souls of men. But all ought to remember that, when God promised the land of Canaan to Abraham and his seed, he let him know that they were not to take possession of that land until the iniquity of the Amorites was full; and then they did it under the immediate direction of Heaven; and they were as real executors of the judgment of God upon those heathens as any person ever was an executor of a criminal justly condemned. And in doing it they were not allowed to invade the lands of the Edomites, who sprang from Esau, who was not only of the seed of Abraham, but was born at the same birth with Israel; and yet they were not of that church. Neither were Israel allowed to invade the lands of the Moabites, or of the children of Ammon, who were of the seed of Lot. And no officer in Israel had any legislative power, but such as were immediately inspired. Even David, the man after God's own heart, had no legislative power, but only as he was inspired from above; and he is expressly called a *prophet* in the New Testament. And we are to remember that Abraham and his seed, for four hundred years, had no warrant to admit any stranger into that church, but by buying of him as a servant, with money. And it was a great privilege to be bought, and adopted into a religious family for seven years, and then to have their freedom. And that covenant was expressly repealed in various parts of the New Testament, and particularly in the First Epistle to the Corinthians, where it is said, "Ye are bought with a price; therefore glorify God in your body, and in your spirit, which are God's." And again, "Circumcision is nothing, and uncircumcision is nothing, but keeping of the commandments of God. Ye are bought with a price; be not ye the servants of men." Thus the gospel sets all men upon a level, very contrary to the declaration of an honorable gentleman in this house, that "the Bible was contrived for the advantage of a particular order of men."

Another great advantage, sir, in the Constitution before us, is, its excluding all titles of nobility, or hereditary succession of power, which hath been a main engine of tyranny in foreign

countries. But the American revolution was built upon the principle that all men are born with an equal right to liberty and property, and that officers have no right to any power but what is fairly given them by the consent of the people. And in the Constitution now proposed to us, a power is reserved to the people constitutionally to reduce every officer again to a private station; and what a guard is this against their invasion of others' rights, or abusing of their power! Such a door is now opened for the establishment of righteous government, and for securing equal liberty, as never was before opened to any people upon earth.

### **Dr. JARVIS.**

Mr. President, the objections which gentlemen have made to the form of ratification which has been submitted by your excellency, have arisen either from a doubt of our having a right to propose alterations, or from the supposed improbability that any amendments recommended by this assembly will ever become a part of the federal system. If we have no right, sir, to propose alterations, there remains nothing farther to be attempted, but to take the final question, independent of the propositions for amendment. But I hope the mere assertion of any one is not to operate as an argument in this assembly; and we are not yet waiting for evidence to prove this very singular position, which has been so often repeated. If we have a right, sir, to receive or reject the Constitution, surely we have an equal authority to determine in what way this right shall be exercised. It is a maxim, I believe, universally admitted, that, in every instance, the manner in which every power is to be exerted, must be in its nature discretionary with that body to which this power is delegated. If this principle be just, sir, the ground which has been taken to oppose your excellency's proposals, by disputing the right of recommending alterations, must be necessarily relinquished. But gentlemen say, that they find nothing about amendments in the commission under which they are acting, and they conceive it neither agreeable to the resolution of the legislature, nor to the sense of their constituents, that such a scheme should be adopted. Let us inquire, then, sir, under what authority we are acting, and to what tribunal we are amenable. Is it, then, sir, from the late federal Convention that we derive that authority? Is it from Congress, or is it even from the legislature itself? It is from neither, sir. We are convened in right of the people, as their immediate representatives, to execute the most important trust which it is possible to receive; we are accountable, in its execution, to God only, and our own consciences. When gentlemen assert, then, that we have no right to recommend alterations, they must have ideas strangely derogatory to the influence and authority of our constituents, whom we have the honor of representing. But should it be thought there was even a part of the people who conceived we were thus restricted as to the forms of our proceedings, we are still to recollect that their aggregate sense, on this point, can only be determined by the voices of the majority in this Convention. The arguments of those gentlemen who oppose any propositions of amendments, amount simply to this, sir, — that the whole people of Massachusetts, assembled by their delegates, on the most solemn and interesting occasion, are not at liberty to resolve in what form this trust shall be executed. When we reflect seriously and coolly on this point, I think, sir, we shall doubt no longer.

But, with respect to the prospect of these amendments, which are the subject of discussion, being adopted by the first Congress which shall be appointed under the new Constitution, I really think, sir, that it is not only far from being improbable, but is in the highest degree likely. I have thought long and often on the subject of amendments, and I know no way in which they would

be more likely to succeed If they were made conditional to our receiving the proposed Constitution, it has appeared to me that a conditional amendment must operate as a total rejection. As so many other states have received the Constitution as it is, how can it be made to appear that they will not adhere to their own resolutions? and should they remain as warmly and pertinaciously attached to their opinion as we might be decidedly in favor of our own sentiments, a long and painful interval might elapse before we should have the benefit of a federal Constitution. I have never yet heard an argument to remove this difficulty. Permit me to inquire of gentlemen what reason we have to suppose that the states which have already adopted the Constitution will suddenly consent to call a new convention at the request of this state. Are we going to expose the commonwealth to the disagreeable alternative of being forced into a compliance, or of remaining in opposition, provided nine others should agree to receive it? As highly as some persons talk of the force of this state, I believe we should be but a feeble power, unassisted by others, and detached from the general benefit of a national government. We are told that, under the blessing of Providence, we may do much. It is very true, sir, but it must be proved that we shall be most likely to secure the approbation of Heaven by refusing the proposed system.

It has been insinuated, sir, that these amendments have been artfully introduced to lead to a decision which would not otherwise be had. Without stopping to remark on the total want of candor in which such an idea has arisen, let us inquire whether there is even the appearance of reason to support this insinuation. The propositions are annexed, it is true, to the ratification; but the assent is complete and absolute without them. It is not possible it can be otherwise understood by a single member in this honorable body. Gentlemen, therefore, when they make such an unjust observation, do no honor to the sagacity of others. Supposing it possible that any single member can be deceived by such a shallow artifice, permit me to do justice to the purity of intention in which they have arisen, by observing, that I am satisfied nothing can be farther from your excellency's intentions. The propositions are general, and not local; they are not calculated for the peculiar interest of this state, but, with indiscriminate justice, comprehend the circumstances of the individual on the banks of the Savannah, as well as the hardy and industrious husbandman on the margin of the Kennebeck. Why, then, they should not be adopted, I confess I cannot conceive. There is one of them, in a particular manner, which is very agreeable to me. When we talk of our wanting a bill of rights to the new Constitution, the first article proposed must remove every doubt on this head; as, by positively securing what is not expressly delegated, it leaves nothing to the uncertainty of conjecture, or to the refinements of implication, but is an explicit reservation of every right and privilege which is nearest and most agreeable to the people. There has been scarcely an instance where the influence of Massachusetts has not been felt and acknowledged in the Union. In such a case, her voice will be heard, sir, and I am fully in sentiment, if these amendments are not ingrafted on the Constitution, it will be our own fault. The remaining seven states will have our example before them; and there is a high probability that they, or at least some of them, will take our conduct as a precedent, and will perhaps assume the same mode of procedure. Should this be the fact, their influence will be united to ours. But your delegates will, besides, be subjected to a perpetual instruction, until its object is completed; and it will be always in the power of the people and legislature to renew those instructions. But, if they should fall, we must then acquiesce in the decision of the majority; and this is the known condition on which all free governments depend.

Would gentlemen who are opposed to the Constitution wish to have no amendments? This does not agree with their reiterated objections to the proposed system. Or are they afraid, sir, that these propositions will secure a larger majority? On such an occasion we cannot be too generally united. The Constitution is a great political experiment. The amendments have a tendency to remove many objections which have been made to it; and I hope, sir, when it is adopted, they will be annexed to the ratification, in the manner which your excellency has proposed.

**TUESDAY, *February 5.* —**

**Mr. AMES**

Observed that, at length, it is admitted that the Constitution, connected with the amendments, is good. Almost every one, who has appeared against the Constitution, has declared that he approves it, with the *amendments*. One gentleman, who has been distinguished by his zealous opposition, has declared that he would hold up both hands for it, if they could be adopted. I admire this candid manner of discussing the subject, and will endeavor to treat it myself with equal care and fairness. The only question which seems to labor is this: the amendments are not a part of the Constitution, and there is nothing better than a probability to trust to, that they will ever be adopted. The nature of the debate is totally shifted, and the inquiry is now, not what the Constitution is, but what degree of probability there is that the amendments will hereafter be incorporated into it.

Before he proceeded to discuss this question, he wished to notice two objections, which had been urged against his excellency's proposition — that this Convention, being confined in their powers to reject or ratify the Constitution as it is, have no right to propose amendments; and that the very propositions imply the Constitution is not perfect, and amount to a confession that it ought to be rejected. It is well that these objections were not made by a lawyer: they would have been called quibbles, and he would have been accused of having learned them at the bar. Have we no right to propose amendments? This is the fullest representation of the people ever known, and if we may not declare their opinion, and upon a point for which we have been elected, how shall it ever be known? A majority may not fully approve the Constitution, and yet they may think it unsafe to reject it; and they may fully approve his excellency's propositions. What shall they say? That they accept, or reject, and no more? — that they be embarrassed, perhaps, to do either. But let them say the truth, that they accept it, in the hope that amendments will obtain. We are chosen to consider the Constitution, and it is clearly incident to our appointment to declare the result of our deliberations. This very mode of obtaining amendments is pointed out in the Constitution itself. How can it be said that we have no right to propose them? If, however, there was any irregularity in this proceeding, the General Court would not delay to conform it.

If it is insisted that the Constitution is admitted to be imperfect, let those objectors consider the nature of their own argument. Do they expect a perfect constitution? Do they expect to find that perfection in government which they well know is not to be found in nature? There is not a man who is not more or less discontented with his condition in life, and who does not experience a mixture of good and evil; and will he expect that a whole society of men can exclude that imperfection which is the lot of every individual in it? The truth is, we call that condition good and happy, which is so upon the whole. But this Constitution may be good without any

amendments, and yet the amendments may be good; for they are not repugnant to the Constitution. It is a gratification to observe how little we disagree in our sentiments; but it is not my purpose to compare the amendments with the Constitution. Whatever opinion may be formed of it by others, Mr. Ames professed to think it comparatively perfect. There was not any government which he knew to subsist, or which he had ever heard of, that would bear a comparison with the new Constitution. Considered merely as a literary performance, it was an honor to our country: legislators have at length condescended to speak the language of philosophy; and if we adopt it, we shall demonstrate to the sneering world, who deride liberty because they have lost it, that the principles of our government are as free as the spirit of our people.

I repeat it, our debates have been profitable, because, upon every leading point, we are at last agreed. Very few among us now deny that a federal government is necessary to save us from ruin; that the Confederation is not that government; and that the proposed Constitution, connected with the amendments, is worthy of being adopted. The question recurs, Will the amendments prevail, and become part of the system? In order to obtain such a system as the Constitution and the amendments, there are but three ways of proceeding — to reject the whole, and begin anew; to adopt this plan upon condition that the amendments be inserted into it; or to adopt his excellency's proposition.

Those who propose to reject the whole, are bound to show that we shall possess some advantage in forming a system which we do not enjoy at present, or that some obstacles will be removed which impede us now. But will that be the case? Shall we adopt another constitution with more unanimity than we expect to find in this Convention? Do gentlemen so soon forget their own arguments? We have been told that the new Constitution will be rebellion against the Confederation; that the interests of the states are too dissimilar for a union; and that Massachusetts can do without the union, and is a match for all the world. We have been warned of the tendency of all power towards tyranny, and of the danger of trusting Congress with the power of the purse and of the sword; that the system is not perfect; there is no religious test, and slavery is not abolished. Now, sir, if we reject the Constitution, and, after two or three years' exertion, another constitution should be submitted to another convention of Massachusetts, shall we escape the opposition which is made in this assembly? Will not the same objections then apply with equal force to another system? Or do gentlemen expect that a constitution may be formed which will not be liable to those objections? Do they expect one which will not annul the Confederation, or that the persons and properties of the people shall not be included in the compact, and that we shall hear no more about armies and taxes? But suppose that it was so framed, who is there, even amongst the objectors, who would give his vote for so paltry a system? If we reject, we are exposed to the risk of having no constitution, of being torn with factions, and at last divided into distinct confederacies.

If we accept *upon condition*, shall we have a right to send members to the new Congress? We shall not; and, of course, this state would lose its voice and influence in obtaining the adoption of the amendments. This is too absurd to need any further discussion.

But, in objection to your excellency's propositions, it is said that it is no more than probable that they will be agreed to by the other states. I ask, What is any future thing that we devise more

than probable? What more is another constitution? All agree that we must have one; and it is easy to perceive that such a one as the majority of the people approve *must* be submitted to by this state; for what right have an eighth or tenth part of the people to dictate a government for the whole? It comes to this point, therefore: Is any method more likely to induce the people of the United States to concur with Massachusetts, than that proposed by your excellency? If it is answered that there is none, as I think it must be, then the objection, that the chance of obtaining the amendments is no more than probable, will come to the ground, and it will appear that, of all chances, we depend upon that which is the safest. For when will the voice of Massachusetts have so powerful an influence as at present? There is not any government now to counteract or awe the people. The attention of the people is excited from one end of the states to the other, and they will watch and control the conduct of their members in Congress. Such amendments as afford better security to liberty will be supported by the people. There will be a Congress in existence to collect their sentiments, and to pursue the objects of their wishes. Nine states may insert amendments into the Constitution; but if we reject it, the vote must be unanimous. Our state, in that case, would lose the advantage of having representatives according to numbers, which is allowed by the Constitution. Upon a few points, and those not of a local nature, unanimity may be expected; but, in discussing a whole Constitution, in which the very amendments, that, it is said, will not be agreed to by the states, are to be inserted, unanimity will be almost a miracle. Either the amendments will be agreed to by the Union, or they will not. If it is admitted that they will be agreed to, there is an end of the objection to your excellency's propositions, and we ought to be unanimous for the Constitution. If it is said that they will not be agreed to, then it must be because they are not approved by the United States, or at least nine of them. Why shall we reject the Constitution, then, for the sole purpose of obtaining that unanimous vote of thirteen states, which, it is confidently said, it is impossible we ever shall obtain from nine only? An object which is impossible is out of the question. The argument that the amendments will not prevail, is not only without force, but directly against those who use it, unless they admit that we have no need of a government, or assert that, by ripping up the foundations of the compact, upon which we now stand, and setting the whole Constitution afloat, and introducing an infinity of new subjects of controversy, we pursue the best method to secure the entire unanimity of thirteen states.

But shall we put every thing that we hold precious to the hazard by rejecting this Constitution? We have great advantages by it in respect of navigation; and it is the general interest of the states that we should have them. But if we reject it, what security have we that we shall obtain them a second time, against the local interests and prejudices of the other states? Who is there, that really loves liberty, that will not tremble for its safety, if the federal government should be dissolved. Can liberty be safe without government?

The period of our political dissolution is approaching. Anarchy and uncertainty attend our future state. But this we know — that Liberty, which is the soul of our existence, once fled, can return no more.

The Union is essential to our being as a nation. The pillars that prop it are crumbling to powder. The Union is the vital sap that nourishes the tree. If we reject the Constitution, — to use the language of the country, — we girdle the tree, its leaves will wither, its branches drop off, and the mouldering trunk will be torn down by the tempest. What security has this single state

against foreign enemies? Could we defend the mast country, which the Britons so much desire? Can we protect our fisheries, or secure by treaties a sale for the produce of our lands in foreign markets? Is there no loss, no danger, by delay? In spite of our negligence and perverseness, are we to enjoy, at all times, the privilege of forming a constitution, which no other nation has ever enjoyed at all? We approve our own form of state government, and seem to think ourselves in safety under its protection. We talk as if there was no danger in deciding wrong. But when the inundation comes, shall we stand on dry land? The state government is a beautiful structure. It is situated, however, upon the naked beach. The Union is the dike to fence out the flood. That dike is broken and decayed; and, if we do not repair it, when the next spring tide comes, we shall be buried in one common destruction.

**Mr. BARRELL, (of York.)**

Awed in the presence of this august assembly; conscious of my inability to express my mind fully on this important occasion; and sensible how little I must appear in the eyes of those giants in rhetoric, who have exhibited such a pompous display of declamation; without any of those talents calculated to draw attention; without the pleasing eloquence of Cicero, or the blaze of Demosthenian oratory, — I rise, sir, to discharge my duty to my constituents, who, I know, expect something more from me than merely a silent vote. With no pretensions to talents above the simple language adapted to the line of my calling, — the plain husbandman, — I hope the gentlemen who compose this honorable body will fully understand me when I attempt to speak my mind of the federal Constitution as it now stands. I wish, sir, to give my voice for its amendment before it can be salutary for our acceptance; because, sir, notwithstanding the Wilsonian oratory, and all the learned arguments I have seen written, notwithstanding the many labored speeches I have heard in its defence, and after the best investigation I am able to give this subject, — I fear it is pregnant with baneful effects, although I may not live to feel them.

Because, sir, as it now stands, Congress will be vested with more extensive powers than ever Great Britain exercised over us; too great, in my opinion, to intrust with any class of men, let their talents or virtues be ever so conspicuous, even though composed of such exalted, amiable characters as the great Washington; for, while we consider them as men of like passions, the same spontaneous, inherent thirst for power with ourselves, great and good as they may be, when they enter upon this all-important charge, what security can we have that they will continue so? And, were we sure they would continue the faithful guardians of our liberties, and prevent any infringement on the privileges of the people, what assurance can we have that such men will always hold the reins of government — that their successors will be such? History tells us Rome was happy under Augustus, though wretched under Nero, who could have no greater power than Augustus; and yet this same Nero, when young in government, could shed tears on signing a death-warrant, though afterwards he became so callous to the tender feelings of humanity as to behold, with pleasure, Rome in flames.

Because, sir, I think that six years is too long a term for any set of men to be at the helm of government; for in that time they may get so firmly rooted, and their influence be so great, as to continue themselves for life.

Because, sir, I am not certain we are able to support the additional expense of such a government.

Because, sir, I think a Continental collector will not be so likely to do us justice in collecting the taxes, as collectors of our own.

Because, sir, I think a frame of government on which all laws are founded, should be so simple and explicit, that the most illiterate may understand it; whereas this appears to me so obscure and ambiguous, that the most capacious mind cannot fully comprehend it.

Because, sir, the duties of excise and impost, and to be taxed besides, appear too great a sacrifice; and when we have given them up, what shall we have to pay our debts, but a dry tax?

Because, sir, I do not think this will produce the efficient government we are in pursuit of.

Because, sir, they fix their own salaries, without allowing any control.

And because, sir, I think such a government may be disagreeable to men with the high notions of liberty we Americans have.

And, sir, I could wish this Constitution had not been, in some parts of the continent, hurried on, like the driving of Jehu, very furiously; for such important transactions should be without force, and with cool deliberation. These, sir, were my objections, and those of my constituents, as they occur to my memory; some of which have been removed, in the course of the debates, by the ingenious reasonings of the speakers. I wish I could say the whole were. But, after all, there are some yet remaining on my mind, enough to convince me, excellent as this system is, in some respects it needs alterations; therefore I think it becomes us, as wise men, as the faithful guardians of the people's rights, and as we wish well to posterity, to propose such amendments as will secure to us and ours that liberty without which life is a burden.

Thus, sir, have I ventured to deliver my sentiments, in which are involved those of my constituents, on this important subject; cautiously avoiding every thing like metaphysical reasoning, lest I should invade the prerogative of those respectable gentlemen of the law, who have so copiously displayed their talents on the occasion. But, sir, although you may perceive, by what I have said, that this is not, in my view, the most perfect system I could wish, yet, as I am possessed with an assurance that the proposed amendments will take place; as I dread the fatal effects of anarchy; as I am convinced the Confederation is essentially deficient, and that it will be more difficult to amend that than to reform this; and as I think *this Constitution*, with all its imperfections, is *excellent*, compared with that, and that it is the best constitution we can now obtain; — as the greatest good I can do my country at present, I could wish for an adjournment, that I might have an opportunity to lay it before my constituents, with the arguments which have been used in the debates, which have eased my mind, and I trust would have the effect on theirs so as heartily to join me in ratifying the same. But, sir, if I cannot be indulged on this desirable object, I am almost tempted to risk their displeasure, and adopt it without their consent.

**Dr. TAYLOR**

Examined the observations of several gentlemen, who had said, that, had the Constitution been so predicated as to require a bill of rights to be annexed to it, it would have been the work of a year, and could not be contained but in volumes. This, if true, he said, was an argument in favor of one being annexed; but so far from its being the case, he believed any gentleman in that Convention could form one in a few hours, as he might take the bill of rights of Massachusetts for a guide. He concluded by objecting to the amendments, because no assurance was given that they ever would become a part of the system.

### **Mr. PARSONS**

Demonstrated the impracticability of forming a bill, in a national constitution, for securing individual rights, and showed the inutility of the measure, from the ideas, that no power was given to Congress to infringe on any one of the natural rights of the people by this Constitution; and, should they attempt it without constitutional authority, the act would be a nullity, and could not be enforced.

Several other gentlemen spoke in a desultory conversation on the amendments. It was urged again and again, on one side, that it was uncertain whether they ever would be interwoven in the Constitution, and that, therefore, they could not vote for it, on that precarious condition. On the other side, the importance of the opinion of Massachusetts, in other states, in determining on great political questions, the general nature of the amendments proposed, &c., were repeatedly urged in favor of their being a part of the ratification.

[A motion was made by Mr. DENCH, and seconded, "That, for the purpose of informing the good people of this commonwealth of the principles of the proposed federal Constitution. and the amendments offered by his excellency, the president, and reported by the committee, and of uniting their opinions respecting the same, this Convention do adjourn to a future day." After debate, (which continued the best part of the day,) the question was put, and was determined in the negative, 329 members being present, and 115 only voting in the affirmative.]

**WEDNESDAY, *February 6.***

### **The Hon. Mr. ADAMS**

[introduced some amendments, to be added to those reported by the committee; but, they not meeting the approbation of those gentlemen whose minds they were intended to ease, after they were debated a considerable time, the honorable gentleman withdrew them.]

### **Rev. Mr. STILLMAN.**

Mr. President, I rise, with deference to gentlemen of superior abilities, to give my opinion on the present all-important national question, and the reasons on which it is founded — an opinion, the result of the most serious deliberation.

Upon entering the Convention, it was my full determination to keep my mind cool and open to conviction, that so I might profit by the discussion of this interesting subject; and now, sir, return my sincere thanks to the gentlemen who have taken opposite sides in the course of the debates. From both I have received advantage — from one class in bringing forward a great variety of objections; from the other class in answering them. Whatever my previous opinion was, I now stand on firmer ground than ever respecting the proposed Constitution.

But my present situation, sir, is to me extremely affecting. To be called by the voice of my fellow-citizens to give my vote for or against a constitution of government that will involve the happiness or misery of millions of my countrymen, is of so solemn a nature as to have occasioned the most painful anxiety.

I have no interest to influence me to accept this Constitution of government, distinct from the interest of my countrymen at large. We are all embarked in one bottom, and must sink or swim together.

Besides, sir, Heaven has fixed me in a line of duty that precludes every prospect of the honors and the emoluments of office. Let who will govern, I must obey. Nor would I exchange the pulpit for the highest honors my country can confer. I, too, have personal liberties to secure, as dear to me as to any gentlemen in the Convention, and as numerous a family, probably, to engage my attention; besides which, I stand here, with my very honorable colleagues, as a representative of the citizens of this great metropolis, who have been pleased to honor me with their confidence — an honor, in my view, unspeakably greater than a peerage or a pension.

The absolute deficiency of the Articles of Confederation is allowed by all. Nor have I seen any publication that places this subject in so convincing a point of view as a letter written by his excellency, Governor Randolph,\* which has appeared in several of our newspapers; whom I rather introduce, on this occasion, because he was a delegate in the late federal Convention, refused to sign the Constitution before us, and has been twice mentioned by gentlemen in the opposition. His candor, apparent in the letter referred to, does him honor, and merits the esteem of every candid mind. I declare, sir, I revere his character, while I differ from him in opinion.

"Before my departure for the (federal) Convention," says he, "I believed that the Confederation was not so eminently defective as it had been supposed. But after I had entered into a free conversation with those who were best informed of the condition and interest of each state, — after I had compared the intelligence derived from them with the properties that ought to characterize the government of our Union, — I became persuaded that the Confederation was destitute of *every energy* which a constitution of the United States ought to possess." And after he had, in the most masterly manner, proved its insufficiency, he adds, "But now, sir, permit me to declare that, in my humble judgment, the powers by which alone the blessings of a general government can be accomplished, cannot be interwoven in the Confederation, *without a change of its very essence*; or, in other words, that the Confederation *must be thrown aside*." Having stated his objections to it, he proceeds thus: "My inference from these facts and principles is, that the new powers must be deposited in a new body, growing out of the consolidation of the Union, as far as the circumstances of the states would allow." Thus fully and candidly does this gentleman insist on the absolute necessity of a new constitution of general government, at the

very time that he objected to the present form; and concludes his letter with these memorable words, which I most heartily wish may make a deep impression on the mind of every gentleman in the opposition: "I hesitate not to say, that the most fervent prayer of my soul is, the establishment of a firm, energetic government; that the most inveterate curse that can befall us is a dissolution of the Union; and that the *present moment*, if suffered to pass unemployed, can NEVER be recalled. I shall therefore cling to the Union as the rock of our salvation, and urge Virginia to finish the salutary work which she hath begun. And if, after our best efforts for amendments, they cannot be obtained, I scruple not to declare (notwithstanding the advantage the declaration may give to the enemies of my proposal) that I will, as an individual citizen, accept the Constitution."

I pause, sir, that every gentleman present may have time to indulge those feelings which these excellent expressions must occasion. May that God who has the hearts of all men under his control, inspire every member of this Convention with a similar disposition! Then shall we lay aside every opposite interest, and unite, as a band of brothers, in the ratification of this Constitution of national government.

Then, sir, will your terms of conciliation be attended to with gratitude and candor. Your excellency, depressed with bodily infirmity, and exercised with severe pain, has stepped forth at the critical moment, and, from the benevolence of your heart, presented us with a number of proposed amendments, in order, if possible, to quiet the minds of the gentlemen in the opposition, and bring us together in amity and peace — amendments which you, sir, declare you do not think necessary, except for the sole purpose of uniting us in a common and most important cause.

But what has been the consequence of your excellency's conciliatory propositions? Jealousy — jealousy, sir, that there was a snake in the grass, a secret intention to deceive. I shuddered at the ungenerous suggestion, nor will I dwell a moment longer on the distressing idea. Be banished forever the groundless suspicion of him whose name stands foremost in the list of American patriots! Let love and harmony prevail!

The important hour is just arrived when the die will be cast, that will in a great measure determine the fate of this commonwealth, and have a mighty influence on the general interests of the Union; for, from the best information I have been able to collect from gentlemen of observation and of undoubted veracity, there is the greatest reason to fear that the rejection of this Constitution will be followed with anarchy and confusion.

The Convention, I doubt not, will bear with me while I take a general view of the Constitution before us.

From all that has been said on the subject of biennial elections, it is my decided opinion that two years in the general government will not be in proportion to one year in the local governments; because, in the former, the objects of government will be great, numerous, and extensive; in the latter, comparatively small and limited. The general government involves all the states now in the Union — all such as shall in future accede to it — all foreign nations with whom we are now, or hereafter shall be, in alliance — an extensive and growing commerce — war and peace, &c.

It has been said that this is a stride towards septennial elections, or perpetuity in office. I answer, the Constitution itself is to be the rule: that declares that "representatives shall be chosen every second year by the people of the several states." Elections, then, of representatives must be every second year; nor can they be otherwise, without a direct violation of the Constitution. The men who shall be wicked enough to do this, would not be restrained, had the elections been annual; it being equally easy to violate the Constitution in one case as in the other. Elections, indeed, ought to be so frequent as to make the representatives feel they are dependent on and amenable to the people. The difference, then, between annual and biennial elections is small, and, in either case, will answer the end just mentioned.

## NOTE

The powers that are granted to Congress by this instrument are great and extensive; but, sir, they are defined and limited, and, in my judgment, sufficiently checked; which I shall prove before I sit down. These powers have been the subject of long and ingenious debate. But the arguments that have been made use of against delegating these powers to the general government prove too much, being applicable to all delegated power; I mean the possible abuse of it. The very term *government* implies a supreme controlling power somewhere; a power to coerce, whenever coercion shall be necessary; of which necessity government must be the judge. This is admitted; if so, the power may be abused. Every gentleman must confess that we cannot give a power to do good, but it may be abused to do evil. If a merchant commits the care of a ship and cargo to the master, he may dispose of both, and appropriate the money to his own use. If we raise a body of men, and put arms into their hands for our defence, they may turn them against us and destroy us. All these things prove, however, that, in order to guard as much as possible against the abuse of those powers we delegate to government, there ought to be sufficient checks on them; every precaution should be used to secure the liberties of the people on the one hand, and not render government inefficient on the other. I believe, sir, such security is provided in this Constitution: if not, no consideration shall induce me to give my voice in its favor. But the people are secured by the following circumstances: —

1st. All the offices in Congress are elective, not hereditary. The President and senators are to be chosen by the interposition of the legislatures of the several states, who are the representatives and guardians of the people, whose honor and interest will lead them, in all human probability, to have good men placed in the general government.

2d. The representatives in Congress are to be chosen, every second year, by the people of the several states. Consequently, it lies with the people themselves to say who shall represent them. It will, then, be their own fault if they do not choose the best men in the commonwealth.

Who are Congress, then? They are ourselves; the men of our own choice, in whom we can confide; whose interest is inseparably connected with our own. Why is it, then, that gentlemen speak of Congress as some foreign body, as a set of men who will seek every opportunity to enslave us? Such insinuations are repugnant to the spirit of the Constitution.

But a worthy gentleman from Middleborough has told us, that, though they may be good men when chosen, they may become corrupt. They may so; nor is it in the power of angels or men to

prevent it; but should this be the case, the Constitution has made provisions for such an event. When it happens, we shall know what method to adopt, in order to bring them to punishment. In all governments where offices are elective, there ever has been, and there ever will be, a competition of interests. They who are in office wish to keep in, and they who are out, to get in; the probable consequences of which will be, that they who are already in place will be attentive to the rights of the people, because they know that they are dependent on them for a future election, which can be secured by good behavior only. Besides, they who are out of office will watch them who are in, with a most critical eye, in order to discover and expose their malconduct, if guilty of any, that so they may step into their places. Every gentleman knows the influence that a desire to obtain a place, or the fear of losing it, hath on mankind. Mr. Borgh tells us, that, towards the close of the seven years for which the representatives are chosen in the British Parliament, they become exceedingly polite to the people. Why? Because they know there is an approaching election depending. This competition of interest, therefore, between those persons who are in and those who are out of office, will ever form one important check to the abuse of power in our representatives.

3d. Every two years there will be a revolution in the general government in favor of the people. At the expiration of the first two years, there will be a new choice of representatives; at the expiration of the second two years, there will be a new choice of President and representatives; and at the expiration of the third term, making six years from the commencement of the Congress, there will be a new choice of senators and representatives. We all know, sir, that power thus frequently reverting to the people will prove a security to their liberties, and a most important check to the power of the general government.

4th. Congress can make no laws that will oppress the people, which will not equally involve themselves in the oppression.

What possible motive, then, can Congress have to abuse their power? Can any man suppose that they will be so lost to their own interest as to abuse their power, knowing, at the same time, that they equally involve themselves in the difficulty? It is a most improbable supposition. This would be like a man's cutting off his nose to spite his face. I place this, sir, among the securities of the liberties of my fellow-citizens, and rejoice in it.

5th. Congress guaranty to every state in the Union a republican form of government, and engage to protect them against all foreign and domestic enemies; that is, as it hath been justly observed by the honorable gentleman [Mr. Adams] near me, of known and tried abilities as a politician, each state shall choose such republican form of government as they please, and Congress solemnly engage themselves to protect it from every kind of violence, whether of faction at home or enemies abroad. This is an admirable security of the people at large, as well as of the several governments of the states; consequently the general government cannot swallow up the local governments, as some gentlemen have suggested. Their existence is dependent on each other, and must stand or fall together. Should Congress ever attempt the destruction of the particular legislatures, they would be in the same predicament with Samson, who overthrew the house in which the Philistines were making sport at his expense; them he killed, indeed, but he buried himself in the ruins.

6th. Another check in favor of the people is this — that the Constitution provides for the **impeachment**, trial, and punishment of every officer in Congress, who shall be guilty of misconduct. With such a prospect, who will dare to abuse the powers vested in him by the people?

7th. Having thus considered several of the checks to the powers of Congress, which are interwoven with the Constitution, we will now suppose the worst that can take place in consequence of its adoption: I mean, that it shall be found in some of its parts oppressive to the people; still we have this *dernier ressort* — it may be amended. It is not, like the laws of the Medes and Persians, immutable. The fifth article provides for amendments.

It has been said, it will be difficult, after its ratification, to procure any alterations. By no means, sir, for this weighty reason — it is a general government, and, as such, will have a general influence; all states in the Union will feel the difficulty, and, feeling it, will readily concur in adopting the method provided by the Constitution. And having once made the trial, experience will teach us what amendments are necessary.

Viewing the Constitution in this light, I stand ready to give my vote for it, without any amendments at all. Yet, if the amendments proposed by your excellency will tend to conciliation, I readily admit them, not as a condition of acceptance, but as a matter of recommendation only; knowing that blessed are the peace-makers. I am ready, sir, to submit my life, my liberty, my family, my property, and, as far as my vote will go, the interest of my constituents, to this general government.

After all, if this Constitution was as perfect as the sacred volume is, it would not secure the liberties of the people, unless they watch their own liberties. Nothing written on paper will do this. It is therefore necessary that the people should keep a watchful, not an over-jealous, eye on their rulers; and that they should give all due encouragement to our colleges, schools of learning, &c., so that knowledge may be diffused through every part of our country. Ignorance and slavery, knowledge and freedom, are inseparably connected. While Americans remain in their present enlightened condition, and warmly attached to the cause of liberty, they cannot be enslaved. Should the general government become so lost to all sense of honor and the freedom of the people, as to attempt to enslave them, they who are the descendants of a race of men who have dethroned kings, would make an American Congress tremble, strip them of their public honors, and reduce them to the lowest state of degradation.

*Afternoon.* —

### **Hon. Mr. TURNER.**

Mr. President, being advanced in life, and having endeavored, I hope, with a faithful attention, according to my ability, to assist my country in their trying difficulties and dangers for more than twenty years; and as, for three weeks past, my state of health has been such as to render me unable to speak in this assembly, — I trust I shall be heard with some indulgence, while I express a few sentiments at this solemn crisis. I have been averse to the reception of this Constitution, while it was considered merely in its original form; but since the honorable Convention have

pleased to agree to the recommendation of certain amendments, I acknowledge my mind is reconciled. But even thus amended, I still see, or think I see, several imperfections in it, and some which give me pain. Indeed, I never expect to see a constitution free from imperfections; and, considering the great diversity of local interests, views, and habits, — considering the unparalleled variety of sentiments among the citizens of the United States, — I despair of obtaining a more perfect constitution than this, at present. And a constitution preferable to the Confederation must be obtained, and obtained soon, or we shall be an undone people. In my judgment, there is a rational probability, amoral certainty, that the proposed amendments will meet the approbation of the several states in the Union. If there is any respect due to the hoary head of Massachusetts, it will undoubtedly have its proper influence in this case. The minds of gentlemen, throughout the nation, must be impressed with such a sense of the necessity of all-important union, especially in our present circumstances, as must strongly operate in favor of a concurrence. The proposed amendments are of such a liberal, such a generous, and such a catholic nature and complexion, — they are so congenial to the soul of every man who is possessed of patriotic regard to the preservation of the just rights and immunities of his country, as well as to the institution of a good and necessary government, — that I think they must, they will, be universally accepted. When, in connection with this confidence, I consider the deplorable state of our navigation and commerce, and various branches of business thereon dependent; the inglorious and provoking figure we make in the eyes of our European creditors; the degree in which the landed interest is burdened and depreciated; the tendency of depreciating paper, and tender acts, to destroy mutual confidence, faith, and credit, to prevent the circulation of specie, and to overspread the land with an inundation, a chaos of multiform injustice, oppression, and knavery; when I consider what want of efficiency there is in our government, as to obliging people seasonably to pay their dues to the public, instead of spending their money in support of luxury and extravagance, of consequence the inability of government to satisfy the just demands of its creditors, and to do it in season, so as to prevent their suffering amazingly by depreciation; in connection with my anxious desire that my ears may be no longer perstranged, nor my heart pained, with the cries of the injured widow and orphans; when I also consider that state of our finances which daily exposes us to become a prey to the despotic humor even of an impotent invader, — I find my self constrained to say, before this assembly, and before God, that I think it my duty to give my vole in favor of this Constitution, with the proposed amendments; and, unless some further light shall be thrown in my way to influence my opinion, I shall conduct accordingly. I know not whether this Convention will vote a ratification of this Constitution, or not. If they should do it, and have the concurrence of the other states, may that God, who has always, in a remarkable manner, watched over us and our fathers for good, in all difficulties, dangers, and distresses, be pleased to command his almighty blessing upon it, and make it instrumental of restoring justice, honor, safety, support, and salvation, to a sinking land! But I hope it will be considered, by persons of all orders, ranks, and ages, that, without the prevalence of Christian piety and morals, the best republican constitution can never save us from slavery and ruin. If vice is predominant, it is to be feared we shall have rulers whose grand object will be (slyly evading the spirit of the Constitution) to enrich and aggrandize themselves and their connections, to the injury and oppression of the laborious part of the community; while it follows, from the moral constitution of the Deity, that prevalent iniquity must be the ruin of any people. The world of mankind have always, in general, been enslaved and miserable, and always will be, until there is a greater prevalence of Christian moral principles; nor have I any expectation of this, in any great degree, unless some superior mode of education shall be

adopted. It is education which almost entirely forms the character, the freedom or slavery, the happiness or misery, of the world. And if this Constitution shall be adopted, I hope the Continental legislature will have the singular honor, the indelible glory, of making it one of their first acts, in their first session, most earnestly to recommend to the several states in the Union the institution of such means of education as shall be adequate to the divine, patriotic purpose of training up the children and youth at large in that solid learning, and in those pious and moral principles, which are the support, the life and soul, of republican government and liberty, of which a free constitution is the body; for, as the body, without the spirit, is dead, so a free form of government, without the animating principles of piety and virtue, is dead also, being alone. May religion, with sanctity of morals, prevail and increase, that the patriotic civilian and ruler may have the sublime, parental satisfaction of eagerly embracing every opportunity of mitigating the rigors of government, in proportion to that increase of morality which may render the people more capable of being a law to themselves! How much more blessed this than to be employed in fabricating constitutions of a higher tone, in obedience to necessity, arising from an increase of turbulent vice and injustice in society! I believe your excellency's patience will not be further exercised by hearing the sound of my voice on the occasion, when I have said, May the United States of America live before God! May they be enlightened, pious, virtuous, free, and happy, to all generations!

### **Capt. SOUTHWORTH**

Spoke a short time against the adoption of the Constitution; but the worthy gentleman, from the indisposition of body, not being able to complete his speech, we cannot give it to the public.

### **Mr. SYMMES.**

Mr. President: I hope, sir, the Convention will indulge me with a few words, and I promise I will not detain them long. It may be known to your excellency, that I have heretofore had the honor to address the Convention in opposition to a certain paragraph in the Constitution. That fact is the sole occasion of my craving a turn to be heard again.

Sir, it never was my opinion that we ought, entirely, to abandon this Constitution. I thought it had great defects: and I still think it by no means free from blemishes; but I ever expected the worst consequences to follow a total rejection of it. I always intended to urge amendments, and was in hopes that the wisdom of this assembly would devise a method to secure their adoption. Therefore, when your excellency came forward, as well became your high office, in the character of a mediator, a ray of hope shone in upon the gloom that overspread my heart — of hope that we should still be united in the grand decision.

Sir, a mortal hatred, a deadly opposition, can be deserved by no government but the tyranny of hell, and perhaps a few similar forms on earth. A government of that complexion, in the present enlightened age, could never enter the heart of man; and if it could, and impudence enough were found to propose it, — nay, if it should be accepted, — I affirm, sir, that in America it would never operate a moment. I should glory in debating on my grounds for this assertion; but who will dare to question the truth of it?

Mr. President, so ample have been the arguments drawn from our national distress, the weakness of the present Confederation, the danger of instant disunion, and perhaps some other topics not included in these, that a man must be obstinate indeed, to say, at this period, that a new government is needless. One is proposed. Shall we reject it totally, or shall we amend it? Let any man recollect or peruse the debates in this assembly, and I venture to say, he shall not be a moment, if he loves his country, in making his election. He would contemplate the idea of rejection with horror and detestation. But, sir, it has been alleged that the necessary amendments cannot be obtained in the way your excellency has proposed. This matter has been largely debated. I beg a moment to consider it. Our committee, sir, were pretty well agreed to the amendments necessary to be made, and, in their report, it appears that these amendments are equally beneficial to all the citizens of America There is nothing local in them. Shall we, then, totally reject the Constitution, because we are only morally certain that they will be adopted? Shall we choose certain misery in one way, when we have the best human prospect of enjoying our most sanguine wishes in another? God forbid!

But, sir, a great deal has been said about the amendments. Here again I refer to the debates. Such has been said to have been the past prevalence of the Northern States in Congress, the sameness of interest in a majority of the states, and their necessary adhesion to each other, that I think there can be no reasonable doubt of the success of any amendments proposed by Massachusetts. Sir, we have, we do, and we *shall*, in a great measure, give birth to all events, and hold the balance among the United States.

The honorable gentleman, my respected friend from Scituate, has so fully entered into the expediency of ratifying the Constitution upon the basis of the report, and so ably stated the unanswerable reasons he finds for giving his sanction to it, notwithstanding his former different opinion, that I may decently waive a task I could not half so well perform.

Upon the whole, Mr. President, approving the amendments, and firmly believing that they will be adopted, I recall my former opposition, such as it was, to this Constitution, and shall — especially as the amendments are a standing instruction to our delegates until they are obtained — give it my unreserved assent.

In so doing, I stand acquitted to my own conscience; I hope and trust I shall to my constituents, and [*laying his hand on his breast*] I know I shall before God.

The time agreed upon for taking the question being arrived, and the same being called for from every quarter, —

## **JOHN HANCOCK, the PRESIDENT,**

Rose, and addressed the honorable Convention as follows: —

Gentlemen, being now called upon to bring the subject under debate to a decision, by bringing forward the question, I beg your indulgence to close the business with a few words. I am happy that my health has been so far restored, that I am rendered able to meet my fellow-citizens as represented in this Convention. I should have considered it as one of the most distressing

misfortunes of my life to be deprived of giving my aid and support to a system which, if amended (as I feel assured it will be) according to your proposals, cannot fail to give the people of the United States a greater degree of political freedom, and eventually as much national dignity, as falls to the lot of any nation on earth. I have not, since I had the honor to be in this place, said much on the important subject before us. All the ideas appertaining to the system, as well those which are against as for it, have been debated upon with so much learning and ability, that the subject is quite exhausted.

But you will permit me, gentlemen, to close the whole with one or two general observations. This I request, not expecting to throw any new light on the subject, but because it may possibly prevent uneasiness and discordance from taking place amongst us and amongst our constituents.

That a general system of government is indispensably necessary to save our country from ruin, is agreed upon all sides. That the one now to be decided upon has its defects, all agree; but when we consider the variety of interests, and the different habits of the men it is intended for, it would be very singular to have an entire union of sentiment respecting it. Were the people of the United States to delegate the powers proposed to be given, to men who were not dependent on them frequently for elections — to men whose interest, either from rank or title, would differ from that of their fellow-citizens in common — the task of delegating authority would be vastly more difficult; but, as the matter now stands, the powers reserved by the people render them secure, and, until they themselves become corrupt, they will always have upright and able rulers. I give my assent to the Constitution, in full confidence that the amendments proposed will soon become a part of the system. These amendments being in no wise local, but calculated to give security and ease alike to all the states, I think that all will agree to them.

Suffer me to add, that, let the question be decided as it may, there can be no triumph on the one side or chagrin on the other. Should there be a great division, every good man, every man who loves his country, will be so far from exhibiting extraordinary marks of joy, that he will sincerely lament the want of unanimity, and strenuously endeavor to cultivate a spirit of conciliation, both in Convention and at home. The people of this commonwealth are a people of great light — of great intelligence in public business. They know that we have none of us an interest separate from theirs; that it must be our happiness to conduce to theirs; and that we must all rise or fall together. They will never, therefore, forsake the first principle of society — that of being governed by the voice of the majority; and should it be that the proposed form of government should be rejected, they will zealously attempt another. Should it, by the vote now to be taken, be ratified, they will quietly acquiesce, and, where they see a want of perfection in it, endeavor, in a constitutional way, to have it amended.

The question now before you is such as no nation on earth, without the limits of America, has ever had the privilege of deciding upon. As the Supreme Ruler of the universe has seen fit to bestow upon us this glorious opportunity, let us decide upon it; appealing to him for the rectitude of our intentions, and in humble confidence that he will yet continue to bless and save our country.

The question being put, whether this Convention will accept of the report of the committee, as follows, —

## COMMONWEALTH OF MASSACHUSETTS.

*In Convention of the Delegates of the People of the Commonwealth of Massachusetts, 1788.*

The Convention, having impartially discussed and fully considered the Constitution for the United States of America, reported to Congress by the Convention of delegates from the United States of America, and submitted to us by a resolution of the General Court of the said commonwealth, passed the twenty-fifth day of October last past; and acknowledging, with grateful hearts, the goodness of the Supreme Ruler of the universe in affording the people of the United States, in the course of his providence, an opportunity, deliberately and peaceably, without fraud or surprise, of entering into an explicit and solemn compact with each other, by assenting to and ratifying a new Constitution, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity, DO, in the name and in behalf of the people of the commonwealth of Massachusetts, assent to and ratify the said Constitution for the United States of America.

And, as it is the opinion of this Convention, that certain amendments and alterations in the said Constitution would remove the fears and quiet the apprehensions of many of the good people of the commonwealth, and more effectually guard against an undue administration of the federal government, the Convention do therefore recommend that the following alterations and provisions be introduced into the said Constitution: —

*First.* That it be explicitly declared, that all powers not expressly delegated by the aforesaid Constitution are reserved to the several states, to be by them exercised.

*Secondly.* That there shall be one representative to every thirty thousand persons, according to the census mentioned in the Constitution, until the whole number of representatives amounts to two hundred.

*Thirdly.* That Congress do not exercise the powers vested in them by the 4th section of the 1st article, but in cases where a state shall neglect or refuse to make the regulations therein mentioned, or shall make regulations subversive of the rights of the people to a free and equal representation in Congress, agreeably to the Constitution.

*Fourthly.* That Congress do not lay direct taxes, but when the moneys arising from the impost and excise are insufficient for the public exigencies, nor then, until Congress shall have first made a requisition upon the states, to assess, levy, and pay their respective proportion of such requisitions, agreeably to the census fixed in the said Constitution, in such way and manner as the legislatures of the states shall think best, and, in such case, if any state shall neglect or refuse to pay its proportion, pursuant to such requisition, then Congress may assess and levy such state's proportion, together with interest thereon, at the rate of six per cent. per annum, from the time of payment prescribed in such requisitions.

**EXCLUSIVE**

*Fifthly.* That Congress erect no company with exclusive advantages of commerce.

*Sixthly.* That no person shall be tried for any crime, by which he may incur an infamous punishment, or loss of life, until he be first indicted by a grand jury, except in such cases as may arise in the government and regulation of the land and naval forces.

## NOTE

*Seventhly.* The Supreme Judicial Federal Court shall have no jurisdiction of causes between citizens of different states, unless the matter in dispute, whether it concern the realty or personalty, be of the value of three thousand dollars at the least; nor shall the federal judicial powers extend to any action between citizens of different states, where the matter in dispute, whether it concern the realty or personalty, is not of the value of fifteen hundred dollars at the least.

## Common Law

*Eighthly.* In civil actions between citizens of different states, every issue of fact, arising in actions at common law, shall be tried by a jury, if the parties, or either of them, request it.

*Ninthly.* Congress shall at no time consent that any person holding an office of trust or profit, under the United States, shall accept of a title of nobility, or any other title or office, from any king, prince, or foreign state.

And the Convention do, in the name and in the behalf of the people of this commonwealth, enjoin it upon their representatives in Congress, at all times, until the alterations and provisions aforesaid have been considered, agreeably to the 5th article of the said Constitution, to exert all their influence, and use all reasonable and legal methods, to obtain a ratification of the said alterations and provisions, in such manner as is provided in the said article.

And, that the United States, in Congress assembled, may have due notice of the assent and ratification of the said Constitution by this Convention, it is

*Resolved,* That the assent and ratification aforesaid be engrossed on parchment, together with the recommendation and injunction aforesaid, and with this resolution; and that his excellency, JOHN HANCOCK, President, and the Hon. WILLIAM CUSHING, Esq., Vice-President of this Convention, transmit the same, countersigned by the Secretary of the Convention, under their hands and seals, to the United States in Congress assembled.

The question was determined by yeas and nays, as follows: —

COUNTY OF SUFFOLK.

Boston -- His Ex. John Hancock,	Yea.
Hon. James Bowdoin,	Yea.
Hon. Samuel Adams,	Yea.

Hon. William Phillips,	Yea.
Hon. Caleb Davis,	Yea.
Charles Jarvis, Esq.,	Yea.
John Coffin Jones, Esq.,	Yea.
John Winthrop, Esq.,	Yea.
Thomas Dawes, Jun.,	Yea.
Rev. Samuel Stillman,	Yea.
Thomas Russell, Esq.,	Yea.
Christopher Gore, Esq.,	Yea.
Roxbury -- Hon. William Heath,	Yea.
Hon. Increase Sumner,	Yea.
Dorchester -- James Bowdoin, Jun.,	Yea.
Ebenezer Wales, Esq.,	Yea.
Milton -- Rev. Nathaniel Robbins,	Yea.
Weymouth -- Hon. Cotton Tufts,	Yea.
Hingham -- Hon. Benj. Lincoln,	Yea.
Rev. Daniel Shute,	Yea.
Braintree -- Hon. Richard Cranch,	Yea.
Rev. Anthony Wibird,	Yea.
Brookline -- Rev. Joseph Jackson,	Yea.
Dedham -- Rev. Thomas Thacher,	Yea.
Fisher Ames, Esq.,	Yea.
Needham -- Col. William M'Intosh,	Yea.
Medfield -- John Baxter, Jun.,	Yea.
Stoughton -- Hon. Elijah Dunbar,	Yea.
Capt. Jedediah Southworth,	Nay.
Wrentham -- Mr. Thomas Man,	Yea.
Mr. Nathan Comstock,	Nay.
Walpole -- Mr. George Payson,	Yea.
Sharon -- Mr. Benjamin Randall,	Nay.
Franklin -- Hon. J. Fisher,	Yea.
Medway -- M. Richardson, Jun.,	Nay.
Bellingham -- Rev. Noah Alden,	Nay.
Chelsea -- Rev. Phillips Payson,	Yea.
Foxboro' -- Mr. Ebenezer Warren,	Yea.
Hull -- Mr. Thomas Jones,	Yea.

Yeas, 34. Nays, 5.

COUNTY OF ESSEX.

Salem -- Richard Manning, Esq.,	Yea.
Edward Pulling, Esq.,	Yea.
Mr. William Gray, Jun.,	Yea.
Mr. Francis Cabot,	Yea.
Danvers -- Hon. Is. Hutchinson,	Nay.
Newbury -- Hon. Tristram Dalton,	Yea.
Enos Sawyer, Esq.,	Yea.
E. March, Esq.,	Yea.
Newburyport -- Hon. Rufus King,	Yea.
Hon. Benjamin Greenleaf,	Yea.
Theophilus Parsons, Esq.,	Yea.
Hon. Jonathan Titcomb,	Yea.
Beverly -- Hon. G. Cabot,	Yea.
Mr. Joseph Wood,	Yea.
Capt Israel Thorndike,	Yea.
Ipswich -- Hon. Michael Farley,	Yea.

J. Choate, Esq.,	Yea.
Daniel Noyes, Esq.,	Yea.
Col. Jonathan Cogswell,	Yea.
Marblehead -- Isaac Mansfield,	Yea.
J. Glover, Esq.,	Yea.
Hon. Azor Orne,	Yea.
John Glover, Esq.,	Yea.
Gloucester -- Daniel Rodgers, Esq.,	Yea.
John Low, Esq,	Yea.
Capt. W. Pearson,	Yea.
Lynn and Lynnfield -- J. Carnes,	Yea.
Capt John Burnham,	Yea.
Andover -- Peter Osgood, Jun.,	Nay.
Dr. Thomas Kittridge,	Nay.
William Symmes, Jun.,	Yea.
Rowley -- Capt Thomas Mighill,	Nay.
Haverhill -- Bailey Bartlett, Esq.,	Yea.
Capt Nathaniel Marsh,	Nay.
Topsfield -- Mr. Israel Clark,	Yea.
Salisbury -- Dr. Samuel Nyre,	Yea.
Mr. Enoch Jackman,	Yea.
Amesbury -- Capt Benj. Lurvey,	Yea.
Mr. Willis Patten,	Yea.
Boxford -- Hon. Aaron Wood,	Nay.
Bradford -- Daniel Thruston, Esq.,	Yea.
Methuen -- Capt. E. Carlton,	Nay.
Wenham -- Mr. Jacob Herrick,	Yea.
Manchester -- Mr. Simeon Miller,	Yea.

Yeas, 38. Nays, 6.

COUNTY OF MIDDLESEX.

Cambridge -- Hon. Francis Dana,	Yea.
Stephen Dana, Esq.,	Yea.
Charlestown -- Hon. N. Gorham,	Yea.
Watertown -- Dr. Marshal Spring,	Nay.
Woburn -- Capt. Timothy Winn,	Nay.
Concord -- Hon. Joseph Hosmer,	Yea.
Newtown -- Hon. A. Fuller,	Yea.
Reading -- Mr. William Flint,	Nay.
Mr. Peter Emerson,	Nay.
Marlborough -- Mr. Jonas Morse,	Nay.
Maj. Benjamin Sawin,	Nay.
Billerica -- Wm. Thompson, Esq.,	Nay.
Framingham -- Capt. L. Buckminster,	Yea.
Lexington -- Benj. Browne, Esq.,	Yea.
Chelmsford -- Maj. John Minot,	Nay.
Sherburne -- Daniel Whitney, Esq.,	Yea.
Sudbury -- Capt. Asahel Wheeler,	Yea.
Malden -- Capt. Benjamin Blaney,	Yea.
Weston -- Capt. Abraham Bigelow,	Yea.
Medford -- Maj. Gen. John Brooks,	Yea.
Hopkinton -- Capt. Gilbert Dench,	Yea.
Westford -- Mr. Jonathan Keep,	Nay.
Stow -- Dr. Charles Whitman,	Yea.
Groton -- Dr. Benjamin Morse,	Nay.

Joseph Sheple, Esq.,	Nay.
Shirley -- Mr. Obadiah Sawtell,	Nay.
Pepperell -- Mr. Daniel Fisk,	Nay.
Waltham -- Leonard Williams, Esq.,	Yea.
Townsend -- Capt. Daniel Adams,	Nay.
Dracut -- Hon. Joseph B. Varnum.	Yea.
Bedford -- Capt. John Webber,	Nay.
Holliston -- Capt. St. Chamberlain,	Nay.
Acton and Carlisle -- Mr. A. Parlin,	Nay.
Dunstable -- Hon. J. Pitts,	Yea.
Lincoln -- Hon. E. Brooks,	Yea.
Wilmington -- Capt. J. Harnden,	Nay.
Tewksbury -- Mr. Newman Scarlet,	Nay.
Littleton -- Mr. Samuel Reed,	Nay.
Ashby -- Mr. Benjamin Adams,	Nay.
Natick -- Maj. Hezekiah Broad,	Nay.
Stoneham -- Capt. Jonathan Green,	Nay.
East Sudbury -- Mr. Phi. Gleason,	Nay.

Yeas, 17. Nays, 25.

COUNTY OF HAMPSHIRE.

Springfield -- Wm. Pynchon, Esq.,	Yea.
West Springfield -- Col. Benj. Ely,	Nay.
Capt. John Williston,	Nay.
Wilbraham -- Capt. Phin. Stebbins,	Nay.
Northampton and Easthampton --	
Hon. Caleb Strong,	Yea.
Benjamin Sheldon,	Yea.
Southampton -- Capt. L. Pomeroy,	Yea.
Hadley -- Brig. Gen. Elisha Porter,	Yea.
South Hadley -- Hon. N. Goodman,	Yea.
Amherst -- Mr. Daniel Cooley,	Nay.
Granby -- Mr. Benjamin Eastman,	Nay.
Hatfield -- Hon. J. Hastings,	Yea.
Whately -- Mr. Josiah Allis,	Nay.
Williamsburg -- Mr. W. Bodman,	Nay.
Westfield -- John Ingersoll, Esq.,	Yea.
Deerfield -- Mr. Samuel Field,	Nay.
Greenfield -- Mr. Moses Bascum,	Nay.
Shelburn -- Mr. Robert Wilson,	Nay.
Conway -- Capt. Consider Arms,	Nay.
Mr. Malachi Maynard,	Nay.
Sunderland -- Capt. Z. Crocker,	Nay.
Montague -- Mr. M. Severance,	Nay.
Northfield -- Mr. Eben James,	Yea.
Brimfield -- Abner Morgan, Esq.,	Yea.
South Brimfield -- Capt. A. Fisk,	Nay.
Monson -- Mr. Phineas Merrick,	Nay.
Pelham -- Mr. Adam Clark,	Nay.
Greenwich -- Capt. N. Whitcomb,	Nay.
Blandford -- Mr. Timothy Blair,	Nay.
Palmer -- Mr. Aaron Merrick,	Nay.
Granville -- Mr. John Hamilton,	Nay.
Mr. Clark Cooley,	Nay.
New Salem -- Mr. J. Chamberlin,	Nay.

Belchertown -- Mr. Justus Dwight,	Nay.
Coleraine -- Mr. Samuel Eddy,	Nay.
Ware -- Mr. Isaac Pepper,	Nay.
Warwick and Orange --	
Capt. John Goldsborough,	Nay.
Chester -- Capt. David Shepard,	Yea.
Charlemont -- Mr. Jesse Reed,	Yea.
Ashfield -- Mr. Ephraim Williams,	Nay.
Worthington -- Nahum Eager, Esq.,	Yea.
Shutesbury -- Mr. Asa Powers,	Nay.
Chesterfield -- Col. Benj. Bonney,	Yea.
Southwick -- Capt. Silas Fowler,	Nay.
Northwick -- Maj. T. J. Doglass,	Yea.
Ludlow -- Mr. John Jennings,	Nay.
Leverett -- Mr. Jonathan Hubbard,	Nay.
West Hampton -- Mr. A. Fisher,	Yea.
Cunningham and Plainfield --	
Mr. Edmund Lazell,	Yea.
Buckland -- Capt. T. Maxwell,	Yea.
Long Meadows -- Mr. E. Colton,	Yea.

Yeas, 33. Nays, 19.

#### COUNTY OF PLYMOUTH.

Plymouth -- Joshua Thomas, Esq.,	Yea.
Thomas Davis,	Yea.
John Davis,	Yea.
Scituate -- Hon. William Cushing,	Yea.
Hon. Nathan Cushing,	Yea.
Hon. Charles Turner, Esq.,	Yea.
Marshfield -- Rev. William Shaw,	Yea.
Bridgewater -- D. Howard, Esq.,	Yea.
Mr. Hezekiah Hooper,	Yea.
Capt. Elisha Mitchell,	Yea.
Mr. Daniel Howard, Jun.,	Yea.
Middleboro' -- Rev. Isaac Backus,	Yea.
Mr. Benjamin Thomas,	Nay.
Isaac Thompson, Esq.,	Yea.
Mr. Isaac Soule,	Nay.
Duxbury -- Hon. G. Partridge,	Yea.
Rochester -- Mr. N. Hammond,	Nay.
Mr. Abraham Holmes,	Nay.
Plympton -- Capt. F. Shurtliff,	Nay.
Mr. Elisha Bisbee, Jun.,	Nay.
Pembroke -- Capt. John Turner,	Yea.
Mr. Josiah Smith,	Yea.
Kingston -- W. Sever, Jun., Esq.,	Yea.
Hanover -- Hon. Joseph Cushing,	Yea.
Abington -- Rev. Samuel Niles,	Yea.
Halifax -- Mr. F. Waterman,	Yea.
Wareham -- Col. Israel Fearing,	Yea.

Yeas, 22. Nays, 6.

#### COUNTY OF BARNSTABLE.

Barnstable -- Shear. Browne, Esq.,	Yea.
Sandwich -- Dr. Thomas Smith,	Nay.
Mr. Thomas Nye,	Nay.
Yarmouth -- D. Thatcher, Esq.,	Yea.
Capt. Jonathan Howes,	Yea.
Harwich -- Hon. Solomon Freeman,	Yea.
Capt. Kimball Clark,	Yea.
Wellfleet -- Rev. Levi Whitman,	Yea.
Falmouth -- Capt. Joseph Palmer,	Yea.

Yeas, 7. Nays, 2.

COUNTY OF BRISTOL.

Taunton -- James Williams, Esq.,	Yea.
Col. Nathaniel Leonard,	Nay.
Mr. Aaron Pratt,	Nay.
Rehoboth -- Capt. Phan. Bishop,	Nay.
Maj. Frederick Brown,	Nay.
William Windsor, Esq.,	Nay.
Swansey -- Mr. Christopher Mason,	Nay.
Mr. David Brown,	Nay.
Dartmouth -- Hon. Hol'r Slocum,	Nay.
Mr. Melatiah Hathaway,	Nay.
Norton -- Hon. Abraham White,	Nay.
Attleboro' -- Hon. Elisha May,	Yea.
Capt. Moses Wilmarth,	Yea.
Dighton -- Col. Sylvester Richmond,	Yea.
Hon. William Baylies,	Yea.
Freetown -- Hon. Thomas Durfee,	Yea.
Israel Washburn, Esq.,	Yea.
Easton -- Capt. Eben Tisdell,	Nay.
Mansfield -- Capt. John Pratt,	Nay.
New Bedford -- Hon. W. Spooner,	Yea.
Rev. Samuel West,	Yea.
Westport -- Mr. William Almy,	Yea.

Yeas, 10. Nays, 12.

COUNTY OF YORK.

York -- Capt. Esaias Preble,	Nay.
Nathaniel Barrell, Esq.,	Yea.
Kittery -- Mr. Mark Adams,	Nay.
Mr. James Neal,	Nay.
Wells -- Rev. Mr. Hemmenway,	Yea.
Hon. Nathaniel Wells,	Yea.
Berwick -- Dr. Nathaniel Low,	Nay.
Mr. Richard F. Cutts,	Nay.
Mr. Elijah Hays.	Nay.
Pepperelboro' -- T. Cutts, Esq.,	Yea.
Lebanon -- Mr. T. M. Wentworth,	Nay.
Sanford -- Maj. Samuel Nason,	Nay.
Buxton -- Jacob Bradbury, Esq.,	Yea.
Fryeburg -- Mr. Moses Ames,	Nay.
Coxhall -- Capt. John Low,	Yea.
Shapleigh -- Mr. Jeremiah Emery,	Nay.

Waterboro' -- Rev. Pel. Tingley, Nay.

Yeas, 6. Nays, 11.

COUNTY OF DUKES.

Edgartown -- Mr. Wm Mayhew, Yea.

Tisbury -- Mr. C. Dunham, Yea.

Yeas, 2.

COUNTY OF WORCESTER.

Worcester -- Mr. David Bigelow, Nay.

Lancaster -- Hon. John Sprague, Yea.

Mendon -- Ed. Thompson, Esq., Nay.

Brookfield -- Mr. Daniel Forbes, Nay.

Mr. N. Jenks, Nay.

Oxford -- Capt. Jeremiah Learned, Nay.

Charlton -- Mr. Caleb Curtiss, Nay.

Mr. Ezra M'Intier, Nay.

Sutton -- Mr. David Harwood, Nay.

Hon. Amos Singletary, Nay.

Leicester -- Col. Samuel Denny, Nay.

Spencer -- Mr. James Hathun, Nay.

Rutland -- Mr. Asaph Sherman, Nay.

Paxton -- Mr. Abraham Smith, Nay.

Oakham -- Capt. Jonathan Bullard, Nay.

Barre -- Capt. John Black, Nay.

Hubbardston -- Capt. J. Woods, Nay.

New Braintree -- Capt. B. Joslyn, Nay.

Southboro' -- Capt. Seth Newton, Yea.

Westboro' -- Capt. S. Maynard, Nay.

Northboro' -- Mr. Art. Brigham, Nay.

Shrewsbury -- Capt. I. Harrington, Nay.

Lunenburg -- Capt. John Fuller, Nay.

Fitchburg -- Mr. Daniel Putman, Nay.

Uxbridge -- Dr. Samuel Willard, Nay.

Harvard -- Joshua Whitney, Esq., Nay.

Dudley -- Mr. Jonathan Day, Nay.

Bolton -- Hon. Samuel Baker, Yea.

Upton -- Capt. T. M. Baker, Nay.

Sturbridge -- Capt. Timothy Parker, Nay.

Leominster -- Maj. D. Wilder, Yea.

Hardwick -- Maj. M. Kinsley, Nay.

Holden -- Rev. Joseph Davi, Nay.

Western -- Mr. Mat. Patrick, Yea.

Douglass -- Hon. John Taylor, Nay.

Grafton -- Dr. Joseph Wood, Nay.

Petersham -- Jonathan Grout, Esq., Nay.

Capt. Samuel Peckham, Nay.

Royalston -- John Frye, Esq., Nay.

Westminster -- Mr. Stephen Holden, Nay.

Templeton -- Capt. J. Fletcher, Nay.

Princeton -- Mr. Timothy Fuller, Nay.

Ashburnham -- Mr. Jacob Willard, Nay.

Winchendon -- Mr. Moses Hale, Nay.

Northbridge -- Capt. J. Wood,	Nay.
Ward -- Mr. Joseph Stone,	Nay.
Athol -- Mr. Josiah Goddard,	Yea.
Milford -- Mr. David Steams,	Nay.
Sterling -- Mr. Ephraim Wilder,	Yea.
Boylston -- Mr. Jonas Temple,	Nay.

Yeas, 8. Nays, 43.

COUNTY OF CUMBERLAND.

Falmouth -- Daniel Isley, Esq.,	Nay.
John K. Smith, Esq.,	Yea.
Portland -- Mr. John Fox,	Yea.
Capt. Joseph M'Lellen,	Yea.
North Yarmouth -- D. Mitchell,	Yea.
Samuel Merrill, Esq.,	Yea.
Scarboro' -- W. Thompson, Esq.,	Yea.
Brunswick -- Capt. John Dunlap,	Yea.
Harpswell -- Capt. Isaac Snow,	Yea.
Cape Elizabeth -- Mr. Joshua Dyer,	Yea.
Gorham -- Mr. S. Longfellow, Jun,	Nay.
New Gloucester -- Mr. Widgerly,	Nay.
Gray -- Rev. Samuel Perley,	Yea.

Yeas, 10. Nays, 3.

COUNTY OF LINCOLN.

Pownalboro' -- Thomas Rice, Esq.,	Yea.
Mr. David Sylvester,	Yea.
Georgetown -- Mr. N. Wyman,	Yea.
Newcastle -- Mr. David Murray,	Nay.
Woolwich -- Mr. David Gilmore,	Yea.
Topsham -- Hon. S. Thompson,	Nay.
Winslow -- Mr. Jonah Crosby,	Nay.
Bowdoinham -- Mr. Zach. Beal,	Nay.
Boothbay -- William M'Cobb, Esq.,	Yea.
Bristol -- William Jones, Esq.,	Nay.
Vassalboro' -- Capt. Samuel Grant,	Yea.
Edgecomb -- Moses Davis, Esq.,	Yea.
Hallowell -- Capt. James Carr,	Nay.
Thomaston -- David Fayles, Esq.,	Yea.
Bath -- Dummer Sewall, Esq.,	Yea.
Winthrop -- Mr. Joshua Bean,	Nay.

Yeas, 9. Nays, 7.

COUNTY OF BERKSHIRE.

Sheffield and Mount Washington --	
John Ashley, Jun., Esq.,	Yea.
Great Barrington -- Hon. E. Dwight,	Yea.
Stockbridge -- Hon. T. Sedgwick,	Yea.
Pittsfield -- Mr. Val. Rathburn,	Nay.
Richmond -- Mr. Comstock Betts,	Nay.
Lenox -- Mr. Lemuel Collins,	Nay.

Lanesboro' -- Hon. Jona. Smith,	Nay.
Williamstown -- Hon. T. J. Skinner,	Yea.
Adams -- Capt. J. Pleroe,	Nay.
Egremont -- Ephraim Fitch, Esq.,	Nay.
Becket -- Mr. Elisha Carpenter,	Yea.
West Stockbridge -- Maj. T. Lusk,	Nay.
Alford -- Mr. John Hulbert,	Nay.
New Marlborough -- D. Taylor,	Yea.
Tyringham -- Capt. E. Herrick,	Nay.
Loudon -- Mr. Joshua Lawton,	Nay.
Windsor -- Mr. Timothy Mason,	Nay.
Partridgefield -- E. Peirce, Esq.,	Nay.
Hancock -- Mr. David Vaughan,	Nay.
Lee -- Capt. Jesse Bradley,	Nay.
Washington -- Mr. Zenas Noble,	Nay.
Sandisfield -- Mr. J. Picket, Jun.,	Nay.

Yeas, 6. Nays, 16.

TOTAL. -- Yeas, 187. Nays, 168.

On the motion for ratifying being declared in the affirmative, by a majority of nineteen, the

### **Hon. Mr. WHITE**

Rose, and said that, notwithstanding he had opposed the adoption of the Constitution, upon the idea that it would endanger the liberties of his country, yet, as a majority had seen fit to adopt it, he should use his utmost exertions to induce his constituents to live in peace under and cheerfully submit to it.

He was followed by

### **Mr. WIDGERY,**

Who said, that he should return to his constituents, and inform them that he had opposed the adoption of this Constitution; but that he had been overruled, and that it had been carried by a majority of wise and understanding men; that he should endeavor to sow the seeds of union and peace among the people he represented; and that he hoped, and believed, that no person would wish for, or suggest, the measure of a PROTEST; for, said he, we must consider that this body is as full a representation of the people as can be convened. — After expressing his thanks for the civility which the inhabitants of this town have shown to the Convention, and declaring, as his opinion, that they had not in the least influenced the decision, he concluded by saying, that he should support, as much as in him lay, the Constitution, and that he believed, as this state had adopted it, that not only nine, but the whole thirteen, would come into the measure.

### **Mr. WHITNEY**

Said that, though he had been opposed to the Constitution, he should support it as much as if he had voted for it.

### **Mr. COOLEY (Amherst)**

Said, that he endeavored to govern himself by the principles of reason; that he was directed to vote against the adoption of the Constitution, and that, in so doing, he had not only complied with his directions, but had acted according to the dictates of his own conscience; and that, as it had been agreed to by a majority, he should endeavor to convince his constituents of the propriety of its adoption.

### **Dr. TAYLOR**

Also said, he had uniformly opposed the Constitution; that he found himself fairly beaten, and expressed his determination to go home and endeavor to infuse a spirit of harmony and love among the people.

Other gentlemen expressed their inclination to speak; but, it growing late, the Convention adjourned to the next morning.

### **THURSDAY, *February 7, 1788.* —**

The Convention met, when

### **Major NASON,**

In a short address, intimated his determination to support the Constitution, and to exert himself to influence his constituents to do the same.

### **Mr. RANDAL**

Said, he had been uniformly opposed to the Constitution. He had, he said, fought like a good soldier; but, as he was beaten, he should sit down contented, hoping the minority may be disappointed in their fears, and that the majority may reap the full fruition of the blessings they anticipate. In the hope that the amendments recommended by his excellency, the president, will take place, I shall, says he, go home and endeavor to satisfy those that have honored me by their choice, so that we may all live in peace.

### **Major SWAIN**

Declared, that the Constitution had had a fair trial, and that there had not, to his knowledge, been any undue influence exercised to obtain the vote in its favor; that many doubts which lay on his mind had been removed; and that, although he was in the minority, he should support the Constitution as cheerfully and as heartily as though he had voted on the other side of the question.

The Convention then passed the pay-roll, amounting to £4499 2 s.; and, after unanimously passing votes of thanks to his excellency, the president, the honorable the vice-president, and the

reverend clergymen of the town of Boston, who officiated as chaplains, for their services, it was *voted*, That, when the business of the Convention shall be completed, the members will proceed to the state-house to proclaim the ratification, and to take an affectionate leave of each other. An invitation from a number of the inhabitants of Boston, requesting the members of the Convention to take refreshment at the senate-chamber, when the ratification of the Constitution should be declared, was read, and thereon *voted*, That the thanks of the Convention be given to the inhabitants of Boston for their polite invitation, and that the Convention will attend, as requested.

The business being finished, the Convention proceeded to the state-house, when the ratification was proclaimed by Joseph Henderson, Esq., high sheriff of the county of Suffolk; after which, the Convention was dissolved

\* See Vol. I. p. 482.

---

**DEBATES**  
IN THE  
LEGISLATURE AND IN CONVENTION  
OF THE  
**STATE OF SOUTH CAROLINA,**  
ON THE  
ADOPTION OF THE FEDERAL CONSTITUTION.

**HOUSE OF REPRESENTATIVES. IN THE LEGISLATURE,  
WEDNESDAY, *January 16, 1788.***

{253} Read the proposed Federal Constitution, after which the house resolved itself into a committee of the whole. Hon. THOMAS BEE in the chair.

Hon. CHARLES PINCKNEY (one of the delegates of the Federal Convention) rose in his place, and said that, although the principles and expediency of the measures proposed by the late Convention will come more properly into discussion before another body, yet, as their appointment originated with them, and the legislatures must be the instrument of submitting the plan to the opinion of the people, it became a duty in their delegates to state with conciseness the motives which induced it.

It must be recollected that, upon the conclusion of the definitive treaty, great inconveniences were experienced, as resulting from the inefficacy of the Confederation. The one first and most sensibly felt was the destruction of our commerce, occasioned by the restrictions of other nations, whose policy it was not in the power of the general government to counteract. The loss of credit, the inability in our citizens to pay taxes, and languor of government, were, as they ever must be, the certain consequences of the decay of commerce. Frequent and unsuccessful attempts were made by Congress to obtain the necessary powers. The states, too, individually attempted, by navigation acts and other {254} commercial provisions, to remedy the evil. These, instead of correcting, served but to increase it; their regulations interfered not only with each other, but, in almost every instance, with treaties existing under the authority of the Union. Hence arose the necessity of some general and permanent system, which should at once embrace all interests, and, by placing the states upon firm and united ground, enable them effectually to assert their commercial rights. Sensible that nothing but a concert of measures could effect this, Virginia proposed a meeting of commissioners at Annapolis, from the legislature of each state, who should be empowered to take into consideration the commerce of the Union; to consider how far a uniform system in their commercial regulations might be necessary to their common interest; and to report to the states such an act as, when unanimously ratified by them, would enable Congress effectually to provide for the same. In consequence of this, ten states appointed delegates. By accident, or otherwise, they did not attend, only five states being represented. The gentlemen present, not being a majority of the Union, did not conceive it advisable to proceed; but in an address to their constituents, which was also transmitted to the other legislatures, acquainted them with the circumstances of their meeting; that there appeared to them to be other and more material defects in the federal system than merely those of commercial powers. That these, upon examination, might be found greater than even the acts of their appointments implied, was at least so far probable, from the embarrassments which mark the present state of

national affairs, foreign and domestic, as to merit, in their opinions, a deliberate and candid discussion in some mode which would unite the sentiments and councils of all the states. They therefore suggested the appointment of another convention, under more extensive powers, for the purpose of devising such further provisions as should appear to them necessary to render the federal government adequate to the exigencies of the Union.

Under this recommendation the late Convention assembled; for most of the appointments had been made before the recommendation of Congress was formed or known. He thought proper concisely to mention the manner of the Convention's assembling, merely to obviate an objection which all the opposers of the federal system had used, viz., {255} that, at the time the Convention met, no opinion was entertained of their departing from the Confederation — that merely the grant of commercial powers, and the establishment of a federal revenue, were in agitation; whereas nothing can be more true, than that its promoters had for their object a firm national government. Those who had seriously contemplated the subject were fully convinced that a total change of system was necessary — that, however the repair of the Confederation might for a time avert the inconveniences of a dissolution, it was impossible a government of that sort could long unite this growing and extensive country. They also thought that the public mind was fully prepared for the change, and that no time could be more proper for introducing it than the present — that the total want of government, the destruction of commerce, of public credit, private confidence, and national character, were surely sufficiently alarming to awaken their constituents to a true sense of their situation.

Under these momentous impressions the Convention met, when the first question that naturally presented itself to the view of almost every member, although it was never formally brought forward, was the formation of a new, or the amendment of the existing system. Whatever might have been the opinions of a few speculative men, who either did, or pretended to, confide more in the virtue of the people than prudence warranted, Mr. Pinckney said he would venture to assert that the states were unanimous in preferring a change. They wisely considered that, though the Confederation might possess the great outlines of a general government, yet that it was, in fact, nothing more than a federal union; or, strictly speaking, a league founded in paternal and persuasive principles, with nothing permanent and coercive in its construction, where the members might, or might not, comply with their federal engagements, as they thought proper — that no power existed of raising supplies but by the requisitions or quotas on the states — that this defect had been almost fatally evinced by the experience of the states for the last six or eight years, in which not one of them had completely complied; but a few had even paid up their specie proportions; others very partially; and some, he had every reason to believe, had not to this day contributed a shilling to the common treasury since the Union was formed. He {256} should not go into a detail Of the conduct of the states, or the unfortunate and embarrassing situation to which their inattention has reduced the Union; these have been so often and so strongly represented by Congress, that he was sure there could not be a member on the floor unacquainted with them. It was sufficient to remark that the Convention saw and felt the necessity of establishing a government upon different principles, which, instead of requiring the intervention of thirteen different legislatures between the demand and the compliance, should operate upon the people in the first instance.

He repeated, that the necessity of having a government which should at once operate upon the people, and not upon the states, was conceived to be indispensable by every delegation present; that, however they may have differed with respect to the quantum of power, no objection was made to the system itself. They considered it, however, highly necessary that, in the establishment of a constitution possessing extensive national authorities, a proper distribution of its powers should be attended to. Sensible of the danger of a single body, and that to such a council the states ought not to intrust important rights, they considered it their duty to divide the legislature into two branches, and, by a limited revisionary power, to mingle, in some degree, the executive in their proceedings — a provision that he was pleased to find meets with universal approbation. The degree of weight which each state was to have in the federal council became a question of much agitation. The larger states contended that no government could long exist whose principles were founded in injustice; that one of the most serious and unanswerable objections to the present system was the injustice of its tendency in allowing each state an equal vote, notwithstanding their striking disparity. The small ones replied, and perhaps with reason, that, as the states were the pillars upon which the general government must ever rest, their state governments must remain; that, however they may vary in point of territory or population, as political associations they were equal; that upon these terms they formally confederated, and that no inducement whatsoever should tempt them to unite upon others; that, if they did, it would amount to nothing less than throwing the whole government of the Union into the hands of three or four of the largest states.

{257} After much anxious discussion, — for, had the Convention separated without determining upon a plan, it would have been on this point, — a compromise was effected, by which it was determined that the first branch be so chosen as to represent in due proportion the people of the Union; that the Senate should be the representatives of the states, where each should have an equal weight. Though he was at first opposed to this compromise, yet he was far from thinking it an injudicious one. The different branches of the legislature being intended as checks upon each other, it appeared to him they would more effectually restrain their mutual intemperances under this mode of representation than they would have done if both houses had been so formed upon proportionable principles; for, let us theorize as much as we will, it will be impossible so far to divest the majority of the federal representatives of their state views and policy, as to induce them always to act upon truly national principles. Men do not easily wean themselves of those preferences and attachments which country and connections invariably create; and it must frequently have happened, had the larger states acquired that decided majority which a proportionable representation would have given them in both houses, that state views and policy would have influenced their deliberations. The ease with which they would, upon all occasions, have secured a majority in the legislature, might, in times less virtuous than the present, have operated as temptations to designing and ambitious men to sacrifice the public good to private views. This cannot be the case at present; the different mode of representation for the Senate will, as has already been observed, most effectually prevent it. The purpose of establishing different houses of legislation was to introduce the influence of different interests and principles; and he thought that we should derive, from this mode of separating the legislature into two branches, those benefits which a proper complication of principles is capable of producing, and which must, in his judgment, be greater than any evils that may arise from their temporary dissensions.

The judicial he conceived to be at once the most important and intricate part of the system. That a supreme federal jurisdiction was indispensable, cannot be denied. It is equally true that, in order to insure the administration of justice, it was necessary to give it all the powers, original as {258} well as appellate, the Constitution has enumerated; without it we could not expect a due observance of treaties — that the state judiciary would confine themselves within their proper sphere, or that general sense of justice pervade the Union which this part of the Constitution is intended to introduce and protect — that much, however, would depend upon the wisdom of the legislatures who are to organize it — that, from the extensiveness of its powers, it may be easily seen that, under a wise management, this department might be made the keystone of the arch, the means of connecting and binding the whole together, of preserving uniformity in all the judicial proceedings of the Union — that, in republics, much more (in time of peace) would always depend upon the energy and integrity of the judicial than on any other part of the government — that, to insure these, extensive authorities were necessary; particularly so were they in a tribunal constituted as this is, whose duty it would be not only to decide all national questions which should arise within the Union, but to control and keep the state judicials within their proper limits whenever they shall attempt to interfere with its power.

And the executive, he said, though not constructed upon those firm and permanent principles which he confessed would have been pleasing to him, is still as much so as the present temper and genius of the people will admit. Though many objections had been made to this part of the system, he was always at a loss to account for them. That there can be nothing dangerous in its powers, even if he was disposed to take undue advantages, must be easily discerned from reviewing them. He is commander-in-chief of the land and naval forces of the Union, but he can neither raise nor support forces by his own authority. He has a revisionary power in the making of laws; but if two thirds of both houses afterwards agree notwithstanding his negative, the law passes. He cannot appoint to an office without the Senate Concur; nor can he enter into treaties, or, in short, take a single step in his government, without their advice. He is, also, to remain in office but four years. He might ask, then, From whence are the dangers of the executive to proceed? It maybe said, From a combination of the executive and the Senate, they might form a baneful aristocracy.

He had been opposed to connecting the executive and {259} the Senate in the discharge of those duties, because their union, in his opinion, destroyed that responsibility which the Constitution should, in this respect, have been careful to establish; but he had no apprehensions of an aristocracy, For his part, he confessed that he ever treated all fears of aristocracies or despotisms, in the federal head, as the most childish chimeras that could be conceived. In a Union extensive as this is, composed of so many state governments, and inhabited by a people characterized, as our citizens are, by an impatience under any act which even looks like an infringement of their rights, an invasion of them by the federal head appeared to him the most remote of all our public dangers. So far from supposing a change of this sort at all probable, he confessed his apprehensions were of a different kind: he rather feared that it was impossible, while the state systems continue — and continue they must — to construct any government upon republican principles sufficiently energetic to extend its influence through all its parts. Near the federal seat, its influence may have complete effect; but he much doubted its efficacy in the more remote districts. The state governments will too naturally slide into an opposition against the general one, and be easily induced to consider themselves as rivals. They will, after a time, resist the

collection of a revenue; and if the general government is obliged to concede, in the smallest degree, on this point, they will of course neglect their duties, and despise its authority: a great degree of weight and energy is necessary to enforce it; nor is any thing to be apprehended from them. All power being immediately derived from the people, and the state governments being the basis of the general one, it will easily be in their power to interfere, and to prevent its injuring or invading their rights. Though at first he considered some declaration on the subject of trial by jury in civil causes, and the freedom of the press, necessary, and still thinks it would have been as well to have had it inserted, yet he fully acquiesced in the reasoning which was used to show that the insertion of them was not essential. The distinction which has been taken between the nature of a federal and state government appeared to be conclusive — that in the former, no powers could be executed, or but such as were expressly delegated; that in indefinite power was given to the government, except on {260} points that were by express compact reserved to the people.

On the subject of juries, in civil cases, the Convention were anxious to make some declaration; but when they reflected that all courts of admiralty and appeals, being governed in their propriety by the civil law and the laws of nations, never had, or ought to have, juries, they found it impossible to make any precise declaration upon the subject; they therefore left it as it was, trusting that the good sense of their constituents would never induce them to suppose that it could be the interest or intention of the general government to abuse one of the most invaluable privileges a free country can boast; in the loss of which, themselves, their fortunes and connections, must be so materially involved, and to the deprivation of which, except in the cases alluded to, the people of this country would never submit. When we reflect that the exigencies of the government require that a general government upon other principles than the present should be established, — when we contemplate the difference between a federal union and a government operating upon the people, and not upon the states, — we must at once see the necessity of giving to it the power of direct taxation. Without this, it must be impossible for them to raise such supplies as are necessary to discharge the debts, or support the expenses, of the Union — to provide against the common dangers, or afford that protection to its members which they have a right to expect from the federal head. But here he begged leave to observe that, so far from apprehending danger from the exercise of this power, few or no inconveniences are to be expected. He had not a doubt that, except in time of war, or pressing necessity, a sufficient sum would always be raised, by impost, to defray the general expenses. As to the power of raising troops, it was unnecessary to remark upon it further than merely to say, that this is a power the government at present possesses and exercises; a power so essential, that he should very much doubt the good sense or information of the man that should conceive it improper. It is guarded by a declaration that no grants for this purpose shall be longer than two years at a time. For his own part, notwithstanding all that had been said upon this popular topic, he could not conceive that either the dignity of a government could be maintained, its safety {261} insured, or its laws administered, without a body of regular forces to aid the magistrate in the execution of his duty. All government is a kind of restraint. We maybe told, a free government imposes no restraint upon the private wills of individuals which does not conduce in a greater degree to the public happiness; but all government is restraint, and founded in force. We are the first nation who have ever held a contrary opinion, or even attempted to maintain one without it. The experiment has been made, and he trusted there would hereafter be few men weak enough to suppose that some

regular force ought not to be kept up, or that the militia ever can be depended upon as the support or protection of the Union.

Upon the whole, he could not but join those in opinion who have asserted that this is the best government that has ever yet been offered to the world, and that, instead of being alarmed at its consequences, we should be astonishingly pleased that one so perfect could have been formed from such discordant and unpromising materials. In a system founded upon republican principles, where the powers of government are properly distributed, and each confined to a separate body of magistracy, a greater degree of force and energy will always be found necessary than even in a monarchy. This arises from the national spirit of union being stronger in monarchies than in republics: it is said to be naturally strong in monarchies, because, in the absence both of manners and principles, the compelling power of the sovereign collects and draws every thing to a point; and thereby, in all common situations, effectually supplies their place. But in free countries it is naturally weak, unless supported by public spirit; for as, in most cases, a full spirit of national union will require that the separate and partial views of private interest be on every occasion sacrificed to the general welfare, so, when this principle prevails not, (and it will only prevail in moments of enthusiasm,) the national union must ever be destroyed by selfish views and private interest. He said that, with respect to the Union, this can only be remedied by a strong government, which, while it collects its powers to a point, will prevent that spirit of disunion from which the most serious consequences are to be apprehended. He begged leave, for a moment, to examine what effect this spirit of disunion must have upon us, as we may be affected {262} by a foreign enemy. It weakens the consistency of all public measures, so that no extensive scheme of thought can be carried into action, if its accomplishment demand any long continuance of time. It weakens not only the consistency, but the vigor and expedition, of all public measures; so that, while a divided people are contending about the means of security or defence, a united enemy may surprise and invade them. These are the apparent consequences of disunion. Mr. Pinckney confessed, however, that, after all that had been said upon the subject, our Constitution was in some measure but an experiment; nor was it possible yet to form a just conclusion as to its practicability.

It had been an opinion long established, that a republican form of government suited only the affairs of a small state; which opinion is founded in the consideration, that unless the people in every district of the empire be admitted to a share in the national representation, the government is not to them as a republic; that in a democratic constitution, the mechanism is too complicated, the motions too slow, for the operations of a great empire, whose defence and government require execution and despatch in proportion to the magnitude, extent, and variety of its concerns. There was, no doubt, weight in these reasons; but much of the objection, he thought, would be done away by the continuance of a federal republic, which, distributing the country into districts, or states, of a commodious extent, and leaving to each state its internal legislation, reserves unto a superintending government the adjustment of their general claims, the complete direction of the common force and treasure of the empire. To what limits such a republic might extend, or how far it is capable of uniting the liberty of a small commonwealth with the safety of a peaceful empire; or whether, among coördinate powers, dissensions and jealousies would not arise, which, for want of a common superior, might proceed to fatal extremities, — are questions upon which he did not recollect the example of any nation to authorize us to decide, because the experiment has never been yet fairly made. We are now about to make it upon an extensive

scale, and under circumstances so promising, that he considered it the fairest experiment that had been ever made in favor of human nature. He concluded with expressing a thorough conviction that the firm establishment of the present system is {263} better calculated to answer the great ends of public happiness than any that has yet been devised.

A long debate arose on reading the Constitution in paragraphs; but, on a division, there appeared to be a majority against it.

Hon. ROBERT BARNWELL hoped gentlemen would confine themselves to the principles of this Constitution. An honorable member had already given much valuable information as reasons that operated in the Convention, so that they were now able to lay before their constituents the necessity of bringing forward this Constitution.

Judge PENDLETON read a paragraph in the Constitution, which says "the Senate shall have the sole power of impeachment." In the British government, and all governments where power is given to make treaties of peace, or declare war, there had been found necessity to annex responsibility. In England, particularly, ministers that advised illegal measures were liable to impeachment, for advising the king. Now, if justice called for punishment of treachery in the Senate, on account of giving bad advice, before what tribunal could they be arraigned? Not surely before their house; that was absurd to suppose. Nor could the President be impeached for making treaties, he acting only under advice of the Senate, without a power of negating.

Maj. PIERCE BUTLER (one of the delegates of the Federal Convention) was one of a committee that drew up this clause, and would endeavor to recollect those reasons by which they were guided. It was at first proposed to vest the sole power of making peace or war in the Senate; but this was objected to as inimical to the genius of a republic, by destroying the necessary balance they were anxious to preserve. Some gentlemen were inclined to give this power to the President; but it was objected to, as throwing into his hands the influence of a monarch, having an opportunity of involving his country in a war whenever he wished to promote her destruction. The House of Representatives was then named; but an insurmountable objection was made to this proposition — which was, that negotiations always required the greatest secrecy, which could not be expected in a large body. The honorable gentleman then gave a clear, concise opinion on the propriety of the proposed Constitution.

Gen. CHARLES COTESWORTH PINCKNEY (one {264} of the delegates of the Federal Convention) observed, that the honorable judge, from his great penetration, had hit upon one of those difficult points which for a long time occasioned much debate in the Convention. Indeed, this subject appeared to be of so much magnitude, that a committee consisting of one member from each state was appointed to consider and report upon it. His honorable friend (Major Butler) was on the committee for this state. Some members were for vesting the power for making treaties in the legislature; but the secrecy and despatch which are so frequently necessary in negotiations evinced the impropriety of vesting it there. The same reason showed the impropriety of placing it solely in the House of Representatives. A few members were desirous that the President alone might possess this power, and contended that it might safely be lodged with him, as he was to be responsible for his conduct, and therefore would not dare to make a treaty repugnant to the interest of his country; and from his situation he was more interested in

making a good treaty than any other man in the United States. This doctrine General Pinckney said he could not acquiesce in. Kings, he admitted, were in general more interested in the welfare of their country than any other individual in it, because the prosperity of the country tended to increase the lustre of the crown, and a king never could receive a sufficient compensation for the sale of his kingdoms; for he could not enjoy in any other country so advantageous a situation as he permanently possessed in his own. Hence kings are less liable to foreign bribery and corruption than any other set of men, because no bribe that could be given them could compensate the loss they must necessarily sustain for injuring their dominions; indeed, he did not at present recollect any instance of a king who had received a bribe from a foreign power, except Charles II., who sold Dunkirk to Louis XIV. But the situation of a President would be very different from that of a king: he might withdraw himself from the United States, so that the states could receive no advantage from his responsibility; his office is not to be permanent, but temporary; and he might receive a bribe which would enable him to live in greater splendor in another country than his own; and when out of office, he was no more interested in the prosperity of his country than any other patriotic citizen; and in framing {265} a treaty, he might perhaps show an improper partiality for the state to which he particularly belonged. The different propositions made on this subject, the general observed, occasioned much debate. At last it was agreed. to give the President a power of proposing treaties, as he was the ostensible head of the Union, and to vest the Senate (where each state had an equal voice) with the power of agreeing or disagreeing to the terms proposed. This, in some measure, took away their responsibility, but not totally; for, though the Senate were to be judges on impeachments, and the members of it would not probably condemn a measure they had agreed to confirm, yet; as they were not a permanent body, they might be tried hereafter by other senators, and condemned, if they deserved it. On the whole, a large majority of the Convention thought this power would be more safely lodged where they had finally vested it, than any where else. It was a power that must necessarily be lodged somewhere: political caution and republican jealousy rendered it improper for us to vest it in the President alone; the nature of negotiation, and the frequent recess of the House of Representatives, rendered that body an improper depository of this prerogative. The President and Senate joined were, therefore, after much deliberation, deemed the most eligible corps in whom we could with safety vest the diplomatic authority of the Union.

Hon. RAWLINS LOWNDES could not consider the representation of two thirds in the Senate as equal to the old Confederation, which required nine states. By this new Constitution, a quorum in the Senate might consist only of fourteen; two thirds of which were ten. Now, was this any thing like a check equal to the present? Was it consistent with prudence to vest so much power in the hands of so small a body of men, who might supersede every existing law in the Union? Here he read the 2d clause in the 6th article of the Constitution, viz.: "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby — any thing in the Constitution or laws of any state to the contrary notwithstanding." Now, in the history of the known world, was there an instance of the {266} rulers of a republic being allowed to go so far? Even the most arbitrary kings possessed nothing like it. The tyrannical Henry VIII. had power given him by Parliament to issue proclamations that should have the same force as laws of the land; but this unconstitutional privilege had been justly reprobated and exploded. The king of France, though a despotic prince, (he meant no reflection on that prince; his opinion was very well known,) yet could not enforce

his edicts until they had been registered in Parliament. In England, the ministers proceed with caution in making treaties: far from being considered as legal without parliamentary sanction, the preamble always stated that his majesty would endeavor to get it ratified by his Parliament. He observed, that the clause entirely did the instalment law; away for, when this Constitution came to be established, the treaty of peace might be pleaded against the relief which that law afforded. The honorable gentleman commented on the extensive powers given to the President, who was not, he believed, likely ever to be chosen from South Carolina or Georgia.

Gen. CHARLES COTESWORTH PINCKNEY rose to obviate some of the objections made by the honorable gentleman who sat down, and whose arguments, he thought, were calculated *ad captandum*, and did not coincide with that ingenuous, fair mode of reasoning he in general made use of. The treaty could not be construed to militate against our laws now in existence; and while we did not make, by law, any distinction between our citizens and foreigners, foreigners would be content. The treaty had been enrolled in the prothonotary's office by the express order of the judges. It had been adjudged, in a variety of cases, to be part of the law of the land, and had been admitted to be so Whenever it was pleaded. If this had not been the case, and any individual state possessed a right to disregard a treaty made by Congress, no nation would have entered into a treaty with us.

The comparison made between kings and our President was not a proper one. Kings are, in general, hereditary, in whose appointment the people have no voice; whereas, in the election of our President, the people have a voice, and the state of South Carolina hath a thirteenth share in his appointment. In the election of senators, South Carolina has an equal vote with any other state; so has Georgia; and if we {267} have a man as fit for the office of President in this state as in others, he did not think the being a southern man could be an objection. More than one president of Congress had been taken from this state. If we should not be represented in the Senate, it would be our own fault; the mode of voting in that body *per capita*, and not by states, as formerly, would be a strong inducement to us to keep up a full representation: the alteration was approved by every one of the Convention who had been a member of Congress. He then mentioned several instances of difficulties which he had been informed had occurred in Congress in determining questions of vast importance to the Union, on account of the members voting as states, and not individually. He did not think the Southern States would be remiss in keeping a full representation. Experience proved that the Eastern and the Southern States were most punctual in attendance. He Understood that it was the Middle ones that principally neglected this duty.

Hon. JOHN RUTLEDGE (one of the delegates of the Federal Convention) thought the gentleman mistaken both as to law and fact; for every treaty was law paramount, and must operate. [Read part of the 9th article of Confederation.] In England, treaties are not necessarily ratified, as was proved when the British Parliament took up the last treaty of peace. A vote of disapprobation dispossessed Lord Shelburne, the minister, of his place; the Commons only addressed the king for having concluded a peace; yet this treaty is binding in our courts and in England. In that country, American citizens can recover debts due to them under the treaty; and in this, but for the treaty, what violences would have taken place! What security had violent tories, stealers of horses, and a number of lawless men, but a law that we passed for recognizing the treaty? There might have been some offenders punished; but if they had obtained a writ of

*habeas corpus*, no doubt they would have been relieved. There was an obvious difference between treaties of peace and those of commerce, because commercial treaties frequently clashed with the laws upon that subject; so that it was necessary to be ratified in Parliament. As a proof that our present Articles of Confederation were paramount, it was there expressed that France should enjoy certain privileges. Now, supposing any law had passed taking those {268} privileges away, would not the treaty be a sufficient bar to any local or municipal laws? What sort of power is that which leaves individuals in full power to reject or approve? Suppose a treaty was unexpectedly concluded between two nations at war; could individual subjects ravage and plunder under letters of marque and reprisal? Certainly not. The treaty concluded, even secretly, would be a sufficient bar to the establishment. Pray, what solid reasons could be urged to support gentlemen's fears that our new governors would wish to promote measures injurious to their native land? Was it not more reasonable that, if every state in the Union had a negative voice, a single state might be tampered with, and defeat every good intention? Adverting to the objection relative to the instalment law being done away, he asked, supposing a person gave security conformable to that law, whether, judging from precedent, the judges would permit any further proceedings contrary to it. He scouted the idea that only ten members would ever be left to manage the business of the Senate; yet, even if so, our delegates might be part of that ten, and consequently our interest secured. He described difficulties experienced in Congress in 1781 and 1782. In those times business of vast importance stood still because nine states could not be kept together. Having said that the laws would stand exactly as they did before, the chancellor asked whether gentlemen seriously could suppose that a President, who has a character at stake, would be such a foot and knave as to join with ten others to tear up liberty by the roots, when a full Senate were competent to impeach him.

Hon. RALPH IZARD gave a clear account of the manner in which edicts are registered in France, which, however, were legal without that ceremony. Even the kings of England had power to make treaties of peace or war. In the congress held at Utrecht, two treaties were agreed upon, one relative to peace, the other of commerce; the latter was not ratified, being found to clash with some laws in existence; yet the king's right to make it was never disputed.

Mr. SPEAKER (Hon. John Julius Pringle) said, that in general he paid great deference to the opinions of the gentleman, (Mr. Lowndes,) because they flowed from good natural sense, matured by much reflection and experience. On this occasion, he entirely disagreed with him. The gentleman {269} appeared extremely alarmed by a phantom of his own creation — a phantom, like every other, without body or, substance, and which will vanish as soon as touched. If the objections which we may have to other parts of the Constitution be no better founded than to this article, the Constitution will pass through the medium of this house, like gold through the crucible, the purer, and with much greater lustre. His objections will only serve to confirm the sentiments of those who favor it. All the gentleman's objections may be comprised in the following compass: By the article, the President, with ten senators, if only ten attend, may make treaties to bind all the states — that the treaties have the force of, and indeed are paramount to, the laws of the land — therefore, the President and Senate have a legislative power; and then he gives scope to a great deal of declamation on the vast danger of their having such legislative powers and particularly that they might have a treaty which might thus repeal the instalment law. This is a greater power, he says, than the king of France has; the king of Great Britain has his ratified by Parliament — the treaties of the French king must be registered. But he conceived the

gentleman was mistaken as to those treaties made by these monarchs. The king of France registers his edicts on some occasions, to facilitate the execution, but not his treaties. The king of Great Britain's treaties are discussed by Parliament, not for ratification, but to discover whether the ministers deserve censure or approbation. The making of treaties is justly a part of their prerogative: it properly belongs to the executive part of government, because they must be conducted with despatch and secrecy not to be expected in larger assemblies. No such dangers as the gentleman apprehends can ensue from vesting it with the President and Senate. Although the treaties they make may have the force of laws when made, they have not, therefore, legislative power. It would be dangerous, indeed, to trust them with the power of making laws to affect the rights of individuals; for this might tend to the oppression of individuals, who could not obtain redress. All the evils would, in that case, flow from blending the legislative, executive, and judicial powers; This would violate the soundest principles of policy and government. It is not with regard to the power of making treaties as of legislation in general. The treaties will affect {270} all the individuals equally of all the states. If the President and Senate make such as violate the fundamental laws, and subvert the Constitution, or tend to the destruction of the happiness and liberty of the states, the evils, equally oppressing all, will be removed as soon as felt, as those who are oppressed have the power and means of redress. Such treaties, not being made with good faith, and on the broad basis of reciprocal interest and convenience, but by treachery and a betraying of trust, and by exceeding the powers with which the makers were intrusted, ought to be annulled. No nations would keep treaties thus made. Indeed, it is too much the practice for them to make mutual interest and convenience the rule of observation, or period of duration. As for the danger of repealing the instalment law, the gentleman has forgot that one article ordains that there shall be no retrospective law. The President and Senate will, therefore, hardly ever make a treaty that would be of this kind. After other arguments to obviate the objections of the honorable gentleman, Mr. Speaker concluded with saying, that it was not necessary for him to urge what further occurred to him, as he saw several of the honorable members of the Convention preparing, whose duty it more particularly was, and who were more able to confute the honorable gentleman in opposition.

Dr. DAVID RAMSAY asked if the gentleman meant us ever to have any treaties at all. If not superior to local laws, who will trust them? Would not the question naturally be, "Did you mean, when you made treaties, to fulfil them?" Establish once such a doctrine, and where will you find ambassadors? If gentlemen had been in the situation of receiving similar information with himself, they would have heard letters read from our ambassadors abroad, in which loud complaints were made that America had become faithless and dishonest. Was it not full time that such conduct as this should be amended?

Gen. CHARLES COTESWORTH PINCKNEY rose to mention some instances he had omitted of the treaty with Great Britain being considered in our courts as part of the law of the land. The judge who held the court at Ninety-six discharged upwards of one hundred recognizances of persons committed for different crimes, which fell within the meaning of this treaty. A man named Love, accused of {271} murder, was liberated. It is true, the people, enraged at the enormity of his conduct, hanged him soon after; but of this the judicial power knew nothing until after its perpetration. Another murderer was allowed to plead the treaty of peace in bar, that had conducted General Pickens's brother, into the hands of the Indians, who soon after put him to death.

Hon. RAWLINS LOWNDES desired gentlemen to consider that his antagonists were mostly gentlemen of the law, who were capable of giving ingenious explanations to such points as they wished to have adopted, He explained his opinion relative to treaties to be, that no treaty concluded contrary to the express laws of the land could be valid. The king of England, when he concluded one, did not think himself warranted to go further than to promise that he would endeavor to induce his Parliament to sanction it. The security of a republic is jealousy; for its ruin may be expected from unsuspecting security. Let us not, therefore, receive this proffered system with implicit confidence, as carrying with it the stamp of superior perfection; rather let us compare what we already possess with what we are offered for it. We are now Under the government of a most excellent constitution, one that had stood the test of time, and carried us through difficulties generally supposed to be insurmountable; one that had raised us high in the eyes of all nations, and given to us the enviable blessings of liberty and independence; a constitution sent like a blessing from Heaven; yet we are impatient to change it for another, that vested power in a few men to pull down that fabric, which we had raised at the expense of our blood. Charters ought to be considered as sacred things. In England, an air erupt was made to alter the charter of the East India Company; but they invoked heaven and earth in their cause; moved lords, nay, even the king, in their behalf, and thus averted the ruin with which they were threatened.

It has been said that this new government was to be considered as an experiment. He really was afraid it would prove a fatal one to our peace and happiness. An experiment! What, risk the loss of political existence on experiment! No, sir; if we are to make experiments, rather let them be such as may do good, but which cannot possibly do any injury to us or our posterity. So far from having any expectation of success from such experiments, he sincerely {272} believed that, when this new Constitution should be adopted, the sun, of the Southern States would set, never to rise again.

To prove this, he observed, that six of the Eastern States formed a majority in the House of Representatives. In the enumeration he passed Rhode Island, and included Pennsylvania. Now, was it consonant with reason, with wisdom, with policy, to suppose, in a legislature where a majority of persons Sat whose interests were greatly different from ours, that we had the smallest chance of receiving adequate advantages? Certainly not. He believed the gentlemen that went from this state, to represent us in Convention, possessed as much integrity, and stood as high in point of character, as any gentlemen that could have been selected; and he also believed that they had done every thing in their power to procure for us a proportionate share in this new government; but the very little they had gained proved what we may expect in future — that the interest of the Northern States would so predominate as to divest us of any pretensions to the title of a republic. In the first place, what cause was there for jealousy of our importing negroes? Why confine us to twenty years, or rather why limit us at all? For his part, he thought this trade could be justified on the principles of religion, humanity, and justice; for certainly to translate a set of human beings from a bad country to a better, was fulfilling every part of these principles. But they don't like our slaves, because they have none themselves, and therefore want to exclude us from this great advantage. Why should the Southern States allow of this, without the consent of nine states?

Judge PENDLETON observed, that only three states, Georgia, South Carolina, and North Carolina, allowed the importation of negroes. Virginia had a clause in her Constitution for this purpose, and Maryland, he believed, even before the war, prohibited them.

Mr. LOWNDES continued — that we had a law prohibiting the importation of negroes for three years, a law he greatly approved of; but there was no reason offered why the Southern States might not find it necessary to alter their conduct, and open their ports. Without negroes, this state one of the most contemptible in the Union; and he an expression that fell from General {273} Pinckney on a former debate, that whilst there remained one acre of swamp-land in South Carolina, he should raise his voice against restricting the importation of negroes Even in granting the importation for twenty years, care had been taken to make us pay for this indulgence, each negro being liable, on importation, to pay a duty not exceeding ten dollars; and, in addition to this, they were liable to a capitation tax. Negroes were our wealth, our only natural resource; yet behold how our kind friends in the north were determined soon to tie up our hands, and drain us of what we had! The Eastern States drew their means of subsistence, in a great measure, from their shipping; and, on that head, they had been particularly careful not to allow of any burdens: they were not to pay tonnage or duties; no, not even the form of clearing out: all ports were free and open to them! Why, then, call this a reciprocal bargain, which took all from one party, to bestow it on the other!

Major BUTLER observed, that they were to pay five percent. impost.

This, Mr. LOWNDES proved, must fall upon the consumer. They are to be the carriers; and, we being the consumers, therefore all expenses would fall upon us. A great number of gentlemen were captivated with this new Constitution, because those who were in debt would be compelled to pay; others pleased themselves with the reflection that no more confiscation laws would be passed; but those were small advantages, in proportion to the evils that might be apprehended from the laws that might be passed by Congress, whenever there was a majority of representatives from the Eastern States, who were governed by prejudices and ideas extremely different from ours. He was afraid, in the present instance, that so much partiality prevailed for this new Constitution, that opposition from him would be fruitless: however. he felt so much the importance of the subject, that he hoped the house would indulge him in a few word as to take a view, comparatively, of the old constitution and the new one, in point of modesty. Congress, laboring under many difficulties, asked to regulate commerce for twenty-one years, when the power reverted into the hands of those who originally gave it; but this infallible new Constitution eased us of any more trouble, for it was to regulate commerce ad infinitum; and thus called upon us to pledge ourselves and {274} posterity, forever, in support of their measures; so when our to the confined local legislature had dwindled down powers of a corporation, we should be liable to taxes and excise; not, perhaps, payable in paper, but in specie. However, thy need not be uneasy, since everything would be managed in future by great men; and great men, every body knew, were incapable of acting under mistake or prejudice: they were infallible; so that if, at any future period, we should smart under laws which bore hard upon us, and think proper to remonstrate, the answer would probably be, "Go: you are totally incapable of managing for yourselves. Go: mind your private affairs; trouble not yourselves with public concerns — 'Mind your business.'" The latter expression was already the motto of some coppers in circulation, and he thought it would soon be the style of language held out towards the Southern States. The honorable

member apologized for going into the merits of this new Constitution, when it was ultimately to be decided on by another tribunal; but understanding that he differed in opinion with his constituents, who were opposed to electing any person as a member of the Convention that did not approve of the proposed plan of government, he should not therefore have an opportunity of expressing those sentiments which occurred to him on considering the plan for a new federal government. But if it was sanctioned by the people, it would have his hearty concurrence and support. He was very much, originally, against a declaration of independency; he also opposed the instalment law; but when they received the approbation of the people, it became his duty, as a good citizen, to promote their due observance.

Hon. E. RUTLEDGE was astonished to hear the honorable gentleman pass such eulogium on the old Confederation, and prefer it, as he had done, to the one before the house. For his part, he thought that Confederation so very weak, so very inadequate to the purposes of the Union, that, unless it was materially altered, the sun of American independence would indeed soon set — never to rise again. What could be effected for America under that highly-extolled constitution? Could it obtain security for our commerce in any part of the world? Could it force obedience to any one law of the Union? Could it obtain one shilling of money for the discharge of the most honorable obligations? The {275} honorable gentleman knew it could not. Was there a single power in Europe that would lend us a guinea on the faith of that Confederation? or could we borrow one on the public faith of our own citizens? The people of America had seen these things; they had felt the consequences of this feeble government, if that deserved the name of government which had no power to enforce laws founded on solemn compact; and it was under the influence of those feelings that, with almost one voice, they had called for a different government. But the honorable gentleman had said that this government had carried us gloriously through the last war. Mr. Rutledge denied the assertion. It was true we had passed gloriously through the war while the Confederation was in existence; but that success was not to be attributed to the Confederation; it was to be attributed to the firm and unconquerable spirit of the people, who were determined, at the hazard of every consequence, to oppose a submission to British government; it was to be attributed to the armaments of an ally, and the pecuniary assistance of our friends: these were the wings on which we were carried so triumphantly through the war; and not this wretched Confederation, which is unable, by universal acknowledgment, to obtain a discharge of any part of our debts in the hour of the most perfect domestic tranquillity. What benefits, then, are to be expected from such a constitution in the day of danger? Without a ship, without a soldier, without a shilling in the federal treasury, and without a nervous government to obtain one, we hold the property that we now enjoy at the courtesy of other powers. Was this such a tenure as was suitable to the inclinations of our constituents? It certainly was not. They had called upon us to change their situation, and we should betray their interest, and our own honor, if we neglected it. But the gentleman has said that there were points in this new confederation which would endanger the rights of the people — that the President and ten senators may make treaties, and that the balance between the states was not sufficiently preserved — that he is for limiting the powers of Congress, so that they shall not be able to do any harm; for, if they have the power to do any harm, they may. To this Mr. Rutledge observed, that the greatest part of the honorable gentleman's objection was founded on an opinion that the choice of the people would fall on the most worthless and the most negligent part of the community; {276} but if it was to be admitted, it would go to the withholding of all power from all public bodies. The gentleman would have done well to have defined the kind of

power that could do no harm. The very idea of power included a possibility of doing harm; and if the gentleman would show the power that could do no harm, he would at once discover it to be a power which could do no good. To argue against the use of a thing from the abuse of it, had long since been exploded by all sensible people. It was true that the President, with the concurrence of two thirds of the Senate, might make treaties; and it was possible that ten senators *might* constitute the two thirds, but it was just within the reach of possibility, and a possibility from whence no danger could be apprehended. If the President or the senators abused their trust, they were liable to impeachment and punishment; and the fewer that were concerned in the abuse of the trust, the more certain would be the punishment. In the formation of this article, the delegates had done their duty fully; they had provided that two thirds of the Senate should concur in the making of treaties. If the states should be negligent in sending their senators, it would be their own fault, and the injury would be theirs, not the framers of the Constitution; but it they were not negligent, they would have more than their share. Is it not astonishing that the gentleman who is so strenuous an advocate for the powers of the people, should distrust the people the moment that power is given to them, and should found his objections to this article in the corruption of the representatives of the people, and in the negligence of the people themselves? If such objections as these have any weight, they tend to the destruction of all confidence — the withholding of all power — the annihilation of all government. Mr. Rutledge insisted that we had our full share in the House of Representatives, and that the gentleman's fears of the northern interest prevailing at all times were ill-founded. The Constitution had provided for a census of the people, and the number of representatives was to be directed by the number of the people in the several states; this clause was highly favorable to the southern interest. Several of the Northern States were already full of people; it was otherwise with us; the migrations to the south were immense, and we should, in the course of a few years, rise high in our representation, whilst {277} other states would keep their present position. Gentlemen should carry their views into futurity, and not confine themselves to the narrow limits of a day, when contemplating a subject of such vast importance. The gentleman had complained of the inequality of the taxes between the Northern and Southern States; that ten dollars a head was imposed on the importation of negroes; and that those negroes were afterwards taxed. To this it was answered, that the ten dollars per head was an equivalent to the five per cent. on imported articles; and as to their being afterwards taxed, the advantage is on our side, or, at least, not against us.

In the Northern States the labor is performed by white people, in the Southern by black. All the free people (and there are few others) in the Northern States are to be taxed by the new Constitution; whereas only the free people, and two fifths of the slaves, in the Southern States, are to be rated, in the apportioning of taxes. But the principal objection is, that no duties are laid on shipping; that, in fact, the carrying trade was to be vested, in a great measure, in the Americans; that the ship-building business was principally carried on in the Northern States. When this subject is duly considered, the Southern States should be the last to object to it. Mr. Rutledge then went into a consideration of the subject; after which the house adjourned.

**THURSDAY, January 17, 1788.**

Gen. CHARLES COTESWORTH PINCKNEY observed, that the honorable gentleman (Mr. Lowndes) who opposed the new Constitution had asserted that treaties made under the old Confederation were not deemed paramount to the laws of the land, and that treaties made by the

king of Great Britain required the ratification of Parliament to render them valid. The honorable gentleman is surely mistaken in his assertion. His honorable friend (Chancellor Rutledge) had clearly shown that, by the 6th, 9th, and 13th Articles of the old Confederation, Congress have a power to make treaties, and each state is pledged to observe them; and it appears, from the debates of the English Parliament, that the House of Commons did not ratify, but actually censure, the peace made by the king of Great Britain with America; yet the very members who censured it acknowledged it was binding on the nation. [Here the general {278} read extracts from the parliamentary debates of the 17th and 21st of February, 1784.] Indeed, the doctrine that the king of Great Britain may make a treaty with a foreign state, which shall irrevocably bind his subjects, is asserted by the best writers on the laws and constitution of England — particularly by Judge Blackstone, who, in the first book of his Commentaries, (ch. 7, p. 257,) declares "that it is the king's prerogative to make treaties, leagues, and alliances, with foreign states and princes, and that no other power in the kingdom can legally delay, resist, or annul them." If treaties entered into by Congress are not to be held in the same sacred light in America, what foreign nation will have any confidence in us? Shall we not be stigmatized as a faithless, unworthy people, if each member of the Union may, with impunity, violate the engagements entered into by the federal government? Who will confide in us? Who will treat with us if our practice should be conformable to this doctrine? Have we not been deceiving all nations, by holding forth to the world, in the 9th Article of the old Confederation, that Congress may make treaties, if we, at the same time, entertain this improper tenet, that each state may violate them? I contend that the article in the new Constitution, which says that treaties shall be paramount to the laws of the land, is only declaratory of what treaties were, in fact, under the old compact. They were as much the law of the land under that Confederation, as they are under this Constitution; and we shall be unworthy to be ranked among civilized nations if we do not consider treaties in this view. Vattel, one of the best writers on the law of nations, says, "There would be no more security, no longer any commerce between mankind, did they not believe themselves obliged to preserve their faith, and to keep their word. Nations, and their conductors, ought, then, to keep their promises and their treaties inviolable. This great truth is acknowledged by all nations. Nothing adds so great a glory to a prince, and the nation he governs, as the reputation of an inviolable fidelity to his engagements. By this, and their bravery, the Swiss have rendered themselves respectable throughout Europe. This national greatness of soul is the source of immortal glory; upon it is founded the confidence of nations, and it thus becomes a certain instrument of power and splendor." Surely this doctrine is right; it speaks to the heart; {279} it impresses itself on the feelings of mankind, and convinces us that the tranquillity, happiness, and prosperity, of the human race, depend on inviolably preserving the faith of treaties.

Burlamaqui, another writer of great reputation on political law, says "that treaties are obligatory on the subjects of the powers who enter into treaties; they are obligatory as conventions between the contracting powers; but they have the force of law with respect to their subjects." These are his very words: "*Ils ont force de loi à l'égard des sujets, considérés comme tels*; and it is very manifest," continues he, "that two sovereigns, who enter into a treaty, impose, by such treaty, an obligation on their subjects to conform to it, and in no manner to contravene it." It is remarkable that the words made use of by Burlamaqui establish the doctrine, recognized by the Constitution, that treaties shall be considered as the law of the land; and happy will it be for America if they shall be always so considered: we shall then avoid the disputes, the tumults, the frequent wars, we must inevitably be engaged in, if we violate treaties. By our treaty with France, we declare

she shall have all the privileges, in matters of commerce, with the most favored nation. Suppose a particular state should think proper to grant a particular privilege to Holland, which she refuses to France; would not this be a violation of the treaty with France? It certainly would; and we in this state would be answerable for the consequences attending such violation by another state; for we do not enter into treaties as separate states, but as united states; and all the members of the Union are answerable for the breach of a treaty by any one of them. South Carolina, therefore, considering its situation, and the valuable produce it has to export, is particularly interested in maintaining the sacredness of treaties, and the good faith with which they should be observed by every member of the Union. But the honorable gentleman complains that the power of making treaties is vested in the President and Senate, and thinks it is not placed so safely with them as with the Congress under the old Confederation. Let us examine this objection. By the old Confederation; each state had an equal vote in Congress, and no treaty could be made without the assent of the delegates from nine states. By the present Constitution, each state sends two members {280} to the Senate, who vote *per capita*; and the President has power, with advice and consent of the Senate, to make treaties, provided two thirds of the Senate present concur. This inconvenience attended the old method: it was frequently difficult to obtain a representation from nine states; and if only nine States were present, they must all concur in making a treaty. A single member would frequently prevent the business from being concluded; and if he absented himself, Congress had no power to compel his attendance. This actually happened when a treaty of importance was about to be concluded with the Indians; and several states, being satisfied, at particular junctures, that the nine states present would not concur in sentiments on the subject of a treaty, were indifferent whether their members attended or not. But now that the senators vote individually, and not by States, each state will be anxious to keep a full representation in the Senate; and the Senate has now power to compel the attendance of its own members. We shall thus have no delay, and business will be conducted in a fuller representation of the states than it hitherto has been. All the members of the Convention, who had served in Congress, were so sensible of the advantage attending this mode of voting, that the measure was adopted unanimously. For my own part, I think it infinitely preferable to the old method. So much for the manner of voting.

Now let us consider whether the power of making treaties is not as securely placed as it was before. It was formerly vested in Congress, who were a body constituted by the legislatures of the different states in equal proportions. At present, it is vested in a President, who is chosen by the people of America, and in a Senate, whose members are chosen by the state legislatures, each legislature choosing two members. Surely there is greater security in vesting this power as the present Constitution has vested it, than in any other body. Would the gentleman vest it in the President alone? If he would, his assertion that the power we have granted was as dangerous as the power vested by Parliament in the proclamations of Henry VIII., might have been, perhaps, warranted. Would he vest it in the House of Representatives? Can secrecy be expected in sixty-five members? The idea is absurd. Besides, their sessions will probably last only two or three months in the year; therefore, on that {281} account, they would be a very unfit body for negotiation; whereas the Senate, from the smallness of its numbers, from the equality of power which each state has in it, from the length of time for which its members are elected, from the long sessions they may have without any great inconveniency to themselves or constituents, joined with the president, who is the federal head of the United States, form together a body in whom can be best and most safely vested the diplomatic power of the Union.

General Pinckney then observed, that the honorable gentleman had not conducted his arguments with his usual candor. He had made use of many which were not well founded, and were only thrown out *ad captandum*. Why say, upon this occasion, that every thing would, in future, be managed by great men, and that great men could do no wrong? Under the new Constitution, the abuse of power was more effectually checked than under the old one. A proper body, immediately taken from the people, and returnable to the people every second year, are to impeach those who behave amiss, or betray their public trust; another body, taken from the state legislatures, are to try them. No man, however great, is exempt from impeachment and trial. If the representatives of the people think he ought to be impeached and tried, the President cannot pardon him; and this great man himself, whom the honorable gentleman pretends to be so much afraid of, as well as the Vice-President, and all civil officers of the United States, are to be removed from office on impeachment and conviction of treason, bribery, or other high crimes and misdemeanors. Then why make use of arguments to occasion improper jealousies and ill-founded fears? Why is the invidious distinction of "great men" to be reiterated in the ears of the members? Is there any thing in the Constitution which prevents the President and senators from being taken from the poor as well as the rich? Is there any pecuniary qualification necessary to the holding of any office under the new Constitution? There is not. Merit and virtue, and federal principles, are the qualifications which will prefer a poor man to office, before a rich man who is destitute of them. The gentleman has made a warm panegyric on the old Confederation. Can he possibly be serious, and does he really think it can secure us tranquillity at home, or respect abroad? Ask the citizens {282} of Massachusetts if the Confederation protected them during the insurrection of Shays. Ask the crews of our vessels captured by the Algerines if respect for our government hath softened the rigors of their captivity. Inquire of our delegates to Congress if all the despatches from your public ministers; are not filled with lamentations of the imbecility of Congress; and whether foreign nations do not declare they can have no confidence in our government, because it has not power to enforce obedience to treaties, Go through each state in the Union, and be convinced that a disregard for law hath taken the place of order, and that Congress is so slighted by all of them that not one hath complied with her requisitions. Every state in the Union, except Rhode Island, was so thoroughly convinced that our government was inadequate to our situation, that all, except her, sent members to the Convention at Philadelphia. General Pinckney said, it had been alleged that, when there, they exceeded their powers. He thought not. They had a right, he apprehended, to propose any thing which they imagined would strengthen the Union, and be for the advantage of our country; but they did not pretend to a right to determine finally upon any thing. The present Constitution is but a proposition which the people may reject; but he conjured them to reflect seriously before they did reject it, as he did not think our state would obtain better terms by another convention, and the anarchy which would, in all probability, be the consequence of rejecting this Constitution, would encourage some daring despot to seize upon the government, and effectually deprive us of our liberties.

Every member who attended the Convention was, from the beginning, sensible of the necessity of giving greater powers: to the federal government. This was the very purpose for which they were convened. The delegations of Jersey and Delaware were, at first, averse to this organization; but they afterwards acquiesced in it; and the conduct of their delegates has been so very agreeable to the people of these states, that their respective conventions have unanimously adopted the Constitution. As we have found it necessary to give very extensive powers to the federal government both over the persons and estates of the citizens, we thought it right to draw

one branch of the legislature immediately from the people, and that both wealth and {283} numbers should be considered in the representation. We were at a loss, for some time, for a rule to ascertain the proportionate wealth of the states. At last we thought that the productive labor of the inhabitants was the best rule for ascertaining their wealth. In conformity to this rule, joined to a spirit of concession, we determined that representatives should be apportioned among the several states, by adding to the whole number of free persons three fifths of the slaves. We thus obtained a representation for our property; and I confess I did not expect that we had conceded too much to the Eastern States, when they allowed us a representation for a species of property which they have not among them.

The numbers in the different states, according to the most accurate accounts we could obtain, were —

- In New Hampshire, ..... 102,000
- Massachusetts, ..... 360,000
- Rhode Island, ..... 58,000
- Connecticut ..... 202,000
- New York, ..... 233,000
- New Jersey, ..... 138,000
- Pennsylvania, ..... 360,000
- Delaware, ..... 37,000
- Maryland, (including three fifths of 80,000 negroes,) ..... 218,000
- Virginia, (including three fifths of 280,000 negroes,) ..... 420,000
- N. Carolina, (including three fifths of 60,000 negroes,) ... 200,000
- S. Carolina, (including three fifths of 80,000 negroes,) ... 150,000
- Georgia, (including three fifths of 20,000 negroes,) ..... 90,000

The first House of Representatives will consist of sixty-five members. South Carolina will send five of them. Each state has the same representation in the Senate that she has at present; so that South Carolina will have, under the new Constitution, a thirteenth share in the government, which is the proportion she has under the old Confederation: and when it is considered that the Eastern States are full of men, and that we must necessarily increase rapidly to the southward and south-westward, he did not think that the Southern States will have an inadequate share in the representation. The honorable gentleman alleges that the Southern States are weak. I sincerely agree with him. We are so weak that by ourselves we could not form a union strong enough for the purpose of effectually protecting each other. Without union with the other states, South Carolina must soon fall. Is there any one among us so much a {284} Quixote as to suppose that this state could long maintain her independence if she stood alone, or was only connected with the Southern States? I scarcely believe there is. Let an invading power send a naval force into the Chesapeake to keep Virginia in alarm, and attack South Carolina with such a naval and military force as Sir Henry Clinton brought here in 1780; and though they might not soon conquer us, they would certainly do us an infinite deal of mischief; and if they Considerably increased their numbers, we should probably fall. As, from the nature of our climate and the fewness of our inhabitants, we are undoubtedly weak, should we not endeavor to form a close union with the Eastern States, who are strong? And ought we not to endeavor to increase that species of strength which will render them of most service to us both in peace and war? — I mean their navy. We certainly ought; and by doing this we render it their particular interest to afford us every assistance in their power, as every wound that we receive will eventually affect

them. Reflect, for a moment, on the situation of the Eastern States; their country full of inhabitants, and so impracticable to an invading enemy by their numberless stone walls, and a variety of other circumstances, that they can be under no apprehension of danger from an attack. They can enjoy their independence without our assistance. If our government is to be founded on equal compact, what inducement can they possibly have to be united with us, if we do not grant them some privileges with regard to their shipping? Or, supposing they were to unite with us without having these privileges, can we flatter ourselves that such union would be lasting, or that they would afford us effectual assistance when invaded? Interest and policy both concurred in prevailing upon us to submit the regulation of commerce to the general government. But I will also add, justice and humanity require it likewise. For who have been the greatest sufferers in the Union, by our obtaining our independence? I answer, the Eastern States. They have lost every thing but their country and their freedom. It is notorious that some ports to the eastward, which used to fit out one hundred and fifty sail of vessels, do not now fit out thirty; that their trade of ship-building, which used to be very considerable, is now annihilated; that their fisheries are trifling, and their mariners in want of bread. Surely we are called upon by every tie of {285} justice, friendship, and humanity, to relieve their distresses; and as, by their exertions, they have assisted us in establishing our freedom, we should let them, in some measure, partake of our prosperity. The general then said he Would make a few observations on the objections which the gentleman had thrown out on the restrictions that might be laid on the African trade after the year 1808. On this point your delegates had to contend with the religious and political prejudices of the Eastern and Middle States, and with the interested and inconsistent opinion of Virginia, who was warmly opposed to our importing more slaves. I am of the same opinion now as I was two years ago, when I used the expressions the gentleman has quoted — that, while there remained one acre of swam-land uncleared of South Carolina, I would raise my voice against restricting the importation of negroes. I am as thoroughly convinced as that gentleman is, that the nature of our climate, and the flat, swampy situation of our country, obliges us to cultivate our lands with negroes, and that without them South Carolina would soon be a desert waste.

You have so frequently heard my sentiments on this subject, that I need not now repeat them. It was alleged, by some of the members who opposed an unlimited importation, that slaves increased the weakness of any state who admitted them; that they were a dangerous species of property, which an invading enemy could easily turn against ourselves and the neighboring states; and that, as we were allowed a representation for them in the House of Representatives, our influence in government would be increased in proportion as we were less able to defend ourselves. "Show some period," said the members from the Eastern States, "when it may be in our power to put a stop, if we please, to the importation of this weakness, and we will endeavor, for your convenience, to restrain the religious and political prejudices of our people on this subject." The Middle States and Virginia made us no such proposition; they were for an immediate and total prohibition. We endeavored to obviate the objections that were made in the best manner we could, and assigned reasons for our insisting on the importation, which there is no occasion to repeat, as they must occur to every gentleman in the house: a committee of the states was appointed in order to accommodate this matter, and, {286} after a great deal of difficulty, it was settled on the footing recited in the Constitution.

By this settlement we have secured an unlimited importation of negroes for twenty years. Nor is it declared that the importation shall be then stopped; it may be continued. We have a security

that the general government can never emancipate them, for no such authority is granted; and it is admitted, on all hands, that the general government has no powers but what are expressly granted by the Constitution, and that all rights not expressed were reserved by the several states. We have obtained a right to recover our slaves in whatever part of America they may take refuge, which is a right we had not before. In short, considering all circumstances, we have made the best terms for the security of this species of property it was in our power to make. We Would have made better if we could; but, on the whole, I do not think them bad.

Dr. DAVID RAMSAY thought our delegates had made a most excellent bargain for us, by transferring an immense sum of Continental debt, which we were pledged to pay, upon the Eastern States, some of whom (Connecticut, for instance) could not expect to receive any material advantage from us. He considered the old Confederation as dissolved.

Hon. JACOB READ looked on the boasted efficiency of Congress to be farcical, and instanced two cases in proof of his opinion. One was, that, when the treaty should have been ratified, a sufficient number of members could not be collected in Congress for that purpose; so that it was necessary to despatch a frigate, at the expense of four thousand dollars, with particular directions for Mr. Adams to use his endeavors to gain time. His application proved successful; otherwise, very disagreeable consequences must have ensued. The other case was, a party of Indians came to Princeton for the purpose of entering into an amicable treaty with Congress; before it could be concluded, a member went to Philadelphia to be married, and his secession had nearly involved the western country in all the miseries of war. Mr. Read urged a concurrence, with those states that were in favor of the new Constitution.

Hon. CHARLES PINCKNEY observed, that the honorable gentleman was singular in his opposition to the new Constitution, and equally singular in his profuse praise of the {287} old one. He described, with much good sense, the impracticability of annexing responsibility to the office of President in a republican form of government; the only remedy against despotism being to form a party against those who were obnoxious, and turn them out. He observed that the President's powers did not permit him to declare war.

Hon. RAWLINS LOWNDES declared himself almost willing to give up his post, finding he was opposed by such a phalanx of able antagonists, any one of them possessing sufficient abilities to contend with him; but as a number of respectable members, men of good sense, though not in the habit of speaking in public, had requested that he would state his sentiments, for the purpose of gaining information on such points as seemed to require it, — rather in compliance, therefore; with their wishes, than any inclination on his party, he should make a few further observations on the subject. Much had been said, from different parts of the house, against the old Confederation — that it was such a futile, inefficient, impolitic government as to render us the objects of ridicule and contempt in the eyes of other nations. He could not agree to this, because there did not appear any evidence of the fact, and because the names of those gentlemen who had signed the old Confederation were eminent for patriotism, virtue, and wisdom, — as much so as any set of men that could be found in America, — and their prudence and wisdom particularly appeared in the care which they had taken sacredly to guaranty the sovereignty of each state. The treaty of peace expressly agreed to acknowledge us as free, sovereign, and independent states, which privileges we lived at present in the exercise of. But this new Constitution at once swept those

privileges away being sovereign over all; so that this state would dwindle into a mere skeleton of what it was; its legislative powers would be pared down to little more than those now vested in the corporation; and he should value the honor of a seat in the legislature in no higher estimation than a seat in the city council. Adverting to the powers given to the President, he considered them as enormous, particularly in being allowed to interfere in the election of members in the House of Representatives; astonishing that we had not this reserved to us, when the senators were to be chosen from that body: — thinks it might be so managed that the different legislatures should be limited to the passing a few laws for regulating ferries and roads.

{288} The honorable gentleman went into an investigation of the weight of our representation in the proposed government, which he thought would be merely virtual, similar to what we were allowed in England, whilst under the British government. We were then told that we were represented in Parliament; and this would, in the event, prove just such another. The mode of choosing senators was exceedingly exceptionable. It had been the practice formerly to choose the Senate or council for this state from that house, which practice proved so inconvenient and oppressive, that, when we framed our present Constitution, great care was taken to vest the power of electing the Senate originally with the people, as the best plan for securing their rights and privileges. He wished to know in what manner it was proposed to elect the five representatives. Was it to be done in this city? or would some districts return one member, and others none at all?

Still greater difficulties would be found in the choice of a President, because he must have a majority of ninety-one votes in his favor. For the first President there was one man to whom all America looked up, (General Washington,) and for whom he most heartily would vote; but after that gentleman's administration ceased, where could they point out another so highly respected as to concentrate a majority of ninety-one persons in his favor? and if no gentleman should be fully returned, then the government must stand still. He went over much of the ground which he had trod the preceding day, relative to the Eastern States having been so guarded in what they had conceded to gain the regulation of our commerce, which threw into their hands the carrying trade, and, put it in their power to lay us under payment of whatever freightage they thought proper to impose. It was their interest to do so, and no person could doubt but they would promote it by every means in their power. He wished our delegates had sufficiently attended to this point in the Convention — had been more attentive to this object, and taken care to have it expressed, in this Constitution, that all our ports were open to all nations; instead of putting us in the power of a set of men who may fritter away the value of our produce to a little or nothing, by compelling a payment of exorbitant freightage. Neither did he believe it was in the power of the Eastern States to furnish a sufficient {289} number of ships to carry our produce. It was, indeed, a general way of talking, that the Eastern States had a great number of seamen, a vast number of ships; but where were they? Why did they not come here now, when ships are greatly wanted? He should always wish to give them a preference, and so, no doubt, would many other gentlemen; and yet very few ships come here from the Eastern States. Another exceptionable point was, that we were to give up the power of taxing ourselves. During our connection with Great Britain, she left us the power of raising money in any way most convenient: a certain sum was only required to defray the public wants, but no mode of collecting it ever prescribed. In this new Constitution, every thing is transferred, not so much power being left us as Lord North offered to guaranty to us in his conciliatory plan. Look at the articles of union ratified between

England and Scotland. How cautiously had the latter taken care of her interest in reserving all the forms of law — her representation in Parliament — the right of taxation the management of her revenue — and all her local and municipal interests! Why take from us the right of paying our delegates, and pay them from the federal treasury? He remembered formerly what a flame was raised in Massachusetts, on account of Great Britain assuming the payment of salaries to judges and other state officers; and that this conduct was considered as originating in a design to destroy the independence of their government. Our local expenses had been nearly defrayed by our impost duty; but now that this was given away, and thrown into a general fund, for the use of all the states indiscriminately, we should be obliged to augment our taxes to carry on our local government, notwithstanding we were to pay a poll tax for our negroes. Paper money, too, was another article of restraint, and a popular point with many; but what evils had we ever experienced by issuing a little paper money to relieve ourselves from any exigency that pressed us? We had now a circulating medium which every body took. We used formerly to issue paper bills every year, and recall them every five, with great convenience and advantage. Had not paper money carried us triumphantly through the war, extricated us from difficulties generally supposed to be insurmountable, and fully established us in our independence? {290} and now every thing is so changed that an entire stop must be put to any more paper emissions, however great our distress may be. It was true, no article of the Constitution declared there should not be jury trials in civil cases; yet this must be implied, because it stated that all crimes, except in cases of impeachment, shall be tried by a jury. But even if trials by jury were allowed, could any person rest satisfied with a mode of trial which prevents the parties from being obliged to bring a cause for discussion before a jury of men chosen from the vicinage, in a manner conformable to the present administration of justice, which had stood the test of time and experience, and ever been highly approved of? Mr. Lowndes expatiated some time on the nature of compacts, the sacred light in which they were held by all nations, and solemnly called on the house to consider whether it would not be better to add strength to the old Confederation, instead of hastily adopting another; asking whether a man could be looked on as wise, who, possessing a magnificent building, upon discovering a flaw, instead of repairing the injury, should pull it down, and build another. Indeed, he could not understand with what propriety the Convention proceeded to change the Confederation; for every person with whom he had conversed on this subject concurred in opinion that the sole object of appointing a convention was to inquire what alterations were necessary in the Confederation, in order that it might answer those salutary purposes for which it was originally intended.

He recommended that another convention should be called; and as the general sense of America appeared now to be known, every objection could be met on fair grounds, and adequate remedies applied where necessary. This mode of proceeding would conciliate all parties, because it was candid, and had a more obvious tendency to do away all inconveniences than the adoption of a government which perhaps might require the bayonet to enforce it; for it could not be expected that the people, who had disregarded the requisitions of Congress, though expressed in language the most elegant and forcible that he ever remembered to have read, would be more obedient to the government until an irresistible force compelled them to be so. Mr. Lowndes concluded a long speech with a glowing eulogy on the old Confederation, and challenged his opponents, whilst {291} one state objected, to get over that section which said, "The Articles of this Confederation shall be inviolably observed in every state, and the Union shall be perpetual; nor

shall any alteration at any time hereafter be made in them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislature of every state."

Hon. ROBERT BARNWELL said, although he had been opposed to the investigation of the Federal Constitution at that period, and in that house, and foretold the unnecessary expenditure of both time and treasure that would be occasioned by it, yet he acknowledged that, if individual information upon its principles could by any means be a compensation for these wastes he should be extremely indebted to the honorable gentleman for the opposition which he had given. Mr. Barnwell was most decidedly in favor of the Constitution as recommended by the Convention, and viewed with pleasure the small sacrifices of interest, which, in his opinion, have been made to effect it. The arguments which had been adduced by the honorable gentleman in opposition had riveted his affections still more firmly to it, and had established in his mind, as conviction, what was only approbation before. If he did not view some part of the Constitution through a medium different from any of the gentlemen who had spoken before him, he should not have troubled this house. With this idea he rose, and left it to the house to determine whether he had done his duty as a member, or whether he had unnecessarily contributed to the interruption of the business before them. When he found that a gentleman of such acknowledged abilities, and of so great experience, was opposed to the Constitution, he expected a train of reasoning, and a power of argument, that would have made the federal fabric totter to its foundation. But to him they rather appeared like those storms which shake the edifice to fix it more strongly on its basis. To give his reasons for this opinion, he begged the indulgence of the house while he made the following observations upon the principles of the gentleman's opposition. In the first instance, it appeared to him that the gentleman had established, as the basis of his objections, that the Eastern States entertained the greatest aversion to those which lay to the south, and would endeavor in every {292} instance to oppress them; This idea he considered as founded in prejudice, and unsupported by facts. To prove this assertion, Mr. B. requested gentlemen for a moment to turn their attention to the transactions which the late war has engraved upon the memory of every man. When the armor oppression lay heavy on us, were they not the first to arouse themselves? When the sword of civil discord was drawn, were they not the first in the field? When war deluged their plains with blood, what was their language? Did they demand the southern troops to the defence of the north? No! Or, when war floated to the south, did they withhold their assistance? The answer was the same. When we stood with the spirit, but weakness, of youth, they supported us with the vigor and prudence of age. When our country was subdued, when our citizens submitted to superior power, it was then these states evinced their attachment. He saw not a man who did not know that the shackles of the south were broken asunder by the arms of the north. With the above-mentioned supposition of oppression, the gentleman had objected to the formation of the Senate; that the Confederation required nine states to ratify matters of importance, but by the Constitution a majority of fourteen can do almost any thing. That this was the case he did not deny; but the conclusions that he had drawn were by no means consequential. The seven Eastern States, the gentleman had said, whose interests were similar, will unite together, and, by having a majority in the Senate, will do what they please. If this was the case, it went against uniting at all; for, if he was not mistaken, the interests of nine of the United States are almost the same. New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, and Delaware, are very similar in their interests. They are most of them entirely carriers for others; and those states which are exporting ones are very nearly equal to the carrying of their products themselves.

Supposing, then, the desire of oppression to exist, he asked if they could not do it equally as well under the Confederation as the Constitution. He thought so; and, as the gentleman's arguments equally lay against every kind of coercive government, he was of opinion that the Senate, as established by this Constitution, was the most proper. Upon this head he {293} begged permission to ask these questions: If the majority was in the Southern States, (which, as ten is a majority, might be the case,) would not objections, equally forcible as the gentleman's, lie on the side of the Eastern States? and yet that, in all governments, a majority must be somewhere, is most evident: nothing would be more completely farcical than a government completely checked. Having commented thus far on the gentleman's opposition to the Federal Constitution, he proceeded, according to the order of his objections, to consider the presiding power. On this he would be extremely concise; for, as the only objection which had fallen upon this head from the honorable gentleman was, that we had only a thirteenth part of him; and as this might equally, and, in his opinion, with more justice, be the objection of many and almost every state, he considered it only as a weight thrown into the scale of other objections, and not a subject for discussion.

With respect to the President's responsibility, it could not be established more firmly than it is by the Constitution. When treaties are made, if in the time of prosperity, men seldom think they gain enough; if in the day of adversity, they would be apt to make the President the pillow upon whom they would rest all their resentment. The Constitution had then wisely made him, as a man, responsible by the influence of fame, his character, and his feelings; as a citizen, they have postponed the period at which he could be tried with propriety until the fervor of party and cool reflection can determine his fate. The gentleman had also objected to the power given to those two branches of making treaties, and that these treaties should become the law of the land. A number of gentlemen have proved this power to be in the possession of the head of every free nation, and that it is within the power of the present Congress. He should only, therefore, observe, that the most free and enlightened nations of the world had a federal head, in which this power was established — he meant the Amphictyonic council of the Greeks, which was the palladium of their united liberties, and, until destroyed by the ambition of a few of the states of Greece, was revered by that jealous people as the cornerstone of their federal union. Against the representation he generally objects, that they are too few, and not elected immediately by the people. The whole body consists of sixty-five {294} persons, in the proportion of one to thirty thousand. The British Parliament have one to fifteen thousand in the island of Great Britain, without considering her possessions elsewhere. The numbers of her Parliament are fixed; our congressional powers may be increased almost ad infinitum. Supposing, then, that a smaller apportionment had been made, in time we should have been oppressed with the number of legislators, and our government would be as languid and inoperative as it is at present; and he differed so much from the honorable gentleman, that he was apprehensive lest he should find that, by the Constitution, their numbers will be too great. As for their not being immediately elected by the people at large, the gentleman would please to observe, that, contradictory to their present method of electing delegates to Congress, — a method laid down by that Confederation which he admires, — all the representatives are elected by the people; so that, in this instance, the gentleman was very unfortunate in his objection. The gentleman also asked why we were deprived of the liberty of paying our own delegates? This is another of the gentleman's unfounded suspicions; for the reason is so evident, and the regulation so favorable, that he was astonished how it escaped the honorable gentleman's notice. Congress are to have the sole power

of laying on imposts; and therefore, when that fired is given up by which we were enabled to pay our delegates, we are also eased of the burden of doing it. This is so evident, that the establishment of the objection takes not a little from the weight of the gentleman's other observations. Mr. Barnwell proceeded to say that the gentleman, upon the deprivation of the right to issue paper medium, has altogether made use of an argument ad hominem, calculated to seduce; and his eulogium upon it was, in his opinion, misapplied. However, supposing that to be the clew that led us to our liberty, yet the gentleman must acknowledge it was not the state, but the Continental money, that brought about the favorable termination of the war. If to strike off a paper medium becomes necessary, Congress, by the Constitution, still have that right, and may exercise it when they think proper.

The honorable gentleman asks why the trial by jury was not established in every instance. Mr. Barnwell considered this right of trial as the birthright of every American, and the {295} basis of our civil liberty; but still most certainly particular circumstances may arise, which would induce even the greatest advocates for this right to yield it for a time. In his opinion, the circumstances that would lead to this point were those which are specified by the Constitution. Mr. Barnwell said, Suffer me to state a case, and let every gentleman determine whether, in particular instances, he would not rather resign than retain this right of trial. A suit is depending between a citizen of Carolina and Georgia, and it becomes necessary to try it in Georgia. What is the consequence? Why, the citizen of this state must rest his cause upon the jury of his opponent's vicinage, where, unknown and unrelated, he stands a very poor chance for justice against one whose neighbors, whose friends and relations, compose the greater part of his judges. It is in this case, and only in cases of a similar nature with this, that the right of trial by jury is not established; and judging from myself, it is in this instance only that every man would wish to resign it, not to a jury with whom he is unacquainted, but to an impartial and responsible individual.

Mr. Barnwell then adverted to the parts of the Constitution which more immediately affected our state; namely, the right of establishing imposts and granting preferences, and the clause which respects the importation of negroes. Upon the first he premised, that, in the compacts which unite men into society, it always is necessary to give up a part of our natural rights to secure the remainder; and that, in every instance; if the latter could be maintained without giving up the former, every individual would be willing to keep back his share of those aggregate ties which then would bind the rest of the community; each individual would wish to retain his right to act as he pleases, whilst all but himself were restricted in their conduct. Let us, then, apply this to the United States; and yet the honorable gentleman supposes that South Carolina should be free herself. Surely this is not just, and cannot be admissible.

Mr. Chairman, suffer me to make this one other remark—that, when the distinctions occasioned by wealth take place, the desire of equality and the appetite for property soon render it necessary that the wealthy weak man should make greater sacrifices than the man who has nothing to lose, and consequently nothing to fear. This is the case with us. To {296} secure our wealth, and establish our security, perhaps some little sacrifice was necessary; and what is this sacrifice? Why, that, generally, American vessels should have a preference in the carrying trade. The gentleman asserts that, by granting this preference, we, as a large importing state, will suffer greatly. Let us examine the truth of this position. By so doing, says the honorable gentleman, we

shall destroy all competition, and the carrying states will establish what freight they please. I deny the declaration; and upon this principle: bounties act as encouragements; and this preference may, in a trifling degree, injure us for one or two years, but will throw so many capitals into this trade, that, even if the Eastern States should desire to oppress us, this would prevent them; for when this bounty takes place, our harbors will most indisputably reduce the freight. the gentleman will perhaps say that this is conjectural only. I appeal to every author, who has written upon the subject, for the certainty of this commercial maxim, and will ask the gentleman himself, whether an overstock of the market, in every instance, does not reduce the price of the commodity. Thus he had proved, he thought, that, should the Eastern States be desirous to take unfriendly advantages, their own interest would defeat their intention.

Mr. Barnwell continued to say, I now come to the last point for consideration, — I mean the clause relative to the negroes; and here I am particularly pleased with the Constitution. It has not left this matter, of so much importance to us, open to immediate investigation. No; it has declared that the United States shall not, at any rate, consider this matter for twenty-one years; and yet gentlemen are displeased with it. Congress has guarantied this right for that space of time, and at its expiration may continue it as long as they please. This question then arises — What will their interest lead them to do? The Eastern States, as the honorable gentleman says, will become the carriers of America. It will, therefore, certainly be their interest to encourage exportation to as great an extent as possible; and if the quantum of our products will be diminished by the prohibition of negroes, I appeal to the belief of every man, whether he thinks those very carriers will themselves dam up the sources from whence their profit is derived. To think so is so contradictory to the general conduct of mankind, {297} that I am of opinion, that, without we ourselves put a stop to them, the traffic for negroes will continue forever.

Mr. Barnwell concluded by declaring that this Constitution was, in his opinion, like the laws of Solon, not the best possible to be formed, but the best that our situation will admit of. He considered it as the panacea of America, whose healing power will pervade the continent, and sincerely believed that its ratification is a consummation devoutly to be wished.

Commodore GILLON wished to know what reason the house had to suppose that, if another convention met, our interest would be better taken care of by men of equal abilities with those who went to the other; or if, when there, they could procure for us superior advantages to those already agreed on. Indeed, he could not but consider our negating the proffered government as an oblique mode of reflecting on the conduct of our delegates, instead of giving them that praise they were so justly entitled to. He called the attention of the house to the late commotions that had happened in Holland, where one part Of the citizens had called in the assistance of foreigners, for the sanguinary purpose of cutting the throats of the other. Are we more virtuous? If not, may it not happen that, if dissension unhappily prevail among us, foreign aid will be joined to those enemies already amongst us, and introduce the horrors of a civil war? He was warmly in favor of our sister states becoming the carriers of America; not that he wished to exclude our employing foreigners; at present two thirds of our produce was carried in American bottoms. The commodore hoped the gentleman who had approved of our state Constitution of 1778, would be, in time, equally pleased with the Federal Constitution proposed in 1787. He had represented our present situation to be calm and peaceable, but it was such a calm as mariners often experience at sea, after a storm, when one ship rolls against another, and they sink.

Hon. RAWLINS LOWNDES said, the honorable gentleman frequently thought proper to level his shot at him; but on the present occasion they were not well pointed. The reason why he assented unto the Constitution in 1778 was, because it had been approved of by the people. There had been something said about a ship: the Confederation was our old ship; it had cost us a great deal of money; and {298} he hoped we should keep her at sea without having any new commanders.

Hon. JOHN MATHEWS, chancellor, confessed himself astonished at hearing such encomiums on the Articles of Confederation, as if they had carried us victoriously through the war, when, in fact, they were not ratified until the year 1781; and if the Confederation had been in force in 1776, this country would have inevitably been lost, because, under it, Congress had not authority to give General Washington the powers of a dictator at Valley Forge. Surely the honorable gentleman must be sensible that the success of Congress depended on the explicit confidence of the people; the voice of Congress had the force of law, and was cheerfully and readily obeyed. With regard to the carrying trade, when the Convention was first appointed, he was afraid that, if a navigation act passed, the Northern States could not for some time furnish shipping sufficient for carrying the produce of America; but on going, last year, to the northward, he was fully convinced to the contrary. At Rhode Island, he received information that they could immediately furnish 50,000 tons of shipping, and that in 1787 Massachusetts could furnish 150,000 tons. He then went into a calculation of the produce of the Southern States. Virginia raised between 60,000 and 70,000 hogsheads annually; South Carolina, he supposed, would raise nearly 150,000 barrels of rice; Georgia about 40,000; which, making large allowances for other kind of produce, still left an excess of shipping. As to any fears that the Northern States would so far engross the navigation of America as to lay the Southern States under a kind of contribution, by charging excessive freightage, we must suppose that they and the Middle States would confederate for this purpose; for, if they did not, a competition would naturally arise between them, and also between America and the European nations, which would always secure us against the payment of great and exorbitant freights. As to the idea that a Senate could overturn our liberties and establish tyranny, this evil never could take place whilst the President was an honest man, because he possessed the power of negating any improper proceedings of the two other branches of government.

Hon. EDWARD RUTLEDGE proved, from the act passed last session, appointing delegates from the state to {299} meet those from other states, in Convention at Philadelphia, that they had not exceeded their powers. He then compared the powers given under the old and new constitutions, and proved that they differed very little, except in that essential point which gave the power to government, of enforcing its engagements; and surely no person could object to this. Mr. Rutledge thought very lightly of those fears entertained about bayonets being necessary to enforce an obedience in the people to the laws, when it became certain that they could not be broken with impunity; but if a spirit of resistance should appear, surely it ought to be in the power of government to compel a coercion in the people. He then took some notice of the union between Great Britain and Scotland, showed the difference between the articles of union and our Federal Constitution. Great Britain reserved to herself the power of passing navigation laws, regulating the excise; the rate of taxation was also proportionate; for every two millions of money raised in England, Scotland engaged to raise £45,000; but in this country, we were to be equally taxed; no distinction had been made, and we went on all-fours. So far from not preferring

Northern States by a navigation act, it would be politic to increase their strength by every means in our power; for we had no other resource, in the day of danger, than in the naval force of our northern friends; nor could we ever expect to become a great nation until we were powerful on the waters. Look only at the partiality of an act passed in England last year, in which we were excluded from trading in some parts of the West Indies, whilst liberty was given to all European powers. In fact, we must hold our country by courtesy, unless we have a navy; for, if we are invaded, supposing in the month of July, Congress could not send troops nine hundred miles, in time to rescue us from danger, were we to run such risk, because it was possible we should be charged a little more freightage for our produce. But if we are a great maritime people, what have we to fear? Nothing; because European powers were so far removed from us that it would be very dangerous to send a considerable force against us; besides, as the West India trade must pass near our coast, it naturally lay at our mercy. The honorable gentleman had said a great deal about establishing an aristocracy, and yet he wanted more power to the old constitution: now, did not {300} his own proposition, which tended to establish a precedent for slipping in, by degrees, additional power, appear as likely to promote what he dreaded, as to agree with a constitution that came sanctioned by the voice of the people?

Hon. ARTHUR SIMKINS, of *Ninety-six*, asked, for information, whether Congress had a right to interfere in religion.

Gen. CHARLES COTESWORTH PINCKNEY answered, they had no power at all, and explained this point to Mr. Simkins's satisfaction.

Hon. RAWLINS LOWNDES saying that he was much in arrear, the committee rose, reported some progress, and asked leave to sit again. Leave was given.

**FRIDAY, January 18, 1788.**

Maj. PIERCE BUTLER opened the debate (as we understand; the reporter of those debates unfortunately not being in the house) with several satisfactory answers to some points of objection the preceding day.

Gen. CHARLES COTESWORTH PINCKNEY, in answer to Mr. Lowndes, observed, that, though ready to pay every tribute of applause to the great characters whose names were subscribed to the old Confederation, yet his respect for them could not prevent him from being thoroughly sensible of the defects of the system they had established; sad experience had convinced him that it was weak, inefficient, and inadequate to the purposes of good government; and he understood that most of the framers of it were so thoroughly convinced of this truth, that they were eager to adopt the present Constitution. The friends of the new system do not mean to shelter it under the respectability of mere names; they wish every part of it may be examined with critical minuteness, convinced that the more thoroughly it is investigated, the better it will appear. The honorable gentleman, in the warmth of his encomiums on the old plan, had said that it had carried us with success through the war. In this it has been shown that he is mistaken, as it was not fatally ratified till March, 1781, and, anterior to that ratification, Congress never acted under it, or considered it as binding. Our success, therefore, ought not to be imputed to the old Confederation; but to the vast abilities of a Washington, {301} to the valor and enthusiasm of

our people, to the cruelty of our enemies, and to the assistance of our friends. The gentleman had mentioned the treaty of peace in a manner as if our independence had been granted us by the king of Great Britain. But that was not the case; we were independent before the treaty, which does not in fact grant, but acknowledges, our independence. We ought to date that invaluable blessing from a much older charter than the treaty of peace from a charter which our babes should be taught to lisp in their cradles; which our youth should learn as a *carmen necessarium*, or indispensable lesson; which our young men should regard as their compact of freedom; and which our old should repeat with ejaculations of gratitude for the bounties it is about to bestow on their posterity: I mean the Declaration of Independence, made in Congress the 4th of July, 1776. This admirable manifesto, which, for importance of matter and elegance of composition, stands unrivalled, sufficiently confutes the honorable gentleman's doctrine of the individual sovereignty and independence of the several states.

In that Declaration the several states are not even enumerated; but after reciting, in nervous language, and with convincing arguments, our right to independence, and the tyranny which compelled us to assert it, the declaration is made in the following words: "We, therefore, the representatives of the United States of America in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of right ought to be, FREE AND INDEPENDENT STATES." The separate independence and individual sovereignty of the several states were never thought of by the enlightened band of patriots who framed this Declaration; the several states are not even mentioned by name in any part of it, as if it was intended to impress this maxim on America, that our freedom and independence arose from our union, and that without it we could neither be free nor independent. Let us, then, consider all attempts to weaken this Union, by maintaining that each state is separately and individually independent, as a species of political heresy, which {302} can never benefit us, but may bring on us the most serious distresses.

The general, then, in answer to Mr. Lowndes's objections, that the powers vested in the general government were too extensive, enumerated all the powers granted, and remarked particularly on each, showing that the general good of the Union required that all the powers specified ought necessarily to be vested where the Constitution had placed them; and that, as all the powers granted sprang from the people, and were to be exercised by persons frequently chosen, mediately or immediately, by the people; and that, as we had as great a share in the government, in proportion to our importance, as any other state had, — the assertion that our representation would be merely virtual, similar to what we possessed under the British government, was altogether unfounded; that there was no danger of the powers granted being abused while the people remained uncorrupt; and that corruption was more effectually guarded against, in the manner this government was constituted, than in any other that had ever been formed. From the number of electors who have a right to vote for a member of the House of Representatives, little danger can be apprehended of corruption or undue influence. If a small district sent a member, there would be frequent opportunities for cabal and intrigue: but if the sphere of election is enlarged, then opportunities must necessarily diminish. The little demagogue of a petty parish or county will find his importance annihilated, and his intrigues useless, When several counties join in an election; he probably would not be known, certainly not regarded, out of his own circle;

while the man whose abilities and virtues had extended a fair reputation beyond the limits of his county, would, nine times out of ten, be the person who would be the choice of the people.

There will be no necessity, as the honorable gentleman has Strangely supposed, for all the freeholders in the state to meet at Charleston to choose five members for the House of Representatives; for the state may be divided into five election districts, and the freeholders in each election district may choose one representative. These freeholders need not all meet at the same place in the district; they may ballot in their particular parishes and counties on the same day, and the ballots may be thence carried into a central part of {303} the district, and opened at the same time; and whoever shall appear to have a majority of the votes of the freeholders of the whole district will be one of the five representatives for this state. But if any state should attempt to fix a very inconvenient time for the election, and name (agreeably to the ideas of the honorable gentleman) only one place in the state, or even one place in one of the five election districts, for the freeholders to assemble to vote, and the people should dislike this arrangement, they can petition the general government to redress this inconvenience, and to fix times and places of election of representatives in the state in a more convenient manner; for, as this house has a right to fix the times and places of election, in each parish and county, for the members of the House of Representatives of this state, so the general government has a similar right to fix the times and places of election, in each state, for the members of the general House of Representatives. Nor is there any real danger to be apprehended from the exercise of this power, as it cannot be supposed that any state will consent to fix the election at inconvenient seasons and places in any other state, lest she herself should hereafter experience the same inconvenience; but it is absolutely necessary that Congress should have this superintending power, lest, by the intrigues of a ruling faction in a state, the members of the House of Representatives should not really represent the people of the state, and lest the same faction, through partial state views, should altogether refuse to send representatives of the people to the general government. The general government has not the same authority with regard to the members of the Senate. It would have been improper to have intrusted them with it; for such a power would, in some measure, have authorized them to fix the times and places when and where the state legislatures should convene, and would tend to destroy that necessary check which the general and state governments will have on each other. The honorable gentleman, as if he was determined to object to every part of the Constitution, though he does not approve of electing representatives immediately by the people, or at least cannot conceive how it is to be effected, yet objects to the constitution of the Senate, because the senators are to be elected by the state legislatures, and not immediately by the people. When the Constitution says the people shall elect, the gentleman cries out, "It is {304} chimerical! — the election will be merely virtual." When the Constitution determines that the state legislatures are to elect, he exclaims, "The people's rights are invaded! — the election should be immediately by them, and not by their representatives." How, then, can we satisfy him, as he is determined to censure, in this Constitution, that mode of election which he so highly approves in the old Confederation? The reason why our present state Constitution, made in 1778, changed the mode of electing senators from the mode prescribed by our first constitution, passed in 1776, was because, by the first, the senators were elected by this house, and therefore, being their mere creatures, they could not be supposed to have that freedom of will as to form a proper check on its proceedings; whereas, in the general Constitution, the House of Representatives will be elected immediately by the people, and represent them and their personal rights individually; the Senate will be elected by

the state legislatures, and represent the states in their political capacity; and thus each branch will form a proper and independent check on the other, and the legislative powers will be advantageously balanced.

With regard to the objection that had been made to the mode of electing the President of the United States, General Pinckney asked what other mode would have been so proper. If he was to be elected by the House of Representatives and the Senate, as one of them have the power of impeaching and the other of trying him, he would be altogether their creature, and would not have independence enough to exercise with firmness the revisionary power and other authorities with which he is invested by the Constitution. This want of independence might influence his conduct, in some degree, if he was to be elected by one branch of the legislature alone; but as he is to be elected by the people, through the medium of electors chosen particularly for that purpose, and he is in some measure to be a check on the Senate and House of Representatives, the election, in my opinion, could not have been placed so well if it had been made in any other mode.

In all elections of a chief magistrate, foreign influence is to be guarded against. Here it is very carefully so; and it is almost impossible for any foreign power to influence thirteen different sets of electors, distributed throughout the {305} states, from New Hampshire to Georgia. By this mode, also, and for the same reason, the dangers of intrigue and corruption are avoided, and a variety of other inconveniences, which must have arisen if the electors from the different states had been directed to assemble at one place, or if either branch of the legislature (in case the majority of electors did not fix upon the same person) might have chosen a President who had not been previously put in nomination by the people. I have before spoken of the policy and justice of vesting the majority of Congress with the power of making commercial regulations, and the necessity there is, in all well-constituted republics, that the majority should control the minority; and I should have had a very strong objection if it had contained the restrictive clause the honorable gentleman appears so anxious for, "that Congress should not have it in their power to prevent the ships of any nation from entering our ports." I cannot think it would have been prudent or fitting to have given the ships of all foreign nations a constitutional right to enter our ports whenever they pleased, and this, too, notwithstanding we might be at war with them; or they may have passed laws denying us the privileges they grant to all other commercial nations; or circumstances not now foreseen might render it necessary for us to prohibit them. Such a clause would have injured the Eastern States, would have been eventually detrimental to ourselves, and would have in fact amounted to a declaration that we were resolved never to have a navy. To such a clause the general declared he never would have consented, and desired the gentleman to produce an instance of any independent power who did not give exclusive advantages to their own shipping. He then took notice that Chancellor Matthews had fully answered what had been alleged concerning the exorbitant freights we should be obliged to pay, and had clearly shown that no danger was to be apprehended on that subject; and that the Eastern States could soon furnish us, and all the Southern States, with a sufficient number of ships to carry off our produce. With regard to the general government imposing internal taxes upon us, he contended that it was absolutely necessary they should have such a power: requisitions had been in vain tried every year since the ratification of the old Confederation, and not a single state had {306} paid the quota required of her. The general government could not abuse this power, and favor one state and oppress another, as each state was to be taxed only in proportion to its

representation; and as to excises, when it is considered how many more excisable articles are manufactured to the northward than there are to the southward, and the ease and convenience of raising a revenue by indirect taxation, and the necessity there is to obtain money for the payment of our debts, for our common defence, and for the general welfare, he thought every man would see the propriety, and even the necessity, of this clause. For his part, he knew of no sum that he would not sooner have consented to have paid, if he had had it, rather than have adopted Lord North's conciliatory plan, which seems, by the argument of the gentleman, to be in some respect preferable to the proposed Constitution; but in asserting this, the gentleman certainly cannot be serious. As to the payment of members of the legislature out of the federal treasury, General Pinckney contended it was right, and particularly beneficial to us, who were so distant from the seat of the federal government, as we at present paid our members not only while they were actually in Congress, but for all the time they were going there and returning home, which was an expense the Middle States felt but in a slight degree; but now that all the members are to be paid out of the public treasury, our remote situation will not be particularly expensive to us. The ease of the payment of the Massachusetts judges under the royal government can by no ingenuity be made applicable to the payment of the members of the federal legislature. With regard to Mr. Lowndes's question, "What harm had paper money done?" General Pinckney answered, that he wondered that gentleman should ask such a question, as he had told the house that he had lost fifteen thousand guineas by depreciation; but he would tell the gentleman what further injuries it had done — it had corrupted the morals of the people; it had diverted them from the paths of honest industry to the ways of ruinous speculation; it had destroyed both public and private credit, and had brought total ruin on numberless widows and orphans.

As to the judiciary department, General Pinckney observed, that trial by jury was so deservedly esteemed by the people of America, that it is impossible for their representatives to {307} omit introducing it whenever it can with propriety be done. In appeals from courts of chancery, it surely would be improper. In a dispute between a citizen of Carolina and a citizen of Georgia, if a jury was to try the case, from which state are they to be drawn? If from both or either, would the citizens of Carolina and Georgia choose to be summoned to attend on juries eight hundred miles from their home? and if the jury is to be drawn from the state in which Congress shall sit, would these citizens wish that a cause relative to negro property should be tried by the Quakers of Pennsylvania, or by the freeholders of those states that have not that species of property amongst them? Surely not. Yet it is necessary, when a citizen of one state cannot obtain an impartial trial in another, that, for the sake of justice, he should have a right to appeal to the supreme judiciary of the United States to obtain redress; and as this right of appeal does not extend to citizens of the same state, (unless they claim under grants of different states,) but only to the causes and persons particularly mentioned in the Constitution, and Congress have power to make such regulations and impose such restrictions relative to appeals as they think proper, it can hardly be supposed that they will exercise it in a manner injurious to their constituents.

Trials by jury are expressly secured in all criminal cases, and not excluded in any civil cases whatsoever. But experience had demonstrated that it was impossible to adhere to them in all civil cases: for instance, on the first establishment of the admiralty jurisdiction, Congress passed an ordinance requiring all causes of capture to be decided by juries: this was contrary to the practice of all nations, and we knew it; but still an attachment to a trial by jury induced the experiment. What was the consequence? The property of our friends was, at times, condemned

indiscriminately with the property of our enemies, and the property of our citizens of one state by the juries of another. Some of our citizens have severely felt these inconveniences. Citizens of other states and other powers experienced similar misfortunes from this mode of trial. It was, therefore, by universal consent and approbation, laid aside in cases of capture. As the ordinance which regulated these trials was passed by Congress, they had the power of altering it, and they exercised that power; but had that ordinance been part of the Confederation, {308} it could not then have been repealed in the then situation of America; and had a clause of a similar tendency been inserted in this Constitution, it could only be altered by a convention of the different states. This shows at once how improper it would have been to have descended to minutiae in this particular; and he trusted it was unnecessary, because the laws which are to regulate trials must be made by the representatives of the people chosen as this house are, and as amenable as they are for every part of their conduct. The honorable gentleman says, compacts should be binding, and that the Confederation was a compact. It was so; but it was a compact that had been repeatedly broken by every state in the Union; and all the writers on the laws of nations agree that, when the parties to a treaty violate it, it is no longer binding. This was the case with the old Confederation; it was virtually dissolved, and it became necessary to form a new constitution, to render us secure at home, respectable abroad, and to give us that station among the nations of the world, to which, as free and independent people, we are justly entitled.

Hon. RAWLINS LOWNDES observed, that he had been accused of obstinacy in standing out against such a formidable opposition; but he would sincerely assure the house that he was as open to conviction as any gentleman on the floor: yet he never would allow himself to be drawn into the adoption of specious arguments; for such he considered many of those now opposed against him to be. Indeed, some gentlemen had departed from their usual candor in giving an interpretation to his arguments which they did not merit. In one instance, it had been stated as if he was of opinion that treaties had not the force of law. This was going too far. He did not recollect that he had asserted any more than that the king of Great Britain had not a legal power to ratify any treaty which trespassed on the fundamental laws of the country. He supposed a case, under the dispensing act of William and Mary, asking, "If the king had made a treaty with the Roman Catholics, could that which was excepted by the laws ever be considered as paramount?" The honorable gentleman again took an ample view of the old Confederation, on which he dwelt with fervency for some time, and ridiculed the depraved inconsistency of those who pant for the change. Great stress was laid on the admirable {309} checks which guarded us, under the new Constitution, from the encroachments of tyranny; but too many checks in a political machine must produce the same mischief as in a mechanical one — that of throwing all into confusion. But supposing we considered ourselves so much aggrieved as to reduce us to the necessity of insisting on redress, what probability had we of relief? Very little indeed. In the revolving on misfortune, some little gleams of comfort resulted from a hope of being able to resort to an impartial tribunal for redress; but pray what reason was there for expectancy that, in Congress, the interest of five Southern States would be considered in a preferable point of view to the nine Eastern ones? With respect to, migration from the Eastern States to the Southern ones, he did not believe that people would ever flock here in such considerable numbers, because our country had generally proved so uncomfortable, from the excessive heats, that our acquaintance, during the heats, is rather shunned than solicited. The honorable gentleman mentioned that he had sent for a person from Europe, who did not long survive his introduction here, falling a sacrifice to the baneful effects of fogs and swamps; so that, from our limitation of importing negroes after the

term of twenty years, instead of rising in representation, we should gradually degenerate. He treated those fears of our falling a prey to foreigners as one of those arguments tending to precipitate us into measures inimical to our natural interest; for was it to be supposed that the policy of France would ever suffer America to become an appendage of the crown of Great Britain; or that Great Britain, equally jealous of France, would permit her to reduce us to subjection? Our danger of ruin should rather be apprehended from dissensions amongst ourselves — from our running into debt without any intention to pay: that was the rock on which we might split, rather than foreign enemies; and, therefore, all those arguments for establishing the necessity of a navy and standing army were nugatory, and entitled to very little attention.

It was urged that, until we had a navy powerful enough to protect us, our liberties and property were held only on courtesy; but if gentlemen adverted, where this navy, so necessary, was to come from, — not from the Southern States, but the Northern ones, — they would easily perceive to whom {310} this country would belong. It was true, the old Confederation was a mere paper defence; but then it was a good proof on our behalf if we were overcome by unmerited wrongs. Some had made this a question — "Will you join, or will you be single?" For his part, he did not think matters had come to such a crisis; rather let us comply with our federal connection, which, not yet being broken, admits of being strengthened. A gentleman had instanced Vattel in support of his argument, and laid down, from that author, an opinion that where parties engaged in the performance of an obligation, should any one of them fly off from his agreement, the original was null and void. He had ingeniously applied this to our present Continental situation, and contended, as some of the states acted in a refractory manner towards the Continental Union, and obstinately refused a compliance, on their parts, with solemn obligations, that of course the Confederation was virtually dissolved. But Vattel merely recited such a case as where only a part of a confederation was broken; whereas ours was totally different, every state in the Union having been uniform in refusing a compliance with the requisitions of Congress. Some gentlemen had advanced a set of assertions to prove that the Eastern States had greatly suffered in the war. Pray, how had they suffered? Did they not draw from the Continental treasury large sums of money? Was not every expense incurred by them defrayed out of the Continental coffers? Another great advantage held out was, that we should be eased, in future, from the obligation and difficulty of defraying the expenses of delegates. Had we gained so much by this, when we had given up the very means of furnishing this sort of supply, formerly in our own option? As to the taxes, undoubtedly they must be increased under this new government. We paid at present two dollars per head upon our negroes; but the expenses attending our pompous government might increase this expense into six dollars per head, and this enormous sum collected by a sort of foreign power; for did any man, that knew America, suppose such tax will be easily paid? But if there was such a universal propensity to set up this golden image, why delay its inauguration? Let us at once go plump into the adoration of it; let us at once surrender every right which we at present possess. A material objection of his to the offered plan was, that the President {311} would have power to call both houses at what time and place he thought proper. Suppose a political cause for partiality; might he not so arrange things, as to carry a favorite point, by assembling the federal government, to the ruin or detriment of those states he meant to crush, and laws be enacted before those in extreme parts of the country knew any thing of their tendency? Surely some restrictions, as to time of meeting, should have been specified. The President had also the power of adjourning to any day he thought proper. In our old constitution, no such power was given to the chief magistrate to

adjourn or dissolve. On the whole, this was the best preparatory plan for a monarchical government he had read. The Constitution of Great Britain he considered as the best monarchical one he ever perused; and this new government came so near to it, that, as to our changing from a republic to a monarchy, it was what every body must naturally expect. How easy the transition! No difficulty occurred in finding a king: the President was the man proper for this appointment. The Senate, hailing him a king, (constituted, according to Mr. Adams's description, from the well-born,) will naturally say to one another, "You see how we are situated; certainly it is for our country's benefit that we should be all lords;" and lords they are.

Mr. Lowndes concluded his speech with thanking the house for their very great indulgence in permitting him to take up so much time. He hoped that the vast importance of the subject would plead his excuse. He also thanked those gentlemen on the other side of the question for the candid, fair manner in which they had answered his arguments. Popularity was what he never courted; but on this point he spoke merely to point out those dangers to which his fellow-citizens were exposed — dangers that were so evident, that, when he ceased to exist, he wished for no other epitaph, than to have inscribed on his tomb, "Here lies the man that opposed the Constitution, because it was ruinous to the liberty of America."

Hon. JOHN RUTLEDGE declared he had often heard the honorable gentleman with much pleasure; but on the present occasion, he was astonished at his perseverance. Well might he apologize for his taking up the time of gentlemen, when, in the very outset, he declared that this Constitution must necessarily be submitted to a future convention {312} of the people. Why, then, enter so largely in argument on its merits, when the ultimate decision depended on another body? Mr. Rutledge then took up an argument relative to treaties not being paramount to the laws of the land. Was not the last treaty contrary to the Declaratory Act, and a great number of other acts of Parliament? Yet who ever doubted its validity? The gentleman had declared that his sentiments were so much in contradiction to the voice of his constituents, that he did not expect to be appointed a member of the Convention. Mr. Rutledge hoped he would be appointed, and did not hesitate to pledge himself to prove, demonstrably, that all those grounds on which he dwelt so much amounted to nothing more than mere declamation; that his boasted Confederation was not worth a farthing; and that, if Mr. Chairman was intrenched in such instruments up to his chin, they would not shield him from one single national calamity. So far from thinking that the sun of this country was obscured by the new Constitution, he did not doubt but that, whenever it was adopted, the sun of this state, united with twelve other suns, would exhibit a meridian radiance astonishing to the world. The gentleman's obstinacy brought to his recollection a friend to this country, once a member of that house, who said, "It is generally imputed to me that I am obstinate. This is a mistake. I am not so, but sometimes hard to be convinced."

Hon. PATRICK CALHOUN, of *Ninety-six*, made some observations on the too great latitude allowed in religion.

Hon. JAMES LINCOLN, of *Ninety-six*, declared, that if ever any person rose in a public assembly with diffidence, he then did; if ever any person felt himself deeply interested in what he thought a good cause, and at the same time lamented the want of abilities to support it, it was he. On a question on which gentlemen, whose abilities would do honor to the senate of ancient Rome, had enlarged with so much eloquence and learning, who could venture without anxiety

and diffidence? He had not the vanity to oppose his opinion to such men; he had not the vanity to suppose he could place this business in any new light; but the justice he owed to his constituents — the justice he owed to his own feelings, which would perhaps upbraid him hereafter, if he indulged himself so far as to give merely a silent vote on this great question — impelled him, reluctantly impelled him, to intrude {313} himself on the house. He had, for some years past, turned his thoughts towards the politics of this country; he long since perceived that not only the federal but the state Constitution required much the hand of correction and revision. They were both formed in times of confusion and distress, and it was a matter of wonder they were so free from defects as we found them. That they were imperfect, no one would deny; and that something must be done to remedy those imperfections, was also evident; but great care should be taken that, by endeavoring to do some good, we should not do an infinite deal of mischief. He had listened with eager attention to all the arguments in favor of the Constitution; but he solemnly declared that the more he heard, the more he was persuaded of its evil tendency. What does this proposed Constitution do? It changes, totally changes, the form of your present government. From a well-digested, well-formed democratic, you are at once rushing into an aristocratic government. What have you been contending for these ten years past? Liberty! What is liberty? The power of governing yourselves. If you adopt this Constitution, have you this power? No: you give it into the hands of a set of men who live one thousand miles distant from you. Let the people but once trust their liberties out of their own hands, and what will be the consequence? First, a haughty, imperious aristocracy; and ultimately, a tyrannical monarchy. No people on earth are, at this day, so free as the people of America. All other nations are, more or less, in a state of slavery. They owe their constitutions partly to chance, and partly to the sword; but that of America is the offspring of their choice — the darling of their bosom: and was there ever an instance in the world that a people in this situation, possessing all that Heaven could give on earth, all that human wisdom and valor could procure — was there ever a people so situated, as calmly and deliberately to convene themselves together for the express purpose of considering whether they should give away or retain those inestimable blessings? In the name of God, were we a parcel of children, who would cry and quarrel for a hobby-horse, which, when we were once in possession of, we quarrel with and throw it away? It is said this Constitution is an experiment; but all regular-bred physicians are cautious of experiments. If the constitution be crazed a {314} little, or somewhat feeble, is it therefore necessary to kill it in order to cure it? Surely not. There are many parts of this Constitution he objected to: some few of them had not been mentioned; he would therefore request some information thereon. The President holds his employment for four years; but he may hold it for fourteen times four years: in short, he may hold it so long that it will be impossible, without another revolution, to displace him. You do not put the same check him that you do on your own state governor a man born and bred among you; a man over whom you have a continual and watchful eye; a man who, from the very nature of his situation, it is almost impossible can do you any injury: this man, you say, shall not be elected for more than four years; and yet this mighty, this omnipotent governor-general may be elected for years and years.

He would be glad to know why, in this Constitution, there is a total silence with regard to the liberty of the press. Was it forgotten? Impossible! Then it must have been purposely omitted; and with what design, good or bad, he left the World to judge. The liberty of the press was the tyrant's scourge — it was the true friend and firmest supporter of civil liberty; therefore why pass it by in silence? He perceived that not till almost the very end of the Constitution was there any

provision made for the nature or form of government we were to live under: he contended it should have been the very first article; it should have been, as it were, the groundwork or foundation on which it should have been built. But how is it? At the very end of the Constitution, there is a clause which says, — "The Congress of the United States shall guaranty to each state a republican form of government." But pray, who are the United States? A President and four or five senators? Pray, sir, what security have we for a republican form of government, when it depends on the mere will and pleasure of a few men, who, with an army, navy, and rich treasury at their back, may change and alter it as they please? It may be said they will be sworn. Sir, the king of Great Britain, at his coronation, swore to govern his subjects with justice and mercy. We were then his subjects, and continued so for a long time after. He would be glad to know how he observed his oath. If, then; the king of Great Britain forswore himself, what security have we that a future President and four or five {315} senators — men like himself — will think more solemnly of so sacred an obligation than he did?

Why was not this Constitution ushered in with the bill of rights? Are the people to have no rights? Perhaps this same President and Senate would, by and by, declare them. He much feared they would. He concluded by returning his hearty thanks to the gentleman who had so nobly opposed this Constitution: it was supporting the cause of the people; and if ever any one deserved the title of man of the people, he, on this occasion, most certainly did.

Gen. CHARLES COTESWORTH PINCKNEY answered Mr. Lincoln on his objections. He said, that the time for which the President should hold his office, and whether he should be reëligible, had been fully discussed in the Convention. It had been once agreed to by a majority, that he should hold his office for the term of seven years, but should not be reëlected a second time. But upon reconsidering that article, it was thought that to cut off all hopes from a man of serving again in that elevated station, might render him dangerous, or perhaps indifferent to the faithful discharge of his duty. His term of service might expire during the raging of war, when he might, perhaps, be the most capable man in America to conduct it; and would it be wise and prudent to declare in our Constitution that such a man should not again direct our military operations, though our success might be owing to his abilities? The mode of electing the President rendered undue influence almost impossible; and it would have been imprudent in us to have put it out of our power to reëlect a man whose talents, abilities, and integrity, were such as to render him the object of the general choice of his country. With regard to the liberty of the press, the discussion of that matter was not forgotten by the members of the Convention. It was fully debated, and the impropriety of saying any thing about it in the Constitution clearly evinced. The general government has no powers but what are expressly granted to it; it therefore has no power to take away the liberty of the press. That invaluable blessing, which deserves all the encomiums the gentleman has justly bestowed upon its is secured by all our state constitutions; and to have mentioned it in our general Constitution would perhaps furnish an argument, hereafter, that the general government had a right {316} to exercise powers not expressly delegated to it. For the same reason, we had no bill of rights inserted in our Constitution; for, as we might perhaps have omitted the enumeration of some of our rights, it might hereafter be said we had delegated to the general government a power to take away such of our rights as we had not enumerated: but by delegating express powers, we certainly reserve to ourselves every power and right not mentioned in the Constitution. Another reason weighed particularly, with the members from this state, against the insertion of a bill of rights. Such bills

generally begin with declaring that all men are by nature born free. Now, we should make that declaration with a very bad grace, when a large part of our property consists in men who are actually born slaves. As to the clause guarantying to each state a republican form of government being inserted near the end of the Constitution, the general observed that it was as binding as if it had been inserted in the first article. The Constitution takes its effect from the ratification, and every part of it is to be ratified at the same time, and not one clause before the other; but he thought there was a peculiar propriety in inserting it where it was, as it was necessary to form the government before that government could guaranty any thing.

Col. MASON thanked Mr. Lowndes for his opposition, by the desire of several gentlemen, members of that house. It had drawn forth from the other side most valuable information, and he thanked those gentlemen for the willingness with which they had given it, with so much good-nature. Those gentlemen who lived in the country were now enabled to satisfy their constituents.

The question being put, that a convention of the people should be called for the purpose of considering, and of ratifying or rejecting, the Constitution framed for the United States by a Convention of delegates assembled at Philadelphia in May last, it was unanimously agreed to.

[There will appear some omissions in what fell from Mr. Lowndes, which could not be supplied, owing to the loss of a note-book in the fire which consumed the State-House.]

**SATURDAY, *January 19, 1788.***

On the question being put for the Convention to assemble in Charleston on Monday, the 12th day of May next, the ayes and nays were as follows, viz.: —

{317} For the Parishes of St. Philip and St. Michael, Charleston. — Ayes: Edward Rutledge, Dr. David Ramsay, William Johnson, C. C. Pinckney, Edward Darrell, Thomas Jones, Isaac Motte, John Mathews, Daniel Cannon, Daniel Stevens, John Blake, Anthony Toomer, John F. Grimke, Thomas Heywood, Jun., Richard Lushington, Francis Kinloch, Jacob Read, Edward Blake, John Budd, Rawlins Lowndes, Michael Kalteisen, Thomas Bee, Adanus Burke, Hugh Rutledge, Edward Lightwood. — Nays: none.

- Christ Church. — Ayes: Charles Pinckney, Plowden Weston, Joseph Manigault, John Hatter. — Nays: none.
- St. John's, Berkley County. — Ayes: Peter Fassoux, Theodore Gourdine, Thomas Simons. — Nays: Robert M'Kelvey, Gideon Kirke.
- St. Andrew's. — Ayes: John Rivers, Glen Drayton, Thomas Farr, James Ladson, Charles Drayton. — Nay: William Scott.
- St. George's, Dorchester. — Ayes: John Glaze, Walter Izard, William Postell, John Bell. — Nays: none.
- St. James's, Goose Creek. — Ayes: Ralph Izard, Gabriel Manigault, William Smith, John Parker, Jun. — Nays: none.
- St. Thomas, and St. Dennis. — Ayes: Thomas Screven, Robert Daniel, Thomas Shrubrick. — Nays: none.
- St. Paul's. — Ayes: George Haig, William Washington, Paul Hamilton. — Nays none.

- St. Bartholomew's. — Ayes: William Furguson, Peter Youngblood, William C. Snipes, John North. — Nays: none.
- St. Helena. — Ayes: William Haxard Wigg, John Joyner, John Jenkins, Robert Barnwell, Benjamin Reynolds, Bernard Elliott. — Nays: none.
- St. James's, Santee. — Ayes: Thomas Horry, Jacob Bond, I'On, William Douxsaint, Lewis Miles. — Nays: none.
- Prince George's, Winyaw. — Ayes: Thomas Waties, Matthew Irvine. — Nays James Withers, Thomas Dunbar.
- All Saints. — Ayes: Robert Herriot, Daniel Morral. — Nays: none.
- Prince Frederick's. — Ayes: none. — Nays: John T. Green, John Dicky, Benjamin Porter, James Pettigrew.
- St. John's, Colleton County. — Ayes: Isaac Jenkins, William Smelie. — Nays: none.
- St. Peter's. — Ayes: none. — Nays: James Thompson, John Chisholm, Jetta Fenwick, Samuel Maner.
- Prince William's. — Ayes: Pierce Butler, John Lightwood, John A. Cuthbert. — Nays: Stephen Bull, William Murray.
- St. Stephen's. — Ayes: none. — Nays: Thomas Palmer, John Coutuier, T Cordes.
- District to the Eastward of Wateree. — Ayes: none. — Nays: Isaac Alexander, Thomas Sumter, Andrew Buskins, Joseph Lee, Thomas M'Faddin, George Cooper, Benjamin Cudworth, Samuel Dunlap, Hugh White.
- District of Ninety-six. — Ayes: Patrick Calhoun, John Purvis. — Nays: Arthur Simpkins, James Lincoln, Adam Crain Jones, William Butler.
- District Of Saxe-Gotha. — Ayes: none. — Nays: Joseph Culpeper, Henry Pendleton, John Threewits, Llewellen Threewits.
- Lower Districts, between Broad and Saluda Rivers. — Ayes: none. Nays: Philemon Waters, George Ruff, John Lindsay, William Wadlington.
- Little River District. — Ayes: none. — Nays: John Hunter, Angus Campbel, Levi Casey, James Mason.
- Upper, or Spartan District. — Ayes: none. — Nays: Thomas Brandon, S. M'Junkin Winn, James Craig, John Gray, James Knox, John Turner, Aromanus Lyles, John Cook, James Pedian.
- District called the New Acquisition. — Ayes: none. — Nays: Andrew Love, James Powell, William Fergus, William Bratton, Robert Patton, James Ramsay, John Drennan, James Martin, Joseph Palmer, Alexander Moore.
- St. Matthew's. — Ayes: none. — Nays: Thomas Sabb, J. Frierson, Paul Warley.
- Orange Parish. — Ayes: none. — Nays: William Robinson, Lewis Lesterjette.
- St. David's. — Ayes: none. — Nays: Calvin Spencer, Robert Baxwill, A. Hunter.
- District between Savannah River and the North Fork of Edisto. — Ayes: none. — Nays: William Davis, Isaac Cush, James Fair, Daniel Greene.

Ayes, 76. | Nays, 75.

So it was resolved in the affirmative.

JOHN SANDFORD DART, C. H. R.

---

## DEBATES IN CONVENTION.

**MONDAY, May 12, 1788.**

{318} This day being appointed for the meeting of the state Convention, (Mr. Thomas Bee, in the chair, *pro tem.*.) the returns were read, and there not being a majority, adjourned until Tuesday, the 13th.

**TUESDAY, May 13, 1788.**

On this day the Convention met, and the names being called over, there appeared to be present one hundred and seventy-three members; upon which they proceeded to ballot, when

His excellency, Governor THOMAS PINCKNEY, was elected *President*.

Colonel JOHN SANDFORD DART was elected *Secretary*.

Mr. Atmore, Messenger. Mr. Athwell, Door-keeper. Mr. John Bounetheau, Bar-keeper. Mr. Stevens, Cashier. Colonel Lushington, Assistant-Cashier.

**WEDNESDAY, May 14, 1788.**

*Speech of Mr. CHARLES PINCKNEY, (one of the delegates of the Federal Convention.)*

Mr. President, after so much has been said with respect to the powers possessed by the late Convention to form and propose a new system — after so many observations have been made on its leading principles, as well in the House of Representatives as in the conventions of other states, whose proceedings have been published — it will be as unnecessary for me again minutely to examine a subject which has been so thoroughly investigated, as it would be difficult to carry you into a field that has not been sufficiently explored.

Having, however, had the honor of being associated in the delegation from this state, and presuming upon the indulgence of the house, I shall proceed to make some observations which appear to me necessary to a full and candid discussion of the system now before us.

It seems to be generally confessed that, of all sciences, that of government, or politics, is the most difficult. In the old world, as far as the lights of history extend, from the earliest ages to our own, we find nations in the constant exercise of all the forms with which the world is at present furnished. We have seen among the ancients, as well as the moderns, monarchies, limited and absolute, aristocracies, republics of {319} a single state, and federal unions. But notwithstanding all their experience, how confined and imperfect is their knowledge of government! how little is the true doctrine of representation understood! how few states enjoy what we call freedom! how few governments answer those great ends of public happiness which we seem to expect from our own!

In reviewing such of the European states as we are best acquainted with, we may with truth assert that there is but one among the most important which confirms to its citizens their civil liberties, or provides for the security of private rights. But as if it had been fated that we should be the first perfectly free people the world had ever seen, even the government I have alluded to withholds from a part of its subjects the equal enjoyment of their religious liberties. How many thousands of the subjects of Great Britain at this moment labor under civil disabilities, merely on account of their religious persuasions! To the liberal and enlightened mind, the rest of Europe affords a melancholy picture of the depravity of human nature, and of the total subversion of those rights, without which we should suppose no people could be happy or content.

We have been taught here to believe that full power of right belongs to the people; that it flows immediately from them, and is delegated to their officers for the public good; that our rulers are the servants of the people, amenable to their will, and created for their use. How different are the governments of Europe! There the people are the servants and subjects of their rulers; there merit and talents have little or no influence; but all the honors and offices of government are swallowed up by birth, by fortune, or by rank.

From the European world are no precedents to be drawn for a people who think they are capable of governing themselves. Instead of receiving instruction from them, we may, with pride, affirm that, new as this country is in point of settlement, inexperienced as she must be upon questions of government, she still has read more useful lessons to the old world, she has made them more acquainted with their own rights, than they had been otherwise for centuries. It is with pride I repeat that, old and experienced as they are, they are indebted to us for light and refinement upon points of all others the most interesting.

Had the American revolution not happened, would Ireland {320} enjoy her present rights of commerce and legislation? Would the subjects of the emperor in the Netherlands have presumed to contend for, and ultimately to secure, the privileges they demanded? Would the parliaments of France have resisted the edicts of their monarch, and justified in a language that will do honor to the freest people? Nay, I may add, would a becoming sense of liberty, and of the rights of mankind, have so generally pervaded that kingdom, had not their knowledge of America led them to the investigation? Undoubtedly not. Let it be therefore our boast that we have already taught some of the oldest and wisest nations to explore their rights as men; and let it be our prayer that the effects of the revolution may never cease to operate until they have unshackled all the nations that have firmness to resist the fetters of despotism. Without a precedent, and with the experience of but a few years, were the Convention called upon to form a system for a people differing from all others we are acquainted with.

The first knowledge necessary for us to acquire, was a knowledge of the people for whom this system was to be formed; for unless we were acquainted with their situation, their habits, opinions, and resources, it would be impossible to form a government upon adequate or practicable principles.

If we examine the reasons which have given rise to the distinctions of rank that at present prevail in Europe, we shall find that none of them do, or in all probability ever will exist in the Union.

The only distinction that may take place is that of wealth. Riches, no doubt, will ever have their influence; and where they are suffered to increase to large amounts in a few hands, there they may become dangerous to the public — particularly when, from the cheapness of labor and the scarcity of money, a great proportion of the people are poor. These, however, are dangers that I think we have very little to apprehend, for these reasons: One is from the destruction of the right of primogeniture; by which means, the estates of intestates are equally to be divided among all their children — a provision no less consonant to the principles of a republican government, than it is to those of general equity and parental affection. To endeavor to raise a name by accumulating property in one branch of a family, at the expense of others equally related and deserving, is a vanity no {321} less unjust and cruel than dangerous to the interests of liberty: it is a practice no wise state will ever encourage or tolerate. In the Northern and Eastern States, such distinctions among children are seldom heard of. Laws have been long since passed in all of them, destroying the right of primogeniture; and as laws never fail to have a powerful influence upon the manners of a people, we may suppose that, in future, an equal division of property among children will, in general, take place in all the states, and one means of amassing inordinate wealth in the hands of individuals be, as it ought, forever removed.

Another reason is that, in the Eastern and Northern States, the landed property is nearly equally divided: very few have large bodies, and there are few that have not small tracts,

The greater part of the people are employed in cultivating their own lands; the rest in handicraft and commerce. They are frugal in their manner of living. Plain tables, clothing, and furniture, prevail in their houses, and expensive appearances are avoided. Among the landed interest, it may be truly said there are few of them rich, and few of them very poor; nor, while the states are capable of supporting so many more inhabitants than they contain at present — while so vast a territory on our frontier remains uncultivated and unexplored — while the means of subsistence are so much within every man's power — are those dangerous distinctions of fortune to be expected which at present prevail in other countries.

The people of the Union may be classed as follows: Commercial men, who will be of consequence or not, in the political scale, as commerce may be made an object of the attention of government. As far as I am able to judge, and presuming that proper sentiments will ultimately prevail upon this subject, it does not appear to me that the commercial line will ever have much influence in the politics of the Union. Foreign trade is one of the enemies against which we must be extremely guarded — more so than against any other, as none will ever have a more unfavorable operation. I consider it as the root of our present public distress — as the plentiful source from which our future national calamities will flow, unless great care is taken to prevent it. Divided as we are from the old world, we should have nothing to do with their politics, and as little as possible with their commerce: {322} they can never improve, but must inevitably corrupt us.

Another class is that of professional men, who, from their education and pursuits, must ever have a considerable influence, while your government retains the republican principle, and its affairs are agitated in assemblies of the people.

The third, with whom I will connect the mechanical, as generally attached to them, are the landed interest — the owners and cultivators of the soil — the men attached to the truest interests of their country from those motives which always bind and secure the affections of the nation. In these consists the great body of the people; and here rests, and I hope ever will continue, all the authority of the government.

I remember once to have seen, in the writings of a very celebrated author upon national wealth, the following remarks: "Finally," says he, "there are but three ways for a nation to acquire wealth. The first is by war, as the Romans did in plundering their conquered neighbors: this is robbery. The second is by commerce, which is generally cheating. The third is by agriculture, the only honest way, wherein a man receives a real increase of the seed thrown into the ground, in a kind of continual miracle wrought by the hand of God in his favor, as a reward for his innocent life and virtuous industry."

I do not agree with him so far as to suppose that commerce is generally cheating. I think there are some kinds of commerce not only fair and valuable, but such as ought to be encouraged by government, I agree with him in this general principle — that all the great objects of government should be subservient to the increase of agriculture and the support of the landed interest, and that commerce should only be so far attended to, as it may serve to improve and strengthen them; that the object of a republic is to render its citizens virtuous and happy; and that an unlimited foreign commerce can seldom fail to have a contrary tendency.

These classes compose the people of the Union; and, fortunately for their harmony, they may be said in a great measure to be connected with and dependent upon each other.

The merchant is dependent upon the planter, as the purchaser {323} of his imports, and as furnishing him with the means of his remittances. The professional men depend upon both for employment in their respective pursuits, and are, in their turn, useful to both. The landholder, though the most independent of the three, is still, in some measure, obliged to the merchant for furnishing him at home with a ready sale for his productions.

From this mutual dependence, and the statement I have made respecting the situation of the people of the Union, I am led to conclude that mediocrity of fortune is a leading feature in our national character; that most of the causes which lead to destructions of fortune among other nations being removed, and causes of equality existing with us which are not to be found among them, we may with safety assert that the great body of national wealth is nearly equally in the hands of the people, among whom there are few dangerously rich or few miserably poor; that we may congratulate ourselves with living under the blessings of a mild and equal government, which knows no distinctions but those of merits or talents — under a government whose honors and offices are equally open to the exertions of all her citizens, and which adopts virtue and worth for her own, wheresoever she can find them.

Another distinguishing feature in our Union is its division into individual states, differing in extent of territory, manners, population, and products.

Those who are acquainted with the Eastern States, the reason of their original migration, and their pursuits, habits, and principles, well know that they are essentially different from those of the Middle and Southern States; that they retain all those opinions respecting religion and government which first induced their ancestors to cross the Atlantic; and that they are, perhaps, more purely republican in habits and sentiment than any other part of the Union. The inhabitants of New York and the eastern part of New Jersey — originally Dutch settlements seem to have altered less than might have been expected in the course of a century; indeed, the greatest part of New York may still be considered as a Dutch settlement, the people in the interior country generally using that language in their families, and having very little varied their ancient customs. Pennsylvania and Delaware are nearly one half inhabited by Quakers, whose {324} passive principles upon questions of government, and rigid opinions in private, render them extremely different from the citizens either of the Eastern or Southern States. Maryland was Originally a Roman Catholic colony, and a great number of their inhabitants, some of them the most wealthy and cultivated, are still of this persuasion. It is unnecessary for me to state the striking difference in sentiment and habit which must always exist between the Independents of the East the Calvinists and Quakers of the Middle States, and the Roman Catholics of Maryland; but striking as this is, it is not to be compared with the difference that there is between the inhabitants of the Northern and Southern States. When I say Southern, I mean Maryland, and the states to the southward of her. Here we may truly observe, that Nature has drawn as strong marks of distinction in the habits and manners of the people as she has in her climates and productions. The southern citizen beholds, with a kind of surprise, the simple manners of the east, and is too often induced to entertain undeserved opinions of the apparent purity of the Quaker; while they, in their turn, seem concerned at what they term the extravagance and dissipation of their southern friends, and reprobate, as unpardonable moral and political evil, the dominion they hold over a part of the human race. The inconveniences which too frequently attend these differences in habits and opinions among the citizens that compose the Union, are not a little increased by the variety of their state governments; for, as I have already observed, the constitution or laws under which a people live never fail to have a powerful effect upon the manners. We know that all the states have adhered, in their forms, to the republican principle, though they have differed widely in their opinions of the mode best calculated to preserve it.

In Pennsylvania and Georgia, the whole powers of government are lodged in a legislative body, of a single branch, over which there is no control; nor are their executives or judicials, from their connection and necessary dependence on the legislature, capable of strictly executing their respective offices. In all the other states, except Maryland, Massachusetts, and New York, they are only so far improved as to have a legislature with two branches, which completely involve and swallow up all the powers of their government. In neither of these are the judicial or executive placed in {325} that firm or independent situation which can alone secure the safety of the people or the just administration of the laws. In Maryland, one branch of their legislature is a Senate, chosen, for five years, by electors chosen by the people. The knowledge and firmness which this body have, upon all occasions, displayed, not only in the exercise of their legislative duties, but in withstanding and defeating such of the projects of the other house as appeared to them founded in local and personal motives, have long since convinced me that the Senate of Maryland is the best model of a senate that has yet been offered to the Union; that it is capable of correcting many of the vices of the other parts of their Constitution, and, in a great measure, atoning for those defects which, in common with the states I have mentioned, are but too evident

in their execution — the want of stability and independence in the judicial and executive departments.

In Massachusetts, we find the principle of legislation more improved by the revisionary power which is given to their governor, and the independence of their judges.

In New York, the same improvement in legislation has taken place as in Massachusetts; but here, from the executive's being elected by the great body of the people; holding his office for three years, and being reëligible; from the appointment to offices being taken from the legislature and placed in a select council, — I think their Constitution is, upon the whole, the best in the Union. Its faults are the want of permanent salaries to their judges, and giving to their executive the nomination to offices, which is, in fact, giving him the appointment.

It does not, however, appear to me, that this can be called a vice of their system, as I have always been of opinion that the insisting upon the right to nominate was a usurpation of their executive's, not warranted by the letter or meaning of their Constitution.

These are the outlines of their various forms, in few of which are their executive or judicial departments wisely constructed, or that solid distinction adopted between the branches of their legislative which can alone provide for the influence of different principles in their operation.

Much difficulty was expected from the extent of country to be governed. All the republics We read of, either in the ancient or modern world, have been extremely limited in {326} territory. We know of none a tenth part so large as the United States; indeed, we are hardly able to determine, from the lights we are furnished with, whether the governments we have heard of under the names of republics really deserved them, or whether the ancients ever had any just or proper ideas upon the subject. Of the doctrine of representation, the fundamental of a republic, they certainly were ignorant. If they were in possession of any other safe or practicable principles, they have long since been lost and forgotten to the world. Among the other honors, therefore, that have been reserved for the American Union, not the least considerable of them is that of defining a mixed system, by which a people may govern themselves, possessing all the virtues and benefits, and avoiding all the dangers and inconveniences, of the three simple forms.

I have said that the ancient confederacies, as far as we are acquainted with them, covered up an inconsiderable territory.

Among the moderns, in our sense of the word, there is no such system as a confederate republic. There are, indeed, some small states whose interior governments are democratic; but these are too inconsiderable to afford information. The Swiss cantons are only connected by alliances; the Germanic body is merely an association of potentates, most of them absolute in their own dominions; and as to the United Netherlands, it is such a confusion of states and assemblies, that I have always been at loss what species of government to term it. According to my idea of the word, it is not a republic; for I conceive it as indispensable, in a republic, that all authority should flow from the people. In the United Netherlands, the people have no interference either in the election of their magistrate or in the affairs of government. From the experiment, therefore, never having been fairly made, opinions have been entertained, and sanctioned by high authorities, that

republics are only suited to small societies. This opinion has its advocates among all those who, not having a sufficient share of industry or talents to investigate for themselves, easily adopt the opinions of such authors as are supposed to have written with ability upon the subject; but I am led to believe other opinions begin to prevail — opinions more to be depended upon, because they result from juster principles.

We begin now to suppose that the evils of a republic — {327} dissension, tumult, and faction — are more dangerous in small societies than in large confederate states. In the first, the people are easily assembled and inflamed — are always exposed to those convulsive tumults of infatuation and enthusiasm which often overturn all public order. In the latter, the multitude will be less imperious, and consequently less inconstant, because the extensive territory of each republic, and the number of citizens, will not permit them all to be assembled at one time and in one place: the sphere of government being enlarged, it will not easily be in the power of factious and designing men to infect the whole people; it will give an opportunity to the more temperate and prudent part of the society to correct the licentiousness and injustice of the rest. We have strong proofs of the truth of this opinion in the examples of Rhode Island and Massachusetts — instances which have, perhaps, been critically afforded by an all-merciful Providence to evince the truth of a position extremely important to our present inquiries. In the former, the most contracted society in the Union, we have seen their licentiousness so far prevail as to seize the reins of government, and oppress the people by laws the most infamous that have ever disgraced a civilized nation. In the latter, where the sphere was enlarged, similar attempts have been rendered abortive by the zeal and activity of those who were opposed to them.

As the Constitution before you is intended to represent states as well as citizens, I have thought it necessary to make these remarks, because there are, no doubt, a great number of the members of this body, who, from their particular pursuits, have not had an opportunity of minutely investigating them, and because it will be impossible for the house fairly to determine whether the government is a proper one or not, unless they are in some degree acquainted with the people and the states, for whose use it is instituted.

For a people thus situated is a government to be formed — a people who have the justest opinion of their civil and religious rights, and who have risked every thing in asserting and defending them.

In every government there necessarily exists a power from which there is no appeal, and which, for that reason, may be formed absolute and uncontrollable.

The person or assembly in whom this power resides is {328} called the sovereign or supreme power of the state. With us, the sovereignty of the Union is in the people.

One of the best political and moral writers (Paley, a deacon of Carlisle — vol. ii. 174, 175) I have met with, enumerates three principal forms of government, which, he says, are to be regarded rather as the simple forms, by some combination and intermixture of which all actual governments are composed, than as any where existing in a pure and elementary state. These forms are, —

1st. Despotism, or absolute monarchy, where the legislature is in a single person.

2d. An aristocracy, where the legislature is in a select assembly, the members of which either fill up, by election, the vacancies in their own body, or succeed to it by inheritance, property, tenure of lands, or in respect of some personal right or qualification.

3d. A republic, where the people at large, either collectively or by representation, form the legislature.

The separate advantages of monarchy are unity of council, decision, secrecy, and despatch; the military strength and energy resulting from these qualities of government; the exclusion of popular and aristocratical contentions; the preventing, by a known rule of succession, all competition for the supreme power, thereby repressing the dangerous hopes and intrigues of aspiring citizens.

The dangers of a monarchy are tyranny, expense, exactions, military dominations, unnecessary wars, ignorance, in the governors, of the interest and accommodation of all people, and a consequent deficiency of salutary regulations; want of constancy and uniformity in the rules of government, and, proceeding from thence, insecurity of persons and property.

The separate advantage of an aristocracy is the wisdom that may be expected from experience and education. A permanent council naturally possesses experience, and the members will always be educated with a view to the stations they are destined by their birth to occupy.

The mischiefs of an aristocracy are dissensions in the ruling orders of the state; an oppression of the lower orders by the privilege of the higher, and by laws partial to the separate interests of the law-makers.

The advantages of a republic are liberty, exemption from needless restrictions, equal laws, public spirit, averseness to {329} war, frugality, above all, the opportunities afforded, to men of every description, of producing their abilities and counsels to public observation, and the exciting to the service of the commonwealth the faculties of its best citizens.

The evils of a republic are dissensions, tumults, faction, the attempts of ambitious citizens to possess power, the confusion and clamor which are the inevitable consequences of propounding questions of state to the discussion of large popular assemblies, the delay and disclosure of the public councils, and too often the imbecility of the laws.

A mixed government is composed by the combination of two or more of the simple forms above described; and in whatever proportion each form enters into the constitution of government, in the same proportion may both the advantages and evils which have been attributed to that form be expected.

The citizens of the United States would reprobate, with indignation, the idea of a monarchy. But the essential qualities of a monarchy — unity of council, vigor, secrecy, and despatch — are qualities essential in every government.

While, therefore, we have reserved to the people, the fountain of all power, the periodical election of their first magistrate, — while we have defined his powers, and bound them to such limits as will effectually prevent his usurping authorities dangerous to the general welfare, — we have, at the same time, endeavored to infuse into this department that degree of vigor which will enable the President to execute the laws with energy and despatch.

By constructing the Senate upon rotative principles, we have removed, as will be shown upon another occasion, all danger of an aristocratic influence; while, by electing the members for six years, we hope we have given to this part of the system all the advantages of an aristocracy — wisdom, experience, and a consistency of measures.

The House of Representatives, in which the people of the Union are proportionably represented, are to be biennially elected by them. Those appointments are sufficiently short to render the member as dependent as he ought to be upon his constituents.

They are the moving-spring of the system. With them all grants of money are to originate: on them depend the wars we shall be engaged in, the fleets and armies we shall {330} raise and support, the salaries we shall pay; in short, on them depend the appropriations of money, and consequently all the arrangements of government. With this powerful influence of the purse, they will be always able to restrain the usurpations of the other departments, while their own licentiousness will, in its turn, be checked and corrected by them.

I trust that, when we proceed to review the system by sections, it will be found to contain all those necessary provisions and restraints, which, while they enable the general government to guard and protect our common rights as a nation, to restore to us those blessings of commerce and mutual confidence which have been so long removed and impaired, will secure to us those rights, which, as the citizens of a state, will make us happy and content at home — as the citizens of the Union, respectable abroad.

How different, Mr. President, is this government constructed from any we have known among us!

In their individual capacities as citizens, the people are proportionably represented in the House of Representatives. Here they who are to pay to support the expenses of government, have the purse-strings in their hands; here the people hold, and feel that they possess, an influence sufficiently powerful to prevent every undue attempt of the other branches, to maintain that weight in the political scale which, as the source of all authority, they should ever possess; here, too, the states, whose existence as such we have often heard predicted as precarious, will find, in the Senate, the guards of their rights as political associations.

On them (I mean the state systems) rests the general fabric: on their foundation is this magnificent structure of freedom erected, each depending upon, supporting, and protecting the other: nor — so intimate is the connection — can the one be removed without prostrating the other in ruin: like the head and the body, separate them and they die.

Far be it from me to suppose that such an attempt should ever be made: the good sense and virtue of our country forbid the idea. To the Union we will look up, as to the temple of our freedom — a temple founded in the affections, and supported by the virtue, of the people. Here we will pour out our gratitude to the Author of all good, for suffering us to participate in the rights of a people who govern themselves.

{331} Is there, at this moment, a nation upon earth that enjoys this right, where the true principles of representation. are understood and practised, and where all authority flows from, and returns at stated periods to, the people? I answer, there is not. Can a government be said to be free where these rights do not exist? It cannot. On what depends the enjoyment of these rare, these inestimable privileges? On the firmness, on the power, of the Union to protect and defend them.

How grateful, then, should we be, that, at this important period, — a period important, not to us alone, but to the general rights of mankind, — so much harmony and concession should prevail throughout the states; that the public opinion should be so much actuated by candor, and an attention to their general interests; that, disdaining to be governed by the narrow motives of state policy, they have liberally determined to dedicate a part of their advantages to the support of that government from which they received them! To fraud, to force, or accident, all the governments we know have owed their births. To the philosophic mind, how new and awful an instance do the United States at present exhibit in the political world! They exhibit, sir, the first instance of a people, who, being dissatisfied with their government, — unattacked by foreign force, and undisturbed by domestic uneasiness, — coolly and deliberately resort to the virtue and good sense of their country, for a correction of their public errors.

It must be obvious that, without a superintending government, it is impossible the liberties of this country can long be secured.

Single and unconnected, how weak and contemptible are the largest of our states! — how unable to protect themselves from external or domestic insult! How incompetent to national purposes would even partial union be! — how liable to intestine wars and confusion! — how little able to secure the blessings of peace!

Let us, therefore, be careful in strengthening the Union. Let us remember that we are bounded by vigilant and attentive neighbors, who view with a jealous eye our rise to empire.

Let us remember that we are bound, in gratitude to our northern brethren, to aid them in the recovery of those rights {332} which they have lost in obtaining for us an extension of our commerce, and the security of our liberties. Let us not be unmindful that those who are weak, and may expect support, must, in their turn, be ready to afford it.

We are called upon to execute an important trust to examine the principles of the Constitution now before you, and, in the name of the people, to receive or reject it.

I have no doubt we shall do this with attention and harmony; and flatter myself that, at the conclusion of our discussion, we shall find that it is not only expedient, but safe and honorable, to adopt it.

TUESDAY, *May 20*, 1788.

This day the Convention went through the discussion of the Federal Constitution by paragraphs.

Mr. ALEXANDER TWEED, of Prince Frederick, said: Since I came to town, I have more than once heard it asserted, that the representatives of the parish of Prince Frederick were, prior to their election, put under promise to their constituents, that they should by no means give their sanction to the adoption of the new Constitution. Any such restriction, sir, on my own part, I deny. Had they taken upon them so far as to dictate for me, I should have spurned at the idea, and treated such proposals with that contempt they would have justly merited; and I am clearly of opinion, and I think warranted to say, that these are the sentiments and situation of (at least) some others of my colleagues. Notwithstanding, sir, from all I have heard or can learn, the general voice of the people is against it. For my own part, Mr. President, I came not here to echo the voice of my constituents, nor determined to approve or put a negative upon the Constitution proposed. I came with a mind open to conviction, in order to hear what, in the course of the debates of this house, might be said for and against it. Much, very much, sir, has been advanced on both sides. The matter in hand I look upon to be the most important and momentous that ever came before the representatives of the people of South Carolina. We were told, sir, some days ago, by a learned and honorable gentleman now on the floor, that, as our case at present stood, we must adopt the Constitution proposed; for, if we did not, in all probability some powerful despot might start up and seize the reins of government. {333} Another learned and honorable gentleman on my left hand said, we must look up to it as the rock of our salvation. To make short, sir, *necessitas non habet legem* was the word.

Those gentlemen, Mr. President, and some others, members of this respectable Convention, — whose profound oratory and elocution would, on the journals of a British House of Commons, stand as lasting monuments of their great abilities, — a man of my circumscribed scale of talents is not adequate to the task of contending with; nor have I a turn for embellishing my language, or bedecking it with all the flowers of rhetoric. In a word, Mr. President, my idea of the matter now under our consideration is, that we very much stand in need of a reform of government, as the very sinews of our present constitution are relaxed. But, sir, I would fondly hope that our case is not so bad as represented. Are we invaded by a foreign enemy? Or are the bowels of our country torn to pieces by insurrections and intestine broils? I answer, No.

Sir, admit but this, and then allow me to ask if history furnishes us with a single instance of any nation, state, or people, who had it more in their power than we at present have to frame for ourselves a perfect, permanent, free, and happy constitution. The Constitution, sir, now under consideration, was framed (I shall say) by the wisdom of a General Convention of the United States; it now lies before us to wait our concurrence or disapprobation. We, sir, as citizens and freemen, have an undoubted right of judging for ourselves; it therefore behoves us most seriously to consider, before we determine a matter of such vast magnitude. We are not acting for ourselves alone, but, to all appearance, for generations unborn.

*Speech of Mr. CHARLES PINCKNEY, on the 10th Section of Article 1st of the Federal Constitution.*

This section I consider as the soul of the Constitution — as containing, in a few words, those restraints upon the states, which, while they keep them from interfering with the powers of the Union, will leave them always in a situation to comply with their federal duties — will teach them to cultivate those principles of public honor and private honesty which are the sure road to national character and happiness. {334} The only parts of this section that are objected to are those which relate to the emission of paper money, and its consequences, tender-laws, and the impairing the obligation of contracts.

The other parts are supposed as exclusively belonging to, and such as ought to be vested in, the Union.

If we consider the situation of the United States as they are at present, either individually or as the members of a general confederacy, we shall find it extremely improper they should ever be intrusted with the power of emitting money, or interfering in private contracts; or, by means of tender-laws, impairing the obligation of contracts.

I apprehend these general reasonings will be found true with respect to paper money: That experience has shown that, in every state where it has been practised since the revolution, it always carries the gold and silver out of the country, and impoverishes it — that, while it remains, all the foreign merchants, trading in America, must suffer and lose by it; therefore, that it must ever be a discouragement to commerce — that every medium of trade should have an intrinsic value, which paper money has not; gold and silver are therefore the fittest for this medium, as they are an equivalent, which paper can never be — that debtors in the assemblies will, whenever they can, make paper money with fraudulent views — that in those states where the credit of the paper money has been best supported, the bills have never kept to their nominal value in circulation, but have constantly depreciated to a certain degree.

I consider it as a granted position that, while the productions of a state are useful to other countries, and can find a ready sale at foreign markets, there can be no doubt of their always being able to command a sufficient sum in specie to answer as a medium for the purposes of carrying on this commerce; provided there is no paper money, or other means of conducting it. This, I think, will be the case even in instances where the balance of trade is against a state; but where the balance is in favor, or where there is nearly as much exported as imported, there can be no doubt that the products will be the means of always introducing a sufficient quantity of specie,

If we were to be governed by partial views, and each state was only to consider how far a general regulation suited her {335} own interests, I think it can be proved there is no state in the Union which ought to be so anxious to have this part of the Constitution passed as ourselves

We are to reflect that this Constitution is not framed to answer temporary purposes. We hope it will last for ages — that it will be the perpetual protector of our rights and properties.

This state is, perhaps, of all others, more blessed in point of soil and productions than any in the Union. Notwithstanding all her sufferings by the war, the great quantity of lands still uncultivated, and the little attention she pays to the improvement of agriculture, she already exports more than any state in the Union, (except Virginia,) and in a little time must exceed her.

Exports are a surer mode of determining the productive wealth of a country than any other, and particularly when these products are in great demand in foreign countries.

Thus circumstanced, where can be the necessity of paper money? Will you not have specie in sufficient quantities? Will you not have more money in circulation without paper money than with it? — I mean, without having only paper in such quantities as you are able to maintain the credit of, as at present. I aver you may, and appeal only to the experience of the last five or six years. Will it not be confessed that, in 1783 and 1784, we had more money than we have at present, and that the emission of your present paper banished double the amount out of circulation? Besides, if paper should become necessary, the general government still possess the power of emitting it, and Continental paper, well funded, must ever answer the purpose better than state paper.

How extremely useful and advantageous must this restraint be to those states which mean to be honest, and not to defraud their neighbors! Henceforth, the citizens of the states may trade with each other without fear of tender-laws or laws impairing the nature of contracts. The citizen of South Carolina will then be able to trade with those of Rhode Island, North Carolina, and Georgia, and be sure of receiving the value of his commodities. Can this be done at present? It cannot! However just the demand may be yet still your honest, suffering citizen must be content to receive their depreciated paper, or give up the debt.

{336} But above all, how much will this section tend to restore your credit with foreigners — to rescue your national character from that contempt which must ever follow the most flagrant violations of public faith and private honesty! No more shall paper money, no more shall tender laws, drive their commerce from our shores, and darken the American name in every country where it is known. No more shall our citizens conceal in their coffers those treasures which the weakness and dishonesty of our government have long hidden from the public eye. The firmness of a just and even system shall bring them into circulation, and honor the virtue shall be again known and countenanced among us. No more shall the widow, the orphan, and the stranger, become the miserable victims of unjust rulers. Your government shall now, indeed, be a government of laws. The arm of Justice shall be lifted on high; and the poor and the rich, the strong and the weak, shall be equally protected in their rights. Public as well as private confidence shall again be established; industry shall return among us; and the blessings of our government shall verify that old, but useful maxim, that which states, as well as individuals, honesty is the best policy.

*Speech of Mr. PATRICK DOLLARD, of Prince Frederick's.*

Mr. President, I rise, with the greatest diffidence, to speak on this occasion, not only knowing myself unequal to the task, but believing this to be the most important question that ever the good people of this state were called together to deliberate upon. This Constitution has been ably

supported, and ingeniously glossed over by many able and respectable gentlemen in this house, whose reasoning, aided by the most accurate eloquence, might strike conviction even in the predetermined breast, had they a good cause to support. Conscious that they have not, and also conscious of my inability to point out the consequences of its defects, which have in some measure been defined by able gentlemen in this house, I shall therefore confine myself within narrow bounds; that is, concisely to make known the sense and language of my constituents. The people of Prince Frederick's Parish, whom I have the honor to represent, are a brave, {337} honest, and industrious people: In the late bloody contest, they bore a conspicuous part, when they fought, bled, and conquered, in defence of their civil rights and privileges, which they expected to transmit untainted to their posterity. They are nearly all, to a man, opposed to this new Constitution, because, they say they have omitted to insert a bill of rights therein, ascertaining and fundamentally establishing, the unalienable rights of men, without a full, free, and secure enjoyment of which there can be no liberty, and over which it is not necessary that a good government should have the control. They say that they are by no means against vesting Congress with ample and sufficient powers; but to make over to them, or any set of men, their birthright, comprised in Magna Charta, which this new Constitution absolutely does, they can never agree to. Notwithstanding this they have the highest opinion of the virtues and abilities of the honorable gentlemen from this state, who represented us in the General Convention; and also a few other distinguished characters, whose names will be transmitted with honor to future ages; but I believe, at the same time, they are but mortal, and, therefore, liable to err; and as the virtue and abilities of those gentlemen will consequently recommend their being first employed in jointly conducting the reins of this government, they are led to believe it will commence in a moderate aristocracy: but, that it will, in its future operations, produce a monarchy, or a corrupt and oppressive aristocracy, they have no manner of doubt. Lust of dominion is natural in every soil, and the love of power and superiority is as prevailing in the United States, at present, as in any part of the earth; yet in this country, depraved as it is, there still remains a strong regard for liberty: an American bosom is apt to glow at the sound of it, and the splendid merit of preserving that best gift of God, which is mostly expelled from every country in Europe, might stimulate Indolence, and animate even Luxury to consecrate herself at the altar of freedom.

My constituents are highly alarmed at the large and rapid strides which this new government has taken towards despotism. They say it is big with political mischiefs, and pregnant with a greater variety of impending woes to the good people of the Southern States, especially South Carolina, than all the plagues supposed to issue from the poisonous {338} box of Pandora. They say it is particularly calculated for the meridian of despotic aristocracy; that it evidently tends to promote the ambitious views of a few able and designing men, and enslave the rest; that it carries with it the appearance of an old phrase, formerly made use of in despotic reigns, and especially by Archbishop Laud, in the reign of Charles I., that is, "non-resistance." They say they will resist against it; that they will not accept of it unless compelled by force of arms, which this new Constitution plainly threatens; and then, they say, your standing army, like Turkish janizaries enforcing despotic laws, must ram it down their throats with the points of bayonets. They warn the gentlemen of this Convention, as the guardians of their liberty, to beware how they will be accessory to the disposal of, or rather sacrificing, their dear-bought rights and privileges. This is the sense and language, Mr. President, of the people; and it is an old saying, and I believe a very true one, that the general voice of the people is the voice of God. The general voice of the

people, to whom I am responsible, is against it. I shall never betray the trust reposed in me by them; therefore, shall give my hearty dissent.

**WEDNESDAY, May 21, 1788.**

Gen. SUMPTER, agreeably to notice given yesterday, (Tuesday, 20th,) moved for an adjournment of the Convention to the (20th October) twentieth day of October next, in order to give time for the *further consideration* of the Federal Constitution. After considerable debate, it was rejected by a majority of (46) forty-six — yeas, eighty-nine. (89;) nays, one hundred and thirty-five (135).

**FRIDAY, May 23, 1788.**

On motion, *Resolved*, That this Convention do assent to and ratify the Constitution agreed to on the 17th day of September last, by the Convention of the United States of America, held at Philadelphia.

On the question being put to agree to the same, the yeas and nays were called for by the unanimous voice of the Convention, and are as follows: —

- For the Parishes of St. Philip and St. Michael, Charleston. — Yeas: His excellency, Governor Thomas Pinckney, did not vote. Lieutenant-Governor Thomas Gadsden, C. C. Pinckney, (general,) Christopher Gadsden, (general — member of Congress of '65, at New York,) Edward Rutledge, (governor — one of the Congress of '76,) David Ramsay, (Dr.,) Thomas Heyward, Jun., (judge — and one of the Congress of '76,) Edward Darrell, Isaac Motte, John Mathews, (governor,) Edward Blake, Thomas Bee, (judge,) Daniel De Soussure, Thomas Jones, John F. Grimke, (judge,) William Johnson, John J. Pringle, (attorney-general,) John Blake, Daniel {339} Stevens, Daniel Cannon, Anthony Toomer, Hugh Rutledge, (judge,) John Budd, (Dr.,) Francis Kinloch, Thomas Sommersall, Michael Kalteisen, (captain of fort Johnson,) Richard Lushington, (colonel,) Nathaniel Russel, Josiah Smith, Lewis Morris, Edward Lightwood, John Edwards. 31.
- Christ Church. — Yeas: Hon. Charles Pinckney, Hon. John Rutledge, Hon. A. Vanderhorst, William Read, Joseph Manigault, Jacob Read, Joshua Toomer. 7.
- St. John's, Berkley. — Yeas: Hon. Henry Laurens, Gen. William Moultrie, Henry Laurens, Jun. 3. — Nays: Peter Fayssoux, Keating Simons, Thomas Walter. 3. — Absent: Francis Marion. 1.
- St. Andrew's. — Yeas: Glen Drayton, Hon. Richard Hutson, Thomas Fuller, James Ladson, Ralph Izard, Jun., Charles Drayton, Hon. William Scott. 7. — Nays: none.
- St. George's, Dorchester. — Yeas: John Glaze, Morton Waring, Thomas Warring, Maj. J. Postell, William Postell, Mathias Hutchinson, John Dawson. 7. — Nays: none.
- St. Jame's, Goose Creek. — Yeas: Hon. Ralph Izard, Peter Smith, Hon. Benjamin Smith, Gabriel Manigault, William Smith, J. Parker, Jun., J. Deas, Jun. 7. — Nays: none.
- St. Thomas and St. Dennis. — Yeas: Hon. John Huger, Thomas Karwon, Thomas Screven, Robert Daniel, Lewis Fogartie, Isaac Harleston, Isaac Parker. — Nays: none.

- St. Paul's Parish. — Yeas: Paul Hamilton, George Haig, Joseph Slann, Roger Parker Saunders, William Washington, (hero of Eutaw and Cowpens.) — Nays: John Wilson, Hon. Melcher Garner. 2.
- St. Batholomew's. — Yeas: Hon. John Lloyd, John Crosskeys. — Nays: Benjamin Postell, William Clay Snipes, O'Brien Smith, Paul Walter, Edmund Bellinger. 5.
- St. Helena's. — Yeas: Hon. John Barnwell, Hon. John Kean, Hon. William H. Wigg, Hon. Robert Barnwell, Hon. William Elliott, Hon. James Stuart. 7. — Nays: none.
- St. Jame's, Santee. — Yeas: Isaac Dubose, Lewis Miles, Samuel Warren, Richard Withers, John Mayrant, Thomas Horry. 6. — Nay: John Bowman. 1.
- Prince George's, Winyaw. — Yeas: Hon. Thomas Waties, (judge of C. C. P., and chancellor,) Samuel Smith, Cleland Kinloch, Hon. William Allston, Jun. 5. — Nays: none. — Absent: Peter Horry. 1.
- All Saints'. — Yeas: Daniel Morral, Thomas Allston. 2. — Nays: none.
- Prince Frederick's. — Yeas: William Wilson, Alexander Tweed, William Frierson, James Pettigrew. 4. — Nays: Patrick Dollard, William Read, J. Burges, Jun. 3.
- St. John's, Colleton County. — Yeas: Thomas Legare, Richard Muncreef, Jun., Hon. Daniel Jenkins, Hugh Wilson, Isaac Jenkins, Ephraim Mikel, William Smelie. — Nays: none.
- St. Peter's. — Yeas: John Fenwick, Joachin Hartstone, Seth Stafford, Rev. Henry Holcom. 4. — Nays: John Chisholm, John Lewis Bourjin, Jun. 2. — Absent: William Stafford. 1.
- Prince William's. — Yeas: Thomas Hutson, John M'Pherson, James Maine, John A. Cuthbert, John Lightwood, John Simmons, Stephen Devaux. 7. — Nuys: none
- St. Stephen's. — Yeas: John Palmer, Hon. Hezekiah Mahams, Samuel Dubose, John Peyre. 4. — Nays: none. — Absent: Thomas Cooper, Thomas Palmer. 1 vacant.
- District Eastward of the Wateree. — Yea: John Chesnut. 1. — Nays: Thomas Sumter, Andrew, Andrew Baskins, John Lowry, Benjamin Cudworth, William Massay, Hugh White, Thomas Dunlap, Samuel Dunlap, John Montgomery. 9. — Absent: S. Boykin.
- District of Ninety-six. — Yea: Dr. John Harris. 1. — Nays: James Lincoln, Adam Crain Jones, Edmond Martin, Andrew Hamilton, Joseph Calhoun, William Butler, John Bowie, Hon. John L. Gervais. 8. — Absent: John Ewing Calhoun, Charles Davenport. 2.
- North Side of Saluda. — Yeas: Samuel Earle, Lemuel J. Allstone, John Thomas, Jun. 3. — Nays: none.
- South Side of Saluda. — Yeas: John Miller, William M'Caleb. 2. — Nays none. — Absent: Robert Anderson. 1.
- District of Saxe-Gotha. — Yea: Hon. Henry Pendleton. 1. — Nays: Hon. Richard Hompton, J. Culpeper, William Fitzpatrick, Llewellen Threewits, John Threewits, Wade Hampton. 6.
- Lower Districts between Broad and Saluda Rivers. — Yeas: none. — Nays: Hon. Edanus Burke, J. Lindsay, Philemon Waters, Robert Ruthford, Hon. J. Hampton. 5.
- {340} Little River District. — Yeas: John Hunter, Thomas Wadsworth. 2. — Nays: Samuel Saxon, Joshua Saxon. 2. — Absent: James Mayson. 1.
- Upper or Spartan District. — Yeas: none. — Nays: William Kennedy, James Jourdon, Charles Sims, Thomas Brandon, Hon. Zacariah Bullock. 5.
- District between Broad and Catawba Rivers, Richland County. — Yeas: none. — Nays: Hon. Thomas Taylor, William Meyer, Thomas Howell. 3.

- Fairfield County. — Nays: James Craig, Jacob Brown, John Gray, John Cook. 4.
- Chester District. — Yeas: none. — Nays: Edward Lacy, Joseph Brown, William Miles, James Knox. 4.
- District called the New Acquisition. — Yea: Rev. Francis Cummins. 1. — Nays: Hon. William Hill, Robert Patton, Samuel Watson, James Martin, James G. Hunt, Samuel Lowry, Andrew Love, John M'Caw, Adam Meek, Abraham Smith. 10.
- St. Matthew's. — Yeas: Hon. William Thompson, Hon. Paul Warley. 2. — Nay' Hon. John Linton. 1.
- Orange. — Yeas: Lewis Lesterjette, Jacob Rumph, Donald Bruce. 3. — Nays: none. — Absent: Lewis Golsan. 1.
- St. David's. — Yeas: Lemuel Benton, William Dewitt, Calvin Spencer, Samuel Taylor, R. Brownfield, Benjamin Hicks, Jun. 6. — Nays: none. — Absent: Trist. Thomas. 1.
- District between Savannah River, and the North Fork of Edisto. — Yeas: Stephen Smith, Hon. William Dunbar, Joseph Vince, William Robison, John Collins, Jonathan Clark. 6. — Nays: none. — Absent: William Buford. 1.
- Yeas, | 149. | Nays, - - 73. | Majority, - - 76, | Absent, 15

So it was resolved in the affirmative.

JOHN S. DART, Secretary of Convention.

	<b>Yeas.</b>	<b>Nays.</b>	<b>Absent</b>
St. Philip and St. Michael,	31	0	0
Christ Church,	7	0	0
St. John's, Berkley County,	3	3	1
St. Andrew's,	7	0	0
St. George's, Dorchester,	7	0	0
St. James's, Goose Creek,	7	0	0
St. Thomas and St. Dennis,	7	0	0
St. Paul's Parish,	5	2	0
St. Bartholomew's,	2	5	0
St. Helena's,	7	0	0
St. James's, Santee,	6	1	0
Prince George's, Winyaw,	4	0	1
All Saints',	2	0	0
Prince Frederick's,	4	3	0
St. John's, Colleton County,	7	0	0
St. Peter's,	4	2	1
Prince William's,	7	0	0
St. Stephen's,	4	0	3
District Eastward of the Wateree,	1	9	1
District of Ninety-six,	1	8	2

North side of the Saluda,	3	0	0
South side of the Saluda,	2	0	1
District of Saxe-Gotha,	1	6	0
Lower District, between Broad and Saluda Rivers,	0	5	0
Little River District,	2	2	1
Upper, or Spartan District,	0	5	0
District between Broad and Catawba Rivers, Richland County,	0	5	0
Fairfield County,	0	4	0
Chester County,	0	4	0
District called the New Acquisition,	1	10	0
St. Matthew's,	2	1	0
Orange,	3	0	0
St. David's,	6	0	1
District between Savannah River and the North Fork of Edisto,	<u>6</u>	<u>0</u>	<u>1</u>
	149	73	14

{341} Two hundred and thirty-six members appointed to the Convention.

Fourteen absent.

Two hundred and twenty-two attended, of which there were,

In favor of adoption,	140
Against adoption,	<u>73</u>
Majority,	67

---

## **Ratification of the Constitution by the State of New Hampshire; June 21, 1788. (1)**

In Convention of the Delegates of the People of the State of New-Hampshire June the Twenty first 1788.

The Convention haveing Impartially discussed and fully considered the [Constitution for the United States of America](#), reported to Congress by the Convention of Delegates from the United States of America & submitted to us by a Resolution of the General Court of said State passed the fourteenth Day of December last past and acknowledgeing with gratefull Hearts the goodness of the Supreme ruler of the Universe in affording the People of the United States in the Course of his Providence an Opportunity, deliberately & peaceably without fraud or surprize of entering into an Explicit and solemn compact with each other by assenting to & ratifying a new [Constitution](#), in Order to form a more perfect Union, establish Justice, Insure domestick Tranquility, provide for the common defence, promote the general welfare and secure the Blessings of Liberty to themselves & their Posterity-Do In the Name & behalf of the People of the State of New-Hampshire assent to & ratify the said [Constitution for the United States of America](#). And as it is the Opinion of this Convention that certain amendments & alterations in the said [Constitution](#) would remove the fears & quiet the apprehensions of many of the good People of this State & more Effectually guard against an undue Administration of the Federal Government- The Convention do therefore recommend that the following alterations & provisions be introduced into the said Constitution.-

First That it be Explicitly declared that all Powers not expressly & particularly Delegated by the aforesaid [Constitution](#) are reserved to the several States to be, by them Exercised.-

Secondly, That there shall be one Representative to every Thirty thousand Persons according to the Census mentioned in the [Constitution](#), untill the whole number of Representatives amount to Two hundred.-

Thirdly That Congress do not Exercise the Powers vested in them, by the [fourth Section of the first Article](#), but in Cases when a State shall neglect or refuse to make the Regulations therein mentioned, or shall make regulations Subversive of the rights of the People to a free and equal Representation in Congress. Nor shall Congress in any Case make regulations contrary to a free and equal Representation.-

Fourthly That Congress do not lay direct Taxes but when the money arising from Impost, Excise and their other resources are insufficient for the Publick Exigencies; nor then, untill Congress shall have first made a Requisition upon the States, to Assess, Levy, & pay their respective proportions, of such requisitions agreeably to the Census fixed in the said Constitution in such way & manner as the Legislature of the State shall think best and in such Case if any State shall neglect, then Congress may Assess & Levy such States proportion together with the Interest thereon at the rate of six per Cent per Annum from the Time of payment prescribed in such requisition-

Fifthly That Congress shall erect no Company of Merchants with exclusive advantages of Commerce.-

Sixthly That no Person shall be Tryed for any Crime by which he may incur an Infamous Punishment, or loss of Life, untill he first be indicted by a Grand Jury except in such Cases as may arise in the Government and regulation of the Land & Naval Forces.-

Seventhly All Common Law Cases between Citizens of different States shall be commenced in the Common Law-Courts of the respective States & no appeal shall be allowed to the Federal Court in such Cases unless the sum or value of the thing in Controversy amount to three Thousand Dollars.-

Eighthly In Civil Actions between Citizens of different States every Issue of Fact arising in Actions at Common Law shall be Tryed by Jury, if the Parties, or either of them request it-

Ninthly-Congress shall at no Time consent that any Person holding an Office of Trust or profit under the United States shall accept any Title of Nobility or any other Title or Office from any King, Prince, or Foreign State.-

Tenth,

That no standing Army shall be Kept up in time of Peace unless with the consent of three fourths of the Members of each branch of Congress, nor shall Soldiers in Time of Peace be quartered upon private Houses without the consent-of the Owners.-

Eleventh

Congress shall make no Laws touching Religion, or to infringe the rights of Conscience-

Twelfth

Congress shall never disarm any Citizen unless such as are or have been in Actual Rebellion.-

And the Convention Do. In the Name & behalf of the People of this State enjoin it upon their Representatives in Congress, at all Times untill the alterations and provisions aforesaid have been Considered agreeably to the [fifth Article of the said Constitution](#) to exert all their Influence & use all reasonable & Legal methods to obtain a ratification of the said alterations & Provisions, in such manner as is provided in the said article-And That the United States in Congress Assembled may have due notice of the assent & Ratification of the said [Constitution](#) by this Convention.-It is resolved that the Assent & Ratification aforesaid be engrossed on Parchment, together with the Recommendation & injunction aforesaid & with this Resolution-And that John Sullivan Esquire President of Convention, & John Langdon Esquire President of the State Transmit the same Countersigned by the Secretary of Convention & the Secretary of the State under their hands & Seals to the United States in Congress Assembled.-

JN<sup>o</sup> SULLIVAN presid<sup>t</sup> of the Convention [SEAL.]  
JOHN LANGDON Presid<sup>t</sup> of State [SEAL.]

By order

JOHN CALVE Secy of Convention  
JOSEPH PEARSON Sect of State

(1) Reprinted from Documentary History of the Constitution, Vol. II (1894), pp. 141-144.

It will be observed that New Hampshire was the ninth State in order of time to ratify the Constitution, which thereupon, in accordance with Article VII thereof, became binding upon the nine States which ratified it-Delaware, Pennsylvania, New Jersey, Georgia, Connecticut, Massachusetts, Maryland, South Carolina, and New Hampshire.

# THE DEBATES IN THE CONVENTION OF THE STATE OF NEW YORK, ON THE ADOPTION OF THE FEDERAL CONSTITUTION.

IN CONVENTION, POUGHKEEPSIE, *June 17, 1788.*

ON the 1st of February, 1788, the legislature of the state of New York passed a resolution in the words following, to wit: —

"*Whereas* the United States, in Congress assembled, did, on the 28th day of September last unanimously resolve, that the report of the Convention of the states lately assembled in Philadelphia, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a Convention of delegates, chosen in each state by the people thereof, in conformity to the resolves of the Convention, made and provided in that case, — Therefore,

"*Resolved*, as the sense of the legislature, that the said report, with the said resolutions and letter accompanying the same, be submitted to a Convention of delegates to be chosen by the people of this state; that it be recommended to the people of this state to choose, by ballot, delegates to meet in Convention for the purpose aforesaid; that the number of delegates to be elected be the same as the number of members of Assembly from the respective cities and counties; that all free male citizens of the age of twenty-one years and upwards be admitted to vote, and that any person of that description be eligible; that the election be held on the last Tuesday in April next, at the same respective places where the elections for members of Assembly shall be held, and be continued by adjournment from day to day, until the same shall be completed, not exceeding five days; that the inspectors, who shall inspect the election for members of Assembly, be also inspectors of the election of delegates; that the inspectors do also appoint two clerks, each of whom shall keep a poll list of the electors for delegates; that the inspectors do provide a box to receive the ballots for delegates; that the poll books or lists shall, after due examination and correction, be signed by the inspectors attending at the closing of the poll, and the clerks who shall have kept the same poll books, respectively; and then the box containing the ballots for delegates shall be opened, and the ballots therein contained taken out, and, without being inspected, shall, together with the poll books or lists for delegates, be immediately put up under cover and enclosed, and the enclosure bound with tape, and sealed in such manner as to prevent its being opened without discovery; and the inspectors present at the closing of the poll shall then put their seals, and write their names, upon the same enclosure, and one of the inspectors then present, to be appointed by a majority of them, shall deliver the same enclosure, so sealed up as aforesaid, to the clerk of the county, without delay, who shall carefully preserve and keep the same, unbroken and unopened, until the meeting of the persons who are to canvass and estimate the ballots therein contained, when he shall deliver the same enclosure, unbroken and unopened, to them; that the person authorized by law to canvass and estimate the votes for members of

Assembly, do, also, immediately after they shall have canvassed and estimated the votes to be taken at the election to be held on the last Tuesday in April next, for members of Assembly, proceed to open the said enclosures containing the ballots for the delegates, and canvass and estimate the votes taken for delegates; and when, as soon as they shall be able to determine, upon such canvass or estimate, who, by the greatest number of votes, shall have been chosen for delegates for the city and county, they shall determine the same, and thereupon, without delay, make, and subscribe with their own proper names and hand-writing, the requisite number of certificates of such determination, and cause one to be delivered to each of the persons so elected a delegate; and that the said election and canvass shall, in every other respect not herein provided for, be conducted in like manner as is provided for by law for holding elections for members of Assembly; that the delegates, so to be chosen, do meet in convention at the court-house in Poughkeepsie, in the county of Dutchess, on the third Tuesday of June next; that the clerks of the Senate and Assembly do forthwith, after the Convention shall have assembled, deliver to them copies of the said report, and of the letter and resolutions which accompanied the same to Congress, and of the said resolution of Congress; that the delegates be allowed the same wages as the members of Assembly, and that it will be proper for the legislature, at their next meeting, to provide for the payment thereof."

In pursuance of the above resolution, an election was held in the several counties, and the following gentlemen were returned: —

*From the City and County of New York.* — John Jay, Richard Morris, John Sloss Hobart, Alexander Hamilton, Robert R. Livingston, Isaac Roosevelt, James Duane, Richard Harrison, Nicholas Low.

*From the City and County of Albany.* — Robert Yates, John Lansing, Jun., Henry Outhoudt, Peter Vroman, Israel Thompson, Anthony Ten Eyck, Dirck Swart.

*From the County of Suffolk.* — Henry Scudder, Jonathan N. Havens, John Smith, Thomas Tredwell, David Hedges.

*From the County of Ulster.* — Governor Clinton, John Cantine, Cor. C. Schoonmaker, Ebenezer Clark, James Clinton, Dirck Wynkoop.

*From the County of Queens.* — Samuel Jones, John Schenck, Nathaniel Lawrence, Stephen Carman.

*From the County of Kings.* — Peter Lefferts, Peter Vandervoort.

*From the County of Richmond.* — Abraham Bancker, Gozen Ryerss.

*From the County of Westchester.* — Lewis Morris, Philip Livingston, Richard Hatfield, Philip Van Courtland, Thaddeus Crane, Lott W. Sarls.

*From the County of Orange.* — John Haring, Jesse Wood-hull, Henry Wisner, John Wood.

*From the County of Dutchess.* — Zephaniah Platt, Melancton Smith, Jacobus Swartwout, Jonathan Akins, Ezra Thompson, Gilbert Livingston, John De Witt.

*From the County of Montgomery.* — William Harper, Christopher P. Yates, John Frey, John Winn, Volkert Veeder, Henry Staring.

*From the County of Columbia.* — Peter Van Ness, John Bay, Matthew Adgate.

*From the Counties of Washington and Clinton.* — Ichabod Parker, John Williams, Albert Baker, David Hopkins.

The Convention, having accordingly assembled on the 17th of June, unanimously elected his excellency, GEORGE CLINTON, president. After appointing the proper subordinate officers, and having ordered that the doors should be kept open, and the business of the Convention opened every morning with prayer, Mr. Duane, Mr. Jones, Mr. R. Morris, Mr. Lansing, and Mr. Harris, were chosen a committee to report rules for conducting the business.

Next day, the *committee of regulations* brought in their report, on which the following resolves were passed, viz.: —

1st. That, at the meeting of the Convention each day, the minutes of the preceding day shall in the first place be read, at which times, mistakes, if any, shall be corrected.

2d. That all motions and addresses be made to the chair, and standing.

3d. That every motion made and seconded, except motions for adjournment, shall be handed to the chair in writing and there read before any debate or question taken thereon.

4th. That, upon every question taken, the yeas and nays shall be entered, if requested by any two members.

5th. That, if two members rise to speak, and there shall be a dispute which of them rose first, it shall be determined by the president.

6th. That no interruption shall be suffered while a member is addressing the chair, but by a call to order by the president, or by a member through the president.

7th. That no member be referred to by name in any debate.

8th. That, if any member shall transgress the rules a second time, the president may refer to him by name; that the Convention may examine and censure the member's conduct, he being allowed to extenuate or justify.

9th. That any member, making a motion, may withdraw it before the question is put thereon; after which any other member may renew the same motion, if he thinks proper.

10th. That the appointment of all committees shall be by ballot.

11th. That none be admitted within the bar, excepting the members and secretaries.

12th. That the preceding rules shall be observed when the Convention resolves itself into a committee of the whole.

The Constitution reported by the general Convention was then read, together with the resolutions and letter accompanying the same to Congress, and the resolve of Congress thereon; after which the Convention, on motion of Mr. Lansing, agreed to resolve itself, the succeeding day, into a committee of the whole.

On the 19th of June, the Convention met, pursuant to adjournment, and, the order of the day being read, resolved itself into a committee of the whole, and Mr. OUTHOUDT was called to the chair.

**The Constitution being again read, the Hon. ROBERT R. LIVINGSTON rose, and addressed the chair as follows: —**

Mr. Chairman, as the preamble of the plan under consideration comprises the great objects of the Union, it will be proper, at this place, to introduce such general observations as may with less propriety be noticed, when particular articles are under consideration, and which may serve, at the same time, to show the necessity of adopting some more efficacious plan of union, than that by which we are now bound. In the course of the observations I shall make with this view, many things will be urged that will be of little use to those gentlemen who have heard all that has been said, who have read all that has been written on this subject, and who have formed their judgments after mature consideration. With such, all debate is unnecessary. But I trust, sir, there are many gentlemen present, who have yet formed no decided opinion on the important question before us, and who (like myself) bring with them dispositions to examine whatever shall be offered, and not to determine till after the maturest deliberation. To such I address myself.

Ever since a pure and perfect religion has lent her mild lights to philosophy, and extended her influence over the sentiments of men, it has been a received opinion that the happiness of nations, as well as of individuals, depends on peace, and that intimate connection which mutual wants occasion. To establish this on the basis of a general union of nations, has, at various times, employed the thoughts and attention of wise and virtuous men. It is said to have been the last great plan of the illustrious Henry IV. of France, who was justly esteemed one of the wisest and best of princes. But, alas! sir, in the old world, every attempt of this nature will prove abortive. There, governments are the children of force or fraud, and carry with them strong features of their parent's character. Disputes will not be referred to a common umpire, unless that umpire has power to enforce his decrees; and how can it be expected that princes, jealous of power, will consent to sacrifice any portion of it to the happiness of their people, who are of little account in their estimation? Differences among them, therefore, will continue to be decided by the sword, and the blood of thousands will be shed before the most trifling controversy can be determined. Even Peace can hardly be said to bestow her usual blessings on them; their mutual jealousies convert peace into an armed truce. The husbandman feels the oppression of standing armies, by

whom the fruits of his labor are devoured; and the flower of youth is sacrificed to the rigors of military discipline. It has pleased Heaven to afford the United States means for the attainment of this great object, which it has withheld from other nations. They speak the same language; they profess the same religion; and, what is of infinitely more importance, they acknowledge the same great principle of government — a principle, if not unknown, at least little understood in the old world — *that all power is derived from the people*. They consider the state and the general governments as different deposits of that power. In this view, it is of little moment to them whether that portion of it which they must, for their own happiness, lodge in their rulers, be invested in the state governments only, or shared between them and the councils of the Union. The rights they reserve are not diminished, and probably their liberty acquires an additional security from the division.

Let us not, then, sir, neglect to improve the advantages we possess; let us avail ourselves of the present moment to fix lasting peace upon the broad basis of national union; let us, while it is still in our power, lay the foundation of our own happiness, and that of our posterity. Jealousies may spring up; the seeds of them are already sown; the present moment may be the only one afforded for eradicating them.

I am too well satisfied, sir, of the virtue and patriotism of those to whom I address myself, to suppose that their determination will be influenced by any unworthy motive. But, sir, I dread the effect which a hasty or partial review may have on their minds; and, above all things, I dread lest the chimerical ideas of perfection in government, which gentlemen may have formed, should induce them to reject this, as falling short of their standard. Perfection, sir, is not the lot of humanity; and perhaps, were the gentlemen on this floor to compare their sentiments on this subject, no two of them would be found to agree. Nay, such is the weakness of our judgment, that it is more than probable that, if a perfect plan was offered to our choice, we should conceive it defective, and condemn it. The only people whose government was visibly directed by God himself, rejected his administration, and induced him, in his wrath, to give them a king. Let us be cautious, sir, lest, by our negligence or eager pursuit after chimerical perfection, we should forfeit the blessings we enjoy, and lose this precious opportunity of completing what other nations have been unable to effect.

As, on the one hand, sir, our situation admits of a union, so, on the other, our distresses point out its necessity. I will not, at this time, touch on the declining state of our commerce; nor will I remind you of our national bankruptcy, of the effect it has upon our public measures, and the private misery that it causes; nor will I wound your feelings by a recapitulation of the insults we daily receive from nations whose injuries we are compelled to repay by the advantages of our commerce. These topics have been frequently touched; they are in every man's mind; they lie heavy at every patriot's heart. They have induced states, the most independent in their situation, to unite in their endeavors to remove them; they operate with peculiar force on us. Permit me, however, to make some observations, drawn from our particular situation, and which will show, in the clearest light, that our existence, as a state, depends on a strong and efficient federal government.

He went into a minute consideration of the natural advantages of this state, drawn from its valuable and abundant staples; the situation of its principal seaport; the command of the

commerce of New Jersey, by the rivers discharging themselves in our bay; the facility that the Sound afforded for an intercourse with the Eastern States. He observed upon the advantages resulting from the Hudson, which he described as bearing upon its bosom the wealth of the remotest part of the state. He touched upon the prospects that a lasting peace afforded of commanding the treasures of the western world, by the improvement of our internal navigation. He said, that to these natural advantages we might add many other adventitious circumstances. He observed, that a considerable proportion of our domestic debt was already in the treasury, and though we were indebted for a part of this to our citizens, yet that debt was comparatively small, and could easily be extinguished by an honest exertion on the part of the government. He observed, that our back lands were competent to the discharge of our foreign debt, if a vigorous government should be adopted, which would enable us to avail ourselves of this resource; so that we might look forward to a day when no other taxes would be required from us than such as would be necessary to support our internal government, the amount of the impost being more than adequate to the other expenses of the Union. He feared that a prospect of these advantages had excited an improper confidence in ourselves; that it has produced an inflexibility, which had rendered us regardless of the wishes and expectations of the other states, and lessened that respect which was due, as well from nations to each other, as from individuals. We have insisted, says he, that every knee shall bow to the golden image we have set up. But let us remember that, how valuable soever the materials of which its nobler parts are composed, its feet (like those of the image in the vision) are composed of iron and clay, of materials that will not adhere together, and which the slightest shock will tumble on the earth.

He observed, that wealth excited envy, stimulated avarice, and invited invasions; that, if the Union was dissolved, we could only be protected by our domestic force. He then urged the incapacity of the state to defend itself, from the detached situation of its ports, remarking particularly upon that of Staten Island and Long Island; their vicinity to states, which, in case of a disunion, must be considered as independent, and perhaps unfriendly powers. He turned the attention of the committee to the north-east, where he showed Vermont ready to avail itself of our weakness, speaking of the people of that state, as a brave and hardy body of men, that we had neither the spirit to subdue, nor, what be more strongly recommended, the magnanimity to yield to. On the north-west, he pointed to the British posts, and hostile tribes of savages. He showed that, in case of domestic war, Hudson River, that great source of our wealth, would also be that of our weakness, by the intersection of the state, and the difficulty we should find in bringing one part to support the other.

He then ran over the alliances that would be formed in case of a disunion; pointed out the connection between the Eastern States, and urged various reasons to show that it was neither the interest nor wish of the states, on the east or west, to form a league offensive or defensive with us. Having dwelt largely on this subject, he deduced, as a consequence from it, that our wealth and our weakness equally required the support of a federal union. He observed that this could only be found in the existing Confederation, or in that under consideration; urging that, as union could only be founded on the consent of the states, it should be sought where we had reason to expect that consent; that to depart from this would be to investigate as many ideal systems as there were persons who had thought on the subject of government. He observed that, in the then state of things, it was problematical, at least, whether we would recur to the old Confederation; but, as many gentlemen thought it possible, he would proceed to investigate it. He then went

through the Confederation, and showed that the powers intended to be vested in Congress were very similar to those given by the new government, to wit: to raise troops, possess a common treasure, borrow money, make treaties, appoint civil officers, &c. He observed that as, on the one hand, the want of these powers would not be objected to in the Confederation, so, on the other, the possession of them could not be urged as a fault in the new plan.

He asked whether, with these powers, it had been able to effect the purposes designed by the Union; whether it had repelled invaders, maintained domestic peace, supported our credit, or extended our commerce. He proved that not one of these objects had been effected by it. He pointed to the British possessions in the limits of this state, held in defiance of the most solemn treaties, and contempt of our government, as proof of its incompetency to defend our rights against foreign powers. How has it happened, said he, that Vermont is, at this moment, an independent state? How has it happened that new states have been rent from those on the west, that were entitled to protection? He asked if any gentlemen would assert that our national credit was fixed upon a proper basis; that our commerce enjoyed the advantages we had a right to expect. If, then, said he, experience has shown that the existing Confederation (if I may use the term) has not answered the great ends of the Union, it must either have arisen from an insufficiency in its powers, or from some defect in the execution of them: if insufficient, more should be added; if not executed, the cause should be inquired into. He showed that, with the addition of a few powers, those it possessed were competent to the purposes of the Union; but that the defect of the system rested in the impossibility of carrying into effect the rights invested in them by the states. He then ran through every power intended to be vested in Congress, and showed that the exercise of them, by the intervention of the state governments, and subject to their pleasure or their different views of the matters recommended to them, would be attended with insuperable difficulties, inconveniences, and delays, even if they were disposed to carry them into effect; but that, if (which, experience had shown, would often be the case) they should either neglect or refuse to comply with the requisition, no means were pointed out by the Confederation to coerce them, but that it was left, as all leagues among nations, to military force. He showed, in a strong point of view, the danger of applying this; and deduced from all those observations, that the old Confederation was defective in its principle, and impeachable in its execution, as it operated upon states in their political capacity, and not upon individuals; and that it carried with it the seeds of domestic violence, and tended ultimately to its dissolution. He then appealed to our experience in the late war, to show the operation of this system, and demonstrated that it must, from its own construction, leave every state to struggle with its own difficulties, and that none would be roused to action but those that were near the seat of war. He alleged that this idea of a federal republic, on the ground of a league among independent states, had, in every instance, disappointed the expectations of its advocates. He mentioned its effects in the ancient republics, and took a view of the union of the Netherlands, and showed that, even when they were struggling for every thing that was dear to them, in the contest with Spain, they permitted the burden of the war to be borne, in a great measure, by the province of Holland; which was, at one time, compelled to attempt to force a neighboring province, by arms, to a compliance with their federal engagements. He cited the Germanic league, as a proof that no government, formed on the basis of the total independency of its parts, could produce the effects of union. He showed that, notwithstanding the power of their federal head, from his hereditary dominions, the decrees of their general diet were little regarded, and different members of the confederacy were perpetually rushing upon each other's swords.

He then observed upon the necessity of adding to the powers of Congress, that of regulating the militia, referring to the article in the proposed plan, which he said he would not anticipate. He urged the common consent of America as a proof of the necessity of adding the power of regulating commerce to those Congress already possessed, which, he said, not only included those of forming laws, but of deciding upon those laws, and carrying them into effect; that this power could never be trusted to the individual states, whose interests might, in many instances, clash with that of the Union. From hence he inferred the necessity of a federal judiciary, to which he would have referred not only the laws for regulating commerce, but the construction of treaties and other great national objects, — showing that, without this, it would be in the power of any state to commit the honor of the Union, defeat their most beneficial treaties, and involve them in a war. He next adverted to the form of the federal government. He said that, though justified when considered as a mere diplomatic body, making engagements for its respective states, which they were to carry into effect, yet, if it was to enjoy legislative, judicial, and executive powers, an attention as well to the facility of doing business as to the principles of freedom, called for a division of those powers. After commenting on each of them, and showing the mischief that would flow from their union in one House of Representatives, and those, too, chosen only by the legislatures, and neither representing the people nor the government, (which he said consisted of legislative, executive, and judicial,) he proposed the Constitution of this state as the model for the state governments.

From these observations he deduced, first, that the powers which were, by common consent, intended to be vested in the federal head, had either been found deficient, or rendered useless by the impossibility of carrying them into execution, on the principle of a league of states totally separate and independent; — secondly, that, if the principle was changed, a change would also become necessary in the form of the government; but if we could no longer retain the old principle of the confederacy, and were compelled to change its form, we were driven to the necessity of creating a new constitution, and could find no place to rest upon in the old Confederation; that he had urged these considerations to fix gentlemen's attention to the only true ground of inquiry; to keep them from reverting to plans which had no single feature that could now be serviceable, and to lead the way to a minute discussion of every article with candor and deliberation; and, in order that this might be the better effected, and no gentleman pledged before he had fully considered the subject, he intended, before he sat down, to move the resolution he had in his hand. He considered the question as one that not only affected the happiness, and perhaps the existence, of this state, but as one that involved the great interests of humanity. Many of us, sir, said he, are officers of government; many of us have seats in the Senate and Assembly: let us, on this solemn occasion, forget the pride of office; let us consider ourselves as simple citizens, assembled to consult on measures that are to promote the happiness of our fellow-citizens. As magistrates, we may be unwilling to sacrifice any portion of the power of the state; as citizens, we have no interest in advancing the powers of the state at the expense of the Union. We are only bound to see that so much power as we find it necessary to intrust to our rulers, be so placed as to insure our liberties, and the blessings of a well-ordered government.

He then offered a resolution, the purport of which was, "That no question, general or particular, should be put in the committee upon the proposed Constitution of government for the United States, or upon any clause or article thereof, nor upon any amendment which should be proposed

thereto, until after the said Constitution and amendments should have been considered clause by clause."

The said resolution, being taken into consideration, was agreed to by the Convention.

The committee then rose, and the Convention adjourned till next day, 10 o'clock, A. M.

FRIDAY, *June 20*, 1788. — Convention met pursuant to adjournment. Went into committee of the whole, Mr. Outhout in the chair.

**The Hon. Mr. LANSING then rose, and addressed the chair as follows: —**

Mr. Chairman, I am equally disposed with the honorable gentleman from New York, who favored the committee with his sentiments yesterday, to a candid and dispassionate investigation of the important business now under consideration, and to receive every possible information on the occasion.

I do not mean to state any objections to the clause now read, but wish the indulgence of the committee, while I make some observations in answer to those which were given to the committee by the honorable gentleman from New York.

Sir, the project devised by Henry IV., in his closet, to form a confederated republic of the European states, may perhaps be considered as visionary in its object, but originating; in motives which were in some measure peculiar to him self, as, from the power and importance he possessed, he might have flattered himself that he should have been at the head of it. But a difference in language, manners, religion, and interests of their sovereigns, would have defeated it, if it had been attempted. Here a confederated republic is only more attainable from the circumstances of all the powers existing in, or originating from, the people, and a similarity of language and manners. We ought, therefore, to be extremely cautious how we establish a government which may give distinct interests to the rulers and governed, so as to induce the former to pursuits adverse to the happiness of the United States.

It has been observed, that, as the people must, of necessity, delegate essential powers either to the individual or general sovereignties, it is perfectly immaterial where they are lodged; but, as the state governments will always possess a better representation of the feelings and interests of the people at large, it is obvious that those powers can be deposited with much greater safety with the state than the general government.

I am equally averse to cherishing, on this occasion, the idea of obtaining a perfection which never existed, and to despairing of making important amendments to the system now offered for consideration; for, sir, however much I may be disposed to perpetuate union, however sensible of the defects of the existing Confederation, I cannot help differing from those gentlemen who are of opinion it is incapable of amelioration.

I would ask, What are the objections which have been so ably urged against it? They are comprised under two heads. First, it affords no defence against foreign assault; second, no

security to domestic tranquillity. Both these objects might be compassed if Congress could be vested with a power to raise men and money.

Requisitions made under the existing Confederation by Congress, it is allowed, are insufficient; but this defect might, in a great measure, have been remedied by permitting the United States to legislate on individuals after the requisitions had been made, and not been complied with. If the requisition could be thus enforced, loans of money might be negotiated when necessary, and Congress be authorized to raise money to replace them.

The languishing situation of our commerce has also been attributed to the impotence of Congress; but I think their journals will justify me in the assertion that all the states, excepting two, had passed laws to enable Congress to regulate commerce, and that those two were not indisposed to vest that power.

The conduct of the king of Great Britain, with respect to the western posts, has also been urged as the result of the inefficiency of our government; but, however organized our general government might be, I should doubt whether it was either prudent or expedient to risk a war, which would expose our coast to depredation by an enemy, against whose attacks in that point we must remain defenceless, until we can create a fleet to repel their invasions. Will any government enable us to do this in a few years? I am convinced it will not.

That we have to encounter embarrassments, and are distressed for want of money, is undoubted; but causes which could not be controlled by any system of government, have principally contributed to embarrass and distress us. On the termination of war, which operated to exhaust our resources, we launched into every species of extravagance, and imported European goods to an amount far beyond our ability to pay. The difficulties which arose from this and several other causes, equally uninfluenced by the system of government, were without hesitation attributed to its want of energy.

Sir, the instance adduced from the history of the Jewish theocracy evinces that there are certain situations in communities which will unavoidably lead to results similar to those we experience. The Israelites were unsuccessful in war; they were sometimes defeated by their enemies: instead of reflecting that these calamities were occasioned by their sins, they sought relief in the appointment of a king, in imitation of their neighbors.

The united Dutch provinces have been instanced as possessing a government parallel to the existing Confederation; but I believe it will be discovered that they were never organized, as a general government, on principles so well calculated to promote the attainment of national objects as that of the United States. They were obliged to resort to subordinate societies to collect the sense of the state, before the deputies were authorized to assent to any public measure binding on their states. Sir William Temple relates that an important measure was prevented from taking place by the dissent of a single town, till one of its citizens was accommodated with a commission.

The Germanic confederacy consists of a heterogeneous mass of powerful princes, petty despots, and republics, differently organized, divided by religious jealousies, and existing only in its

forms by the pressure of the great controlling powers of the emperor. I know not that history furnishes an example of a confederated republic coercing the states composing it by the mild influence of laws operating on the individuals of those states. This, therefore, I suppose to be a new experiment in politics; and, as we cannot always accurately ascertain the results of political measures, and as reasoning on them has been frequently found fallacious, we should not too confidently predict those to be produced by the new system.

The dangers to which we shall be exposed by a dissolution of the Union, have been represented; but, however much I may wish to preserve the Union, apprehensions of its dissolution ought not to induce us to submit to any measure which may involve in its consequences the loss of civil liberty. Conquest can do no more, in the state of civilization, than to subject us to be ruled by persons in whose appointment we have no agency. This, sir, is the worst we can apprehend at all events; and, as I suppose a government so organized, and possessing the powers mentioned in the proposed Constitution, will unavoidably terminate in the depriving us of that invaluable privilege, I am content to risk a probable, but, on this occasion, a mere possible evil, to avoid a certain one. But if a dissolution of the Union should unfortunately ensue, what have we to apprehend? We are connected, both by interest and affection, with the New England States; we harbor no animosities against each other; we have no interfering territorial claims; our manners are nearly similar, and they are daily assimilating, and mutual advantages will probably prompt to mutual concessions, to enable us to form a union with them. I, however, contemplate the idea of a possible dissolution with pain, and I make these remarks with the most sincere reluctance, only in answer to those which were offered by the honorable gentleman from New York.

Sir, I have formerly had occasion to declare to the public my apprehensions that a consolidated government, partaking in a great degree of republican principles, and which had in object the control of the inhabitants of the extensive territory of the United States, by its sole operations could not preserve the essential rights and liberties of the people. I have not as yet discovered any reason to change that sentiment; on the contrary, reflection has given it additional force. But I stand here the representative of others, and, as far as I can ascertain the views of my constituents, it is my duty to promote them with the utmost assiduity; and in no one pursuit can I be better supported by the almost unanimous opinion of my fellow-citizens in the county I have the honor to represent, than in proposing amendments to the Constitution which is now the subject of our deliberations, as the mode of introducing amendments was the only point of difference. Influenced by these considerations, every amendment which I am convinced will have a tendency to lessen the danger of invasion of civil liberty by the general government, will receive my sincere approbation. But none which can, in the remotest degree, originate in local views, will meet my concurrence; and I trust an intention will not be attributed to me to preserve the consequence of official state establishments.

Sir, when motives of this kind are supposed to actuate men in office, by persons who have imbibed prejudices from a want of information — when they originate from an illiberality of sentiment which would disgrace the worst cause — every man who feels the imputation, while he laments the misguided zeal which aims, by the sacrifice of private feelings, to obtain a favorite object, will disregard the attempt, and consign it to merited oblivion. But when an honorable gentleman, distinguished for his liberal turn of thinking, who is possessed of one of the most lucrative offices of the state, deliberately gives his name to the public, as impliedly

sanctioning the sentiment, silence must unavoidably be construed into a tacit confession of its justice. The committee will therefore indulge me in remarking that, if the operations of the general government will subvert those of the individual states, the interest of the state officers may be affected in some measure, otherwise their emoluments will remain undiminished — their consequence not so much impaired as not to compensate men of interested pursuits by the prospect of sharing the offices of the general government. Does this imputation only apply to the officers of this state? Are they more discerning in distinguishing their interest, or are they only capable of being warped by apprehensions of loss? In the neighboring states, the officers of government are among the warmest advocates of the new system; and even in this state they are perhaps more divided in sentiment than any other class of men whatsoever.

But, sir, I trust we shall divest ourselves, on this occasion, of every consideration of a private nature, and determine on the Constitution with caution and moderation.

**Mr. R. R. LIVINGSTON rose to reply.**

The CHANCELLOR, in explanation, said, it gave him pain to observe a meaning attributed to him which was totally foreign from his mind. He by no means had intended to insinuate that the opposition to the Constitution flowed from interested or improper motives. He knew that the officers of this state had taken different sides; he himself held a public station, and many of the officers of the several states were among its warmest advocates. He was sensible that every man in place felt, in a delicate degree, the dignity attached to his office. Far from aiming an improper suggestion of the previous or present disposition of any member, his only view was to express a hope, and at the same time a caution, that, in the prosecution of this business, gentlemen might not suffer themselves to be influenced by partial views or private prejudices. For, said he, we sit here as simple citizens, and every species of official authority is lost in this equal assembly. But, sir, as the officers of government were selected from the mass of the people, with an expectation that they would be their wisest and best friends, it is to be hoped that, if this Constitution is proved to be a good one, and friendly to the liberties of the people, those men who are highest in office will be the most urgent to adopt, and most active to execute it. He begged leave to take notice of an observation which had just been made. He should notice it, because it tended to establish a new and singular opinion; that is, that, if a conditional power of coercion only was lodged in the government, the purposes of the union might be answered. The idea was, that Congress should make requisitions on the states, and, on their non-compliance, the compulsory authority should be exercised on individuals. This idea includes an acknowledgment that the old Confederation is totally incompetent to federal purposes.

But let us view, said he, the operation of a system founded on such a principle. In the first place, the necessary revenue officers must be appointed. Congress will then send out the requisitions, and, on refusal or neglect, will resort to individual coercion. If the states punctually comply with the requisitions, an expensive establishment must be supported, without object or employment. If, on the contrary, they are delinquent, what an alarming image of disorder is presented to our view! A body of federal officers, in the heart of a state, acting in direct opposition to the declared sense of the legislature! Would not this be a source of eternal disorder? Would not a government, thus calculated to promote a spirit of civil dissension, be forever impracticable? Such a

government must be attended with every delay, with every expense — must defeat itself, and be its own destruction.

**The Hon. Mr. SMITH said,**

he conceived that the Constitution ought to be considered by paragraphs. An honorable gentleman yesterday had opened the debate with some general observations; another honorable gentleman had just answered him by general observations. He wished the Constitution to be examined by paragraphs. In going through it, he should offer his objections to such parts of it as he thought defective.

The first section of the first article was then read, and passed by without remark.

The second section being read,

**Mr. SMITH again rose.**

He most heartily concurred in sentiment with the honorable gentleman who opened the debate, yesterday, that the discussion of the important question now before them ought to be entered on with a spirit of patriotism; with minds open to conviction; with a determination to form opinions only on the merits of the question, from those evidences which should appear in the course of the investigation.

How far the general observations made by the honorable gentleman accorded with these principles, he left to the house to determine.

It was not, he said, his intention to follow that gentleman through all his remarks. He should only observe that what had been advanced did not appear to apply to the subject under consideration.

He was as strongly impressed with the necessity of a union as any one could be. He would seek it with as much ardor. In the discussion of this question, he was disposed to make every reasonable concession, and, indeed, to sacrifice every thing for a union, except the liberties of his country, than which he could contemplate no greater misfortune. But he hoped we were not reduced to the necessity of sacrificing, or even endangering, our liberties, to preserve the Union. If that was the case, the alternative was dreadful. But he would not now say that the adoption of the Constitution would endanger our liberties; because that was the point to be debated, and the premises should be laid down previously to the drawing of any conclusion. He wished that all observations might be confined to this point, and that declamations and appeals to the passions might be omitted.

Why, said he, are we told of our weakness? of the defenceless condition of the southern parts of our state? of the exposed situation of our capital? of Long Island, surrounded by water, and exposed to the incursions of our neighbors in Connecticut? of Vermont having separated from us, and assumed the powers of a distinct government? and of the north-west parts of our state being in the hands of a foreign enemy? Why are we to be alarmed with apprehensions that the Eastern States are inimical, and disinclined to form alliances with us? He was sorry to find that such suspicions were entertained. He believed that no such disposition existed in the Eastern

States. Surely it could not be supposed that those states would make war upon us for exercising the rights of freemen, deliberating and judging for ourselves, on a subject the most interesting that ever came before any assembly. If a war with our neighbors was to be the result of not acceding, there was no use in debating here; we had better receive their dictates, if we were unable to resist them. The defects of the old Confederation needed as little proof as the necessity of a union. But there was no proof in all this that the proposed Constitution was a good one. Defective as the old Confederation is, he said, no one could deny but it was possible we might have a worse government. But the question was not whether the present Confederation be a bad one, but whether the proposed Constitution be a good one.

It had been observed, that no example of federal republics had succeeded. It was true that the ancient confederated republics were all destroyed; so were those which were not confederated; and all ancient governments, of every form, had shared the same fate. Holland had, no doubt, experienced many evils from the defects in her government; but, with all these defects, she yet existed: she had, under her confederacy, made a principal figure among the nations of Europe, and he believed few countries had experienced a greater share of internal peace and prosperity. The Germanic confederacy was not the most pertinent example to produce on this occasion. Among a number of absolute princes, who consider their subjects as their property, whose will is law, and to whose ambition there are no bounds, it was no difficult task to discover other causes from which the convulsions in that country rose, than the defects of their confederation. Whether a confederacy of states, under any form, be a practicable government, was a question to be discussed in the course of investigating the Constitution.

He was pleased that, thus early in debate, the honorable gentleman had himself shown that the intent of the Constitution was not a confederacy, but a reduction of all the states into a consolidated government. He hoped the gentleman would be complaisant enough to exchange names with those who disliked the Constitution, as it appeared from his own concessions, that they were federalists, and those who advocated it were anti-federalists. He begged leave, however, to remind the gentleman, that Montesquieu, with all the examples of modern and ancient republics in view, gives it as his opinion, that a confederated republic has all the internal advantages of a republic, with the external force of a monarchical government. He was happy to find an officer of such high rank recommending to the other officers of government, and to those who are members of the legislature, to be unbiased by any motives of interest or state importance. Fortunately for himself, he was out of the verge of temptation of this kind, not having the honor to hold any office under the state. But, then, he was exposed, in common with other gentlemen of the Convention, to another temptation, against which he thought it necessary that we should be equally guarded. If, said he, this Constitution is adopted, there will be a number of honorable and lucrative offices to be filled; and we ought to be cautious lest an expectancy of some of them should influence us to adopt without due consideration.

We may wander, said he, in the fields of fancy without end, and gather flowers as we go. It may be entertaining, but it is of little service to the discovery of truth. We may, on one side, compare the scheme advocated by our opponents *to golden images, with feet part of iron and part of clay*; and on the other, *to a beast dreadful and terrible, and strong exceedingly, having great iron teeth, — which devours, breaks in pieces, and stamps the residue with his feet*; and after all, said

he, we shall find that both these allusions are taken from the same *vision*; and their true meaning must be discovered by sober reasoning.

He would agree with the honorable gentlemen that perfection in any system of government was not to be looked for. If that was the object, the debates on the one before them might soon be closed. But he would observe, that this observation applied, with equal force, against changing any system, especially against material and radical changes. Fickleness and inconstancy, he said, were characteristic of a free people; and, in framing a constitution for them, it was, perhaps, the most difficult thing to correct this spirit, and guard against the evil effects of it. He was persuaded it could not be altogether prevented without destroying their freedom. It would be like, attempting to correct a small indisposition in the habit of the body, fixing the patient in a confirmed consumption. This fickle and inconstant spirit was the more dangerous in bringing about changes in the government. The instance that had been adduced by the gentleman from sacred history, was an example in point to prove this. The nation of Israel, having received a form of civil government from Heaven, enjoyed it for a considerable period; but, at length, laboring under pressures which were brought upon them by their own misconduct and imprudence, instead of imputing their misfortunes to their true causes, and making a proper improvement of their calamities, by a correction of their errors, they imputed them to a defect in their constitution; they rejected their divine Ruler, and asked Samuel to make them a king to judge them, like other nations. Samuel was grieved at their folly; but still, by the command of God, he hearkened to their voice, though not until he had solemnly declared unto them the manner in which the king should reign over them. "This (says Samuel) shall be the manner of the king that shall reign over you. He will take your sons, and appoint them for himself, for his chariots, and for his horsemen, and some shall run before his chariots; and he will appoint him captains over thousands, and captains over fifties, and will set them to ear his ground, and to reap his harvest, and to make his instruments of war, and instruments of his chariots. And he will take your daughters to be confectionaries, and to be cooks, and to be bakers. And he will take your fields, and your vineyards, and your olive-yards, even the best of them, and give them to his servants. And he will take the tenth of your seed, and of your vineyards, and give to his officers and to his servants, and he will take your men-servants, and your maid-servants, and your goodliest young men, and your asses, and put them to his work. He will take the tenth of your sheep; and ye shall be his servants. And ye shall cry out in that day, because of your king which ye have chosen you; and the Lord will not hear you in that day!" How far this was applicable to the subject, he would not now say. it could be better judged of when they had gone through it. On the whole, he wished to take up this matter with candor and deliberation.

He would now proceed to state his objections to the clause just read, (section 2, of article 1, clause 3.) His objections were comprised under three heads: 1st, the rule of apportionment is unjust; 2d, there is no precise number fixed on, below which the house shall not be reduced; 3d, it is inadequate. In the first place, the rule of apportionment of the representatives is to be according to the whole number of the white inhabitants, with three fifths of all others; that is, in plain English, each state is to send representatives in proportion to the number of freemen, and three fifths of the slaves it contains. He could not see any rule by which slaves were to be included in the ratio of representation. The principle of a representation being that every free agent should be concerned in governing himself, it was absurd in giving that power to a man who could not exercise it. Slaves have no will of their own. The very operation of it was to give

certain privileges to those people who were so wicked as to keep slaves. He knew it would be admitted that this rule of apportionment was founded on unjust principles, but that it was the result of accommodation; which, he supposed, we should be under the necessity of admitting, if we meant to be in union with the Southern States, though utterly repugnant to his feelings. In the second place, the number was not fixed by the Constitution, but left at the discretion of the legislature; perhaps he was mistaken; it was his wish to be informed. He understood, from the Constitution, that sixty-five members were to compose the House of Representatives for three years; that, after that time, the census was to be taken, and the numbers to be ascertained by the legislature, on the following principles: 1st, they shall be apportioned to the respective states according to numbers; 2d, each state shall have one, at least; 3d, they shall never exceed one to every thirty thousand. If this was the case, the first Congress that met might reduce the number below what it now is — a power inconsistent with every principle of a free government, to leave it to the discretion of the rulers to determine the number of representatives of the people. There was no kind of security except in the integrity of the men who were intrusted; and if you have no other security, it is idle to contend about constitutions. In the third place, supposing Congress should declare that there should be one representative for every thirty thousand of the people, in his opinion, it would be incompetent to the great purposes of representation. It was, he said, the fundamental principle of a free government, that the people should make the laws by which they were to be governed. He who is controlled by another is a slave; and that government which is directed by the will of any one, or a few, or any number less than is the will of the community, is a government for slaves.

The new point was, How was the will of the community to be expressed? It was not possible for them to come together; the multitude would be too great: in order, therefore, to provide against this inconvenience, the scheme of representation had been adopted, by which the people deputed others to represent them. Individuals entering into society became one body, and that body ought to be animated by one mind; and he conceived that every form of government should have that complexion. It was true, notwithstanding all the experience we had from others, it had appeared that the experiment of representation had been fairly tried; there was something like it in the ancient republics, in which, being of small extent, the people could easily meet together, though, instead of deliberating, they only considered of those things which were submitted to them by their magistrates. In Great Britain, representation had been carried much further than in any government we knew of, except our own; but in that country it now had only a name. America was the only country in which the first fair opportunity had been offered. When we were colonies, our representation was better than any that was then known: since the revolution, we had advanced still nearer to perfection. He considered it as an object, of all others the most important, to have it fixed on its true principle; yet he was convinced that it was impracticable to have such a representation in a consolidated government. However, said he, we may approach a great way towards perfection by increasing the representation and limiting the powers of Congress. He considered that the great interests and liberties of the people could only be secured by the state governments. He admitted that, if the new government was only confined to great national objects, it would be less exceptionable; but it extended to every thing dear to human nature. That this was the case, would be proved without any long chain of reasoning; for that power which had both the purse and the sword had the government of the whole country, and might extend its powers to any and to every object. He had already observed that, by the true doctrine of representation, this principle was established — that the representative must be

chosen by the free will of the majority of his constituents. It therefore followed that the representative should be chosen from small districts. This being admitted, he would ask, Could 65 men for 3,000,000, or 1 for 30,000, be chosen in this manner? Would they be possessed of the requisite information to make happy the great number of souls that were spread over this extensive country? There was another objection to the clause: if great affairs of government were trusted to few men, they would be more liable to corruption. Corruption, he knew, was unfashionable amongst us, but he supposed that Americans were like other men; and though they had hitherto displayed great virtues, still they were men; and therefore such steps should be taken as to prevent the possibility of corruption. We were now in that stage of society in which we could deliberate with freedom; how long it might continue, God only knew! Twenty years hence, perhaps, these maxims might become unfashionable. We already hear, said he, in all parts of the country, gentlemen ridiculing that spirit of patriotism, and love of liberty, which carried us through all our difficulties in times of danger. When patriotism was already nearly hooted out of society, ought we not to take some precautions against the progress of corruption?

He had one more observation to make, to show that the representation was insufficient. Government, he said, must rest, for its execution, on the good opinion of the people: for, if it was made heaven, and had not the confidence of the people, it could not be executed; that this was proved by the example given by the gentleman of the Jewish theocracy. It must have a good setting out, or the instant it takes place, there is an end of liberty. He believed that the inefficacy of the old Confederation had arisen from that want of confidence; and this caused, in a great degree, by the continual declamation of gentlemen of importance against it from one end of the continent to the other, who had frequently compared it to a rope of sand. It had pervaded every class of citizens; and their misfortunes, the consequences of idleness and extravagance, were attributed to the defects of that system. At the close of the war, our country had been left in distress; and it was impossible that any government on earth could immediately retrieve it; it must be time and industry alone that could effect it. He said, he would pursue these observations no further at present, — and concluded with making the following motion: —

*"Resolved*, That it is proper that the number of representatives be fixed at the rate of one for every twenty thousand inhabitants, to be ascertained on the principles mentioned in the 2d section of the 1st article of the Constitution, until they amount to three hundred; after which they shall be apportioned among the states, in proportion to the number of inhabitants of the states respectively; and that, before the first enumeration shall be made, the several states shall be entitled to choose double the number of representatives, for that purpose mentioned in the Constitution."

**The Hon. Mr. HAMILTON then rose.**

Mr. Chairman, the honorable member who spoke yesterday went into an explanation of a variety of circumstances, to prove the expediency of a change in our national government, and the necessity of a firm union. At the same time, he described the great advantages which this state, in particular, receives from the confederacy, and its peculiar weaknesses when abstracted from the Union. In doing this, he advanced a variety of arguments, which deserve serious consideration. Gentlemen have this day come forward to answer him. He has been treated as having wandered in the flowery fields of fancy; and attempts have been made to take off from the minds of the

committee that sober impression which might be expected from his arguments. I trust, sir, that observations of this kind are not thrown out to cast a light air on this important subject, or to give any personal bias on the great question before us. I will not agree with gentlemen who trifle with the weaknesses of our country, and suppose that they are enumerated to answer a party purpose, and to terrify with ideal dangers. No. I believe these weaknesses to be real, and pregnant with destruction. Yet, however weak our country may be, I hope we never shall sacrifice our liberties. If, therefore, on a full and candid discussion, the proposed system shall appear to have that tendency, for God's sake, let us reject it! But let us not mistake words for things, nor accept doubtful surmises as the evidence of truth. Let us consider the Constitution calmly and dispassionately, and attend to those things only which merit consideration.

No arguments drawn from embarrassment or inconvenience ought to prevail upon us to adopt a system of government radically bad; yet it is proper that these arguments, among others, should be brought into view. In doing this, yesterday, it was necessary to reflect upon our situation; to dwell upon the imbecility of our union; and to consider whether we, as a state, could stand alone. Although I am persuaded this Convention will be resolved to adopt nothing that is bad, yet I think every prudent man will consider the merits of the plan in connection with the circumstances of our country, and that a rejection of the Constitution may involve most fatal consequences. I make these remarks to show that, though we ought not to be actuated by unreasonable fear, yet we ought to be prudent.

This day, sir, one gentleman has attempted to answer the arguments advanced by my honorable friend; another has treated him as having wandered from the subject. This being the case, I trust I shall be indulged in reviewing the remarks that have been made.

Sir, it appears to me extraordinary, that, while gentlemen in one breath acknowledge that the old Confederation requires many material amendments, they should in the next deny that its defects have been the cause of our political weakness, and the consequent calamities of our country. I cannot but infer from this, that there is still some lurking favorite imagination, that this system, with correctness, might become a safe and permanent one. It is proper that we should examine this matter. We contend that the radical vice in the old Confederation is, that the laws of the Union apply only to states in their corporate capacity. Has not every man who has been in our legislature experienced the truth of this position? It is inseparable from the disposition of bodies, who have a constitutional power of resistance, to examine the merits of a law. This has ever been the case with the federal requisitions. In this examination, not being furnished with those lights which directed the deliberations of the general government, and incapable of embracing the general interests of the Union, the states have almost uniformly weighed the requisitions by their own local interests, and have only executed them so far as answered their particular convenience or advantage. Hence there have ever been thirteen different bodies to judge of the measures of Congress, and the operations of government have been distracted by their taking different courses. Those which were to be benefited have complied with the requisitions; others have totally disregarded them. Have not all of us been witnesses to the unhappy embarrassments which resulted from these proceedings? Even during the late war, while the pressure of common danger connected strongly the bond of our union, and incited to vigorous exertion, we have felt many distressing effects of the important system. How have we seen this state, though most exposed to the calamities of the war, complying, in an unexampled manner, with the federal

requisitions, and compelled by the delinquency of others to bear most unusual burdens! Of this truth we have the most solemn proof on our records. In 1779 and '80, when the state, from the ravages of war, and from her great exertions to resist them, became weak, distressed, and forlorn, every man avowed the principle which we now contend for — that our misfortunes, in a great degree, proceeded from the want of vigor in the Continental government. These were our sentiments when we did not speculate, but feel. We saw our weakness, and found ourselves its victims. Let us reflect that this may again, in all probability, be our situation. This is a weak state, and its relative state is dangerous. Your capital is accessible by land, and by sea is exposed to every daring invader; and on the north-west you are open to the inroads of a powerful foreign nation. Indeed, this state, from its situation, will, in time of war, probably be the theatre of its operations.

Gentlemen have said that the non-compliance of the states had been occasioned by their sufferings. This may in part be true. But has this state been delinquent? Amidst all our distresses, *we* have fully complied. If New York could comply wholly with the requisitions, is it not to be supposed that the other states could in part comply? Certainly every state in the Union might have executed them in some degree. But New Hampshire, which has not suffered at all, is totally delinquent. North Carolina is totally delinquent. Many others have contributed in a very small proportion. And Pennsylvania and New York are the only states which have perfectly discharged their federal duty.

From the delinquency of those states which have suffered little by the war, we naturally conclude, that they have made no efforts; and a knowledge of human nature will teach us that their ease and security have been a principal cause of their want of exertion. While danger is distant, its impression is weak; and while it affects only our neighbors, we have few motives to provide against it. Sir, if we have national objects to pursue, we must have national revenues. If you make requisitions, and they are not complied with. what is to be done? It has been observed, to coerce the states is one of the maddest projects that was ever devised. A failure of compliance will never be confined to a single state This being the case, can we suppose it wise to hazard a civil war? Suppose Massachusetts, or any large state, should refuse, and Congress should attempt to compel them, would they not have influence to procure assistance, especially from those states which are in the same situation as themselves? What picture does this idea present to our view? A complying state at war with a non-complying state; Congress marching the troops of one state into the bosom of another; this state collecting auxiliaries, and forming, perhaps, a majority against its federal head. Here is a nation at war with itself. Can any reasonable man be well disposed towards a government which makes war and carnage the only means of supporting itself — a government that can exist only by the sword? Every such war must involve the innocent with the guilty. This single consideration should be sufficient to dispose every peaceable citizen against such a government.

But can we believe that one state will ever suffer itself to be used as an instrument of coercion? The thing is a dream; it is impossible. Then we are brought to this dilemma — either a federal standing army is to enforce the requisitions, or the federal treasury is left without supplies, and the government without support. What, sir, is the cure for this great evil? Nothing, but to enable the national laws to operate on individuals, in the same manner as those of the states do. This is

the true reasoning upon the subject, sir. The gentlemen appear to acknowledge its force; and yet, while they yield to the principle, they seem to fear its application to the government.

What, then, shall we do? Shall we take the old Confederation, as the basis of a new system? Can this be the object of the gentlemen? Certainly not. Will any man, who entertains a wish for the safety of his country, trust the sword and the purse with a single assembly organized on principles so defective — so rotten? Though we might give to such a government certain powers with safety, yet to give them the full and unlimited powers of taxation and the national forces, would be to establish a despotism; the definition of which is, a government in which all power is concentrated in a single body. To take the old Confederation, and fashion it upon these principles, would be establishing a power which would destroy the liberties of the people. These considerations show clearly that a government totally different must be instituted. They had weight in the Convention who formed the new system. It was seen that the necessary powers were too great to be trusted to a single body; they therefore formed two branches, and divided the powers, that each might be a check upon the other. This was the result of their wisdom; and I presume that every reasonable man will agree to it. The more this subject is explained, the more clear and convincing it will appear to every member of this body. The fundamental principle of the old Confederation is defective; we must totally eradicate and discard this principle before we can expect an efficient government. The gentlemen who have spoken to-day have taken up the subject of the ancient confederacies; but their view of them has been extremely partial and erroneous. The fact is, the same false and impracticable principle ran through the ancient governments. The first of these governments that we read of, was the Amphictyonic confederacy. The council which managed the affairs of this league possessed powers of a similar complexion to those of our present Congress. The same feeble mode of legislation in the head, and the same power of resistance in the members, prevailed. When a requisition was made, it rarely met a compliance; and a civil war was the consequence. Those that were attacked called in foreign aid to protect them; and the ambitious Philip, under the mask of an ally to one, invaded the liberties of each, and finally subverted the whole.

The operation of this principle appears in the same light in the Dutch republics. They have been obliged to levy taxes by an armed force. In this confederacy, one large province, by its superior wealth and influence, is commonly a match for all the rest; and when they do not comply, the province of Holland is obliged to compel them. It is observed, that the United Provinces have existed a long time; but they have been constantly the sport of their neighbors, and have been supported only by the external pressure of the surrounding powers. The policy of Europe, not the policy of their government, has saved them from dissolution. Besides, the powers of the stadtholder have given energy to the operations of this government, which is not to be found in ours. This prince has a vast personal influence; he has independent revenues; he commands an army of forty thousand men.

The German confederacy has also been a perpetual source of wars. They have a diet, like our Congress, who have authority to call for supplies. These calls are never obeyed; and in time of war, the imperial army never takes the field till the enemy are returning from it. The emperor's Austrian dominions, in which he is an absolute prince, alone enable him to make head against the common foe. The members of this confederacy are ever divided and opposed to each other. The

king of Prussia is a member; yet he has been constantly in opposition to the emperor. Is this a desirable government?

I might go more particularly into the discussion of examples, and show that, wherever this fatal principle has prevailed, even as far back as the Lycian and Achaean leagues, as well as the Amphictyonic confederacy, it has proved the destruction of the government. But I think observations of this kind might have been spared. Had they not been entered into by others, I should not have taken up so much of the time of the committee. No inference can be drawn from these examples, that republics cannot exist: we only contend that they have hitherto been founded on false principles. We have shown how they have been conducted, and how they have been destroyed. Weakness in the head has produced resistance in the members; this has been the immediate parent of civil war: auxiliary force has been invited; and foreign power has annihilated their liberties and name. Thus Philip subverted the Amphictyonic, and Rome the Achaean republic.

We shall do well, sir, not to deceive ourselves with the favorable events of the late war. Common danger prevented the operation of the ruinous principle, in its full extent; but, since the peace, we have experienced the evils; we have felt the poison of the system in its unmingled purity.

Without dwelling any longer on this subject, I shall proceed to the question immediately before the committee.

In order that the committee may understand clearly the principles on which the general Convention acted, I think it necessary to explain some preliminary circumstances. Sir, the natural situation of this country seems to divide its interests into different classes. There are navigating and non-navigating states. The Northern are properly navigating states: the Southern appear to possess neither the means nor the spirit of navigation. This difference of situation naturally produces a dissimilarity of interests and views respecting foreign commerce. It was the interest of the Northern States that there should be no restraints on their navigation, and they should have full power, by a majority in Congress, to make commercial regulations in favor of their own, and in restraint of the navigation of foreigners. The Southern States wish to impose a restraint on the Northern, by requiring that two thirds in Congress should be requisite to pass an act in regulation of commerce. They were apprehensive that the restraints of a navigation law would discourage foreigners, and, by obliging them to employ the shipping of the Northern States, would probably enhance their freight. This being the case, they insisted strenuously on having this provision ingrafted in the Constitution; and the Northern States were as anxious in opposing it. On the other hand, the small states, seeing themselves embraced by the Confederation upon equal terms, wished to retain the advantages which they already possessed. The large states, on the contrary, thought it improper that Rhode Island and Delaware should enjoy an equal suffrage with themselves. From these sources a delicate and difficult contest arose. It became necessary, therefore, to compromise, or the Convention must have dissolved without effecting any thing. Would it have been wise and prudent in that body, in this critical situation, to have deserted their country? No. Every man who hears me, every wise man in the United States, would have condemned them. The Convention were obliged to appoint a committee for accommodation. In this committee, the arrangement was formed as it now stands, and their report was accepted. It was a delicate point, and it was necessary that all parties should be indulged. Gentlemen will see

that, if there had not been a unanimity, nothing could have been done; for the Convention had no power to establish, but only to recommend, a government. Any other system would have been impracticable. Let a convention be called to-morrow; let them meet twenty times, — nay, twenty thousand times; they will have the same difficulties to encounter, the same clashing interests to reconcile.

But, dismissing these reflections, let us consider how far the arrangement is in itself entitled to the approbation of this body. We will examine it upon its own merits.

The first thing objected to is that clause which allows a representation for three fifths of the *negroes*. Much has been said of the impropriety of representing men who have no will of their own. Whether this be reasoning or declamation, I will not presume to say. It is the unfortunate situation of the Southern States to have a great part of their population, as well as property, in blacks. The regulation complained of was one result of the spirit of accommodation which governed the Convention; and without this indulgence no union could possibly have been formed. But, sir, considering some peculiar advantages which we derive from them, it is entirely just that they should be gratified. The Southern States possess certain staples, — tobacco, rice, indigo, &c., — which must be capital objects in treaties of commerce with foreign nations; and the advantages which they necessarily procure in those treaties will be felt throughout all the states. But the justice of this plan will appear in another view. The best writers on government have held that representation should be compounded of persons and property. This rule has been adopted, as far as it could be, in the constitution of New York. It will, however, by no means be admitted that the slaves are considered altogether as property. They are men, though degraded to the condition of slavery. They are persons known to the municipal laws of the states which they inhabit, as well as to the laws of nature. But representation and taxation go together, and one uniform rule ought to apply to both. Would it be just to compute these slaves in the assessment of taxes, and discard them from the estimate in the apportionment of representatives? Would it be just to impose a singular burden, without conferring some adequate advantage?

Another circumstance ought to be considered. The rule we have been speaking of is a general rule, and applies to all the states. Now, you have a great number of people in your state, which are not represented at all, and have no voice in your government. These will be included in the enumeration — not two fifths, nor three fifths, but the whole. This proves that the advantages of the plan are not confined to the Southern States, but extend to other parts of the Union.

I now proceed to consider the objection with regard to the number of representatives, as it now stands. I am persuaded the system, in this respect, stands on a better footing than the gentlemen imagine.

It has been asserted that it will be in the power of Congress to reduce the number. I acknowledge that there are no direct words of prohibition, but contend that the true and genuine construction of the clause gives Congress no power whatever to reduce the representation below the number as it now stands. Although they may limit, they can never diminish the number. One representative for every thirty thousand inhabitants is fixed as the standard of increase; till, by the natural course of population, it shall become necessary to limit the ratio. Probably, at present, were this standard to be immediately applied, the representation would considerably exceed

sixty-five. In three years, it would exceed one hundred. If I understand the gentlemen, they contend that the number may be enlarged, or may not. I admit that this is in the discretion of Congress; and I submit to the committee whether it be not necessary and proper. Still, I insist that an immediate limitation is not probable, nor was it in the contemplation of the Convention. But, sir, who will presume to say to what precise point the representation ought to be increased? This is a matter of opinion, and opinions are vastly different upon the subject. A proof of this is drawn from the representations in the state legislatures. In Massachusetts, the Assembly consists of about three hundred; in South Carolina, of nearly one hundred; in New York, there are sixty-five. It is observed generally that the number ought to be large; let the gentlemen produce their criterion. I confess it is difficult for me to say what number may be said to be sufficiently large. On one hand, it ought to be considered that a small number will act with more facility, system, and decision; on the other, that a large one may enhance the difficulty of corruption. The Congress is to consist, at first, of ninety-one members. This, to a reasonable man, may appear as near the proper medium as any number whatever, at least for the present. There is one source of increase, also, which does not depend upon any constructions of the Constitution; it is the creation of new states. Vermont, Kentucky, and Franklin,<sup>[1]</sup> will probably become independent. New members of the Union will also be formed from the unsettled tracts of western territory.

These must be represented, and will all contribute to swell the federal legislature. If the whole number in the United States be, at present, three millions, as is commonly supposed, according to the ratio of one for thirty thousand, we shall have, on the first census, a hundred representatives. In ten years, thirty more will be added; and in twenty-five years, the number will be double. Then, sir, we shall have two hundred, if the increase goes on in the same proportion. The Convention of Massachusetts, who made the same objections, have fixed upon this number as the point to which they chose to limit the representation. But can we pronounce, with certainty, that it will not be expedient to go beyond this number? We cannot. Experience alone must determine. This matter may, with more safety, be left to the discretion of the legislature, as it will be the interest of the large and increasing states of Massachusetts, New York, Pennsylvania, &c., to augment the representation. Only Connecticut, Rhode Island, Delaware, and Maryland, can be interested in limiting it. We may, therefore, safely calculate upon a growing representation, according to the advance of population, and the circumstances of the country.

The state governments possess inherent advantages, which will ever give them an influence and ascendancy over the national government, and will forever preclude the possibility of federal encroachments. That their liberties, indeed, can be subverted by the federal head, is repugnant to every rule of political calculation. Is not this arrangement, then, sir, a most wise and prudent one? Is not the present representation fully adequate to our present exigencies, and sufficient to answer all the purposes of the Union? I am persuaded that an examination of the objects of the federal government will afford a conclusive answer.

Many other observations might be made on this subject, but I cannot now pursue them; for I feel myself not a little exhausted. I beg leave, therefore, to waive, for the present, the further discussion of the question.

## **SATURDAY, *June 21, 1788.* — Convention met pursuant to adjournment.**

**The Hon. Mr. WILLIAMS** rose,

and addressed the chair. We are now, sir, said he, to investigate and decide upon a Constitution, in which not only the present members of the community are deeply interested, but upon which the happiness or misery of generations yet unborn is, in a great measure, suspended. I therefore hope for a wise and prudent determination. I believe that this country has never before seen such a critical period in political affairs. We have felt the feebleness of those ties by which the states are held together, and the want of that energy which is necessary to manage our general concerns. Various are the expedients which have been proposed to remedy these evils; but they have been proposed without effect; though I am persuaded that, if the Confederation had been attended to as its value justly merited, and proper attention paid to a few necessary amendments, it might have carried us on for a series of years, and probably have been in as great estimation with succeeding ages as it was in our long and painful war, notwithstanding the frightful picture that has been drawn of our situation, and the imputation of all our difficulties to the want of an energetic government. Indeed, sir, it appears to me that many of our present distresses flow from a source very different from the defects in the Confederation. Unhappily for us, immediately after our extrication from a cruel and unnatural war, luxury and dissipation overran the country, banishing all that economy, frugality, and industry, which had been exhibited during the war.

Sir, if we were to reassume all our old habits, we might expect to prosper. Let us, then, abandon all those foreign commodities which have hitherto deluged our country, which have loaded us with debt, and which, if continued, will forever involve us in difficulties. How many thousands are daily wearing the manufactures of Europe, when, by a little industry and frugality, they might wear those of their own country! One may venture to say, sir, that the greatest part of the goods are manufactured in Europe by persons who support themselves by our extravagance. And can we believe a government ever so well formed can relieve us from these evils? What dissipation is there from the immoderate use of spirits! Is it not notorious that men cannot be hired, in time of harvest, without giving them, on an average, a pint of rum per day? so that, on the lowest calculation, every twentieth part of the grain is expended on that article; and so, in proportion, all the farmer's produce. And what is worse, the disposition of eight tenths of the commonalty is such, that, if they can get credit, they will purchase unnecessary articles, even to the amount of their crop, before it becomes merchantable. And therefore it is evident that the best government ever devised, without economy and frugality, will leave us in a situation no better than the present.

Sir, the enormous expense of the article of tea will amount, in two years, to our whole foreign debt. Much more might be said on the subject; but I fear I have trespassed on your patience already. The time of the committee would not have been so long taken up, had there not appeared a propriety in showing that all our present difficulties are not to be attributed to the defects in the Confederation; and, were the real truth known, part of its defects have been used as an instrument to make way for the proposed system; and whether or not it is calculated for greater emoluments and more placemen the committee will determine. However, from what has

been said, and the mode agreed on for our proceedings, it appears probable that the system of government under consideration is preferred before the Confederation. This being the case, let us examine whether it be calculated to preserve the invaluable blessings of liberty, and secure the inestimable rights of mankind. If it be so, let us adopt it. But if it be found to contain principles that will lead to the subversion of liberty, — if it tends to establish a despotism, or, what is worse, a tyrannical aristocracy, — let us insist upon the necessary alterations and amendments.

Momentous is the question, and we are called upon by every motive to examine it well, and make up a wise and candid judgment.

In forming a constitution for a free country like this, the greatest care should be taken to define its powers, and guard against an abuse of authority. The constitution should be so formed as not to swallow up the state governments: the general government ought to be confined to certain national objects; and the states should retain such powers as concern their own internal police. We should consider whether or not this system is so formed, as, directly or indirectly, to annihilate the state governments. If so, care should be taken to check it in such a manner as to prevent this effect. Now, sir, with respect to the clause before us, I agree with the gentlemen from Albany and Duchess, who spoke yesterday. The number of representatives is, in my opinion, too small to resist corruption. Sir, how guarded is our state Constitution on this head! The number of the Senate and House of Representatives proposed in the Constitution does not surpass those of our state. How great the disparity, when compared with the aggregate number of the United States! The history of representation in England, from which we have taken our model, is briefly this: Before the institution of legislating by deputies, the whole free part of the community usually met for that purpose: when this became impracticable by increase of numbers, the people were divided into districts, from each of which was sent a number of deputies, for a complete representation of the various orders of the citizens within them. Can it be supposed that six men can be a complete representation of the various orders of the people of this state?

I conceive, too, that biennial elections are a departure from the true principles of democracy. A well-digested democracy has advantages over all other forms of government. It affords to many the opportunity of being advanced, and creates that desire of public promotion, and ardent affection for the public weal, which are so beneficial to our country. It was the opinion of the great Sidney and Montesquieu that annual elections are productive of this effect. But as there are more important defects in the proposed Constitution, I shall desist making any further observations at this time.

In order to convince gentlemen it is my sincere intention to accede to this system, when properly amended, I give it as my opinion that it will be best for gentlemen to confine themselves to certain points which are defective.

Before I conclude, I would only mention, that while, on one hand, I wish those endowed with a spirit of moderation through the whole debate, to give way to small matters, yet, on the other hand, not to be intimidated by imaginary dangers; for to say that a bad government must be established for fear of anarchy, is, in reality, saying that we must kill ourselves for fear of dying.

**Mr. M. SMITH.**

I had the honor, yesterday, of submitting an amendment to the clause under consideration, with some observations in support of it. I hope I shall be indulged in making some additional remarks in reply to what has been offered by the honorable gentleman from New York.

He has taken up much time in endeavoring to prove that the great defect in the old Confederation was, that it operated upon states instead of individuals. It is needless to dispute concerning points on which we do not disagree. It is admitted that the powers of the general government ought to operate upon individuals to a certain degree. How far the powers should extend, and in what cases to individuals, is the question.

As the different parts of the system will come into view in the course of our investigation, an opportunity will be afforded to consider this question. I wish, at present, to confine myself to the subject immediately under the consideration of the committee. I shall make no reply to the arguments offered by the honorable gentleman to justify the rule of apportionment fixed by this clause; for, though I am confident they might be easily refuted, yet I am persuaded we must yield this point, in accommodation to the Southern States. The amendment therefore proposes no alteration to the clause in this respect.

The honorable gentleman says, that the clause, by obvious construction, fixes the representation. I wish not to torture words or sentences. I perceive no such obvious construction.

I see clearly that, on one hand, the representatives cannot exceed one for thirty thousand inhabitants; and, on the other, that whatever larger number of inhabitants may be taken for the rule of apportionment, each state shall be entitled to send one representative. Every thing else appears to me in the discretion of the legislature. If there be any other limitation, it is certainly implied. Matters of moment should not be left to doubtful construction. It is urged that the number of representatives will be fixed at one for thirty thousand, because it will be the interest of the larger states to do it. I cannot discern the force of this argument. To me it appears clear, that the relative weight of influence of the different states will be the same, with the number of representatives at sixty-five as at six hundred, and that of the individual members greater; for each member's share of power will decrease as the number of the House of Representatives increases. If, therefore, this maxim be true, that men are unwilling to relinquish powers which they once possess, we are not to expect the House of Representatives will be inclined to enlarge the numbers. The same motive will operate to influence the President and Senate to oppose the increase of the number of representatives; for, in proportion as the House of Representatives is augmented, they will feel their own power diminished. It is, therefore, of the highest importance that a suitable number of representatives should be established by the Constitution.

It has been observed, by an honorable member, that the Eastern States insisted upon a small representation, on the principles of economy. This argument must have no weight in the mind of a considerate person. The difference of expense, between supporting a House of Representatives sufficiently numerous, and the present proposed one, would be twenty or thirty thousand dollars per annum. The man who would seriously object to this expense, to secure his liberties, does not deserve to enjoy them. Besides, by increasing the number of representatives, we open a door for

the admission of the substantial yeomanry of our country, who, being possessed of the habits of economy, will be cautious of imprudent expenditures, by which means a greater saving will be made of public money than is sufficient to support them. A reduction of the numbers of the state legislatures might also be made, by which means there might be a saving of expense much more than sufficient for the purpose of supporting the general legislature; for as, under this system, all the powers of legislation, relating to our general concerns, are vested in the general government, the powers of the state legislatures will be so curtailed as to render it less necessary to have them so numerous as they now are.

But an honorable gentleman has observed, that it is a problem that cannot be solved, what the proper number is which ought to compose the House of Representatives, and calls upon me to fix the number. I admit that this is a question that will not admit of a solution with mathematical certainty; few political questions will; yet we may determine with certainty that certain numbers are too small or too large. We may be sure that ten is too small, and a thousand too large a number. Every one will allow that the first number is too small to possess the sentiments, be influenced by the interests of the people, or secure against corruption; a thousand would be too numerous to be capable of deliberating.

To determine whether the number of representatives proposed by this Constitution is sufficient, it is proper to examine the qualifications which this house ought to possess, in order to exercise their power discreetly for the happiness of the people. The idea that naturally suggests itself to our minds, when we speak of representatives, is, that they resemble those they represent. They should be a true picture of the people, possess a knowledge of their circumstances and their wants, sympathize in all their distresses, and be disposed to seek their true interests. The knowledge necessary for the representative of a free people not only comprehends extensive political and commercial information, such as is acquired by men of refined education, who have leisure to attain to high degrees of improvement, but it should also comprehend that kind of acquaintance with the common concerns and occupations of the people, which men of the middling class of life are, in general, more competent to than those of a superior class. To understand the true commercial interests of a country, not only requires just ideas of the general commerce of the world, but also, and principally, a knowledge of the productions of your own country, and their value, what your soil is capable of producing, the nature of your manufactures, and the capacity of the country to increase both. To exercise the power of laying taxes, duties, and excises, with discretion, requires something more than an acquaintance with the abstruse parts of the system of finance. It calls for a knowledge of the circumstances and ability of the people in general — a discernment how the burdens imposed will bear upon the different classes.

From these observations results this conclusion — that the number of representatives should be so large, as that, while it embraces the men of the first class, it should admit those of the middling class of life. I am convinced that this government is so constituted that the representatives will generally be composed of the first class in the community, which I shall distinguish by the name of the *natural aristocracy* of the country. I do not mean to give offence by using this term. I am sensible this idea is treated by many gentlemen as chimerical. I shall be asked what is meant by the *natural aristocracy*, and told that no such distinction of classes of men exists among us. It is true, it is our singular felicity that we have no legal or hereditary distinctions of this kind; but still there are real differences. Every society naturally divides itself

into classes. The Author of nature has bestowed on some greater capacities than others; birth, education, talents, and wealth, create distinctions among men as visible, and of as much influence, as titles, stars, and garters. In every society, men of this class will command a superior degree of respect; and if the government is so constituted as to admit but few to exercise the powers of it, it will, according to the natural course of things, be in their hands. Men in the middling class, who are qualified as representatives, will not be so anxious to be chosen as those of the first. When the number is so small, the office will be highly elevated and distinguished; the style in which the members live will probably be high; circumstances of this kind will render the place of a representative not a desirable one to sensible, substantial men, who have been used to walk in the plain and frugal paths of life.

Besides, the influence of the great will generally enable them to succeed in elections. It will be difficult to combine a district of country containing thirty or forty thousand inhabitants, — frame your election laws as you please, — in any other character, unless it be in one of conspicuous military, popular, civil, or legal talents. The great easily form associations; the poor and middling class form them with difficulty. If the elections be by plurality, — as probably will be the case in this state, — it is almost certain none but the great will be chosen, for they easily unite their interests: the common people will divide, and their divisions will be promoted by the others. There will be scarcely a chance of their uniting in any other but some great man, unless in some popular demagogue, who will probably be destitute of principle. A substantial yeoman, of sense and discernment, will hardly ever be chosen. From these remarks, it appears that the government will fall into the hands of the few and the great. This will be a government of oppression. I do not mean to declaim against the great, and charge them indiscriminately with want of principle and honesty. The same passions and prejudices govern all men. The circumstances in which men are placed in a great measure give a cast to the human character. Those in middling circumstances have less temptation; they are inclined by habit, and the company with whom they associate, to set bounds to their passions and appetites. If this is not sufficient, the want of means to gratify them will be a restraint: they are obliged to employ their time in their respective callings; hence the substantial yeomanry of the country are more temperate, of better morals, and less ambition, than the great. The latter do not feel for the poor and middling class; the reasons are obvious — they are not obliged to use the same pains and labor to procure property as the other. They feel not the inconveniences arising from the payment of small sums. The great consider themselves above the common people, entitled to more respect, do not associate with them; they fancy themselves to have a right of preeminence in every thing. In short, they possess the same feelings, and are under the influence of the same motives, as an hereditary nobility. I know the idea that such a distinction exists in this country is ridiculed by some; but I am not the less apprehensive of danger from their influence on this account. Such distinctions exist all the world over, have been taken notice of by all writers on free government, and are founded in the nature of things. It has been the principal care of free governments to guard against the encroachments of the great. Common observation and experience prove the existence of such distinctions. Will any one say that there does not exist in this country the pride of family, of wealth, of talents, and that they do not command influence and respect among the common people? Congress, in their address to the inhabitants of the province of Quebec, in 1775, state this distinction in the following forcible words, quoted from the Marquis Beccaria: "In every human society there is an essay continually tending to confer on one part the height of power and happiness, and to reduce the other to the extreme of weakness and misery. The intent of good laws is to oppose this effort,

and to diffuse their influence universally and equally." We ought to guard against the government being placed in the hands of this class. They cannot have that sympathy with their constituents which is necessary to connect them closely to their interests. Being in the habit of profuse living, they will be profuse in the public expenses. They find no difficulty in paying their taxes, and therefore do not feel public burdens. Besides, if they govern, they will enjoy the emoluments of the government. The middling class, from their frugal habits, and feeling themselves the public burdens, will be careful how they increase them.

But I may be asked, Would you exclude the first class in the community from any share in legislation? I answer, By no means. They would be factious, discontented, and constantly disturbing the government. It would also be unjust. They have their liberties to protect, as well as others, and the largest share of property. But my idea is, that the Constitution should be so framed as to admit this class, together with a sufficient number of the middling class to control them. You will then combine the abilities and honesty of the community, a proper degree of information, and a disposition to pursue the public good. A representative body, composed principally of respectable yeomanry, is the best possible security to liberty. When the interest of this part of the community is pursued, the public good is pursued, because the body of every nation consists of this class, and because the interest of both the rich and the poor are involved in that of the middling class. No burden can be laid on the poor but what will sensibly affect the middling class. Any law rendering property insecure would be injurious to them. When, therefore, this class in society pursue their own interest, they promote that of the public, for it is involved in it.

In so small a number of representatives, there is great danger from corruption and combination. A great politician has said that every man has his price. I hope this is not true in all its extent; but I ask the gentleman to inform me what government there is in which it has not been practised. Notwithstanding all that has been said of the defects in the constitution of the ancient confederacies in the Grecian republics, their destruction is to be imputed more to this cause than to any imperfection in their forms of government. This was the deadly poison that effected their dissolution. This is an extensive country, increasing in population and growing in consequence. Very many lucrative offices will be in the grant of the government, which will be objects of avarice and ambition. How easy will it be to gain over a sufficient number, in the bestowment of offices, to promote the views and the purposes of those who grant them! Foreign corruption is also to be guarded against. A system of corruption is known to be the system of government in Europe. It is practised without blushing; and we may lay it to our account, it will be attempted amongst us. The most effectual as well as natural security against this is a strong democratic branch in the legislature, frequently chosen, including in it a number of the substantial, sensible yeomanry of the country. Does the House of Representatives answer this description? I confess, to me they hardly wear the complexion of a democratic branch; they appear the mere shadow of representation. The whole number, in both houses, amounts to ninety-one; of these forty-six make a quorum; and twenty-four of those, being secured, may carry any point. Can the liberties of three millions of people be securely trusted in the hands of twenty-four men? Is it prudent to commit to so small a number the decision of the great questions which will come before them? Reason revolts at the idea.

The honorable gentleman from New York has said, that sixty-five members in the House of Representatives are sufficient for the present situation of the country; and, taking it for granted that they will increase as one for thirty thousand, in twenty-five years they will amount to two hundred. It is admitted, by this observation, that the number fixed in the Constitution is not sufficient without it is augmented. It is not declared that an increase shall be made, but is left at the discretion of the legislature, by the gentleman's own concession; therefore the Constitution is imperfect. We certainly ought to fix, in the Constitution, those things which are essential to liberty. If any thing falls under this description, it is the number of the legislature. To say, as this gentleman does, that our security is to depend upon the spirit of the people, who will be watchful of their liberties, and not suffer them to be infringed, is absurd. It would equally prove that we might adopt any form of government. I believe, were we to create a despot; he would not immediately dare to act the tyrant; but it would not be long before he would destroy the spirit of the people, or the people would destroy him. If our people have a high sense of liberty, the government should be congenial to this spirit, calculated to cherish the love of liberty, while yet it had sufficient force to restrain licentiousness. Government operates upon the spirit of the people, as well as the spirit of the people operates upon it; and if they are not conformable to each other, the one or the other will prevail. In a less time than twenty-five years, the government will receive its tone. What the spirit of the country may be at the end of that period, it is impossible to foretell. Our duty is to frame a government friendly to liberty and the rights of mankind, which will tend to cherish and cultivate a love of liberty among our citizens. If this government becomes oppressive, it will be by degrees: it will aim at its end by disseminating sentiments of government opposite to republicanism, and proceed from step to step in depriving the people of a share in the government. A recollection of the change that has taken place in the minds of many in this country in the course of a few years, ought to put us on our guard. Many, who are ardent advocates for the new system, reprobate republican principles as chimerical, and such as ought to be expelled from society. Who would have thought, ten years ago, that the very men, who risked their lives and fortunes in support of republican principles, would now treat them as the fictions of fancy? A few years ago, we fought for liberty; we framed a general government on free principles; we placed the state legislatures, in whom the people have a full and a fair representation, between Congress and the people. We were then, it is true, too cautious, and too much restricted the powers of the general government. But now it is proposed to go into the contrary, and a more dangerous extreme — to remove all barriers, to give the new government free access to our pockets, and ample command of our persons, and that without providing for a genuine and fair representation of the people. No one can say what the progress of the change of sentiment may be in twenty-five years. The same men who now cry up the necessity of an energetic government, to induce a compliance with this system, may, in much less time, reprobate this in as severe terms as they now do the Confederation, and may as strongly urge the necessity of going as far beyond this as this is beyond the Confederation. Men of this class are increasing: they have influence, talents, and industry. It is time to form a barrier against them. And while we are willing to establish a government adequate to the purposes of the Union, let us be careful to establish it on the broad basis of equal liberty.

### **Mr. HAMILTON**

then resumed his argument. When, said he, I had the honor to address the committee yesterday, I gave a history of the circumstances which attended the Convention, when forming the plan

before you. I endeavored to point out to you the principles of accommodation on which this arrangement was made, and to show that the contending interests of the states led them to establish the representation as it now stands. In the second place, I attempted to prove that, in point of number, the representation would be perfectly secure. Sir, no man agrees more perfectly than myself to the main principle for which the gentlemen contend. I agree that there should be a broad democratic branch in the national legislature. But this matter, sir, depends on circumstances. It is impossible, in the first instance, to be precise and exact with regard to the number; and it is equally impossible to determine to what point it may be proper in future to increase it. On this ground I am disposed to acquiesce. In my reasonings on this subject of government, I rely more on the interests and opinions of men, than on any speculative parchment provisions whatever. I have found that constitutions are more or less excellent as they are more or less agreeable to the natural operation of things. I am, therefore, disposed not to dwell long on curious speculations, or pay much attention to modes and forms; but to adopt a system whose principles have been sanctioned by experience, adapt it to the real state of our country, and depend on probable reasonings for its operation and result. I contend that sixty-five and twenty-six, in two bodies, afford perfect security, in the present state of things; and that the regular progressive enlargement, which was in the contemplation of the general Convention, will leave not an apprehension of danger in the most timid and suspicious mind. It will be the interest of the large states to increase the representation. This will be the standing instruction to their delegates. But, say the gentlemen, the members of Congress will be interested not to increase the number, as it will diminish their relative influence. In all their reasoning upon this subject, there seems to be this fallacy: They suppose that the representative will have no motive of action, on the one side, but a sense of duty; or on the other, but corruption. They do not reflect that he is to return to the community; that he is dependent on the will of the people, and that it cannot be his interest to oppose their wishes. Sir, the general sense of the people will regulate the conduct of their representatives. I admit that there are exceptions to this rule: there are certain conjunctures, when it may be necessary and proper to disregard the opinions which the majority of the people have formed. But, in the general course of things, the popular views, and even prejudices, will direct the actions of the rulers.

All governments, even the most despotic, depend, in a great degree, on opinion. In free republics, it is most peculiarly the case. In these, the will of the people makes the essential principle of the government; and the laws which control the community receive their tone and spirit from the public wishes. It is the fortunate situation of our country, that the minds of the people are exceedingly enlightened and refined. Here, then, we may expect the laws to be proportionably agreeable to the standard of perfect policy and the wisdom of public measures to consist with the most intimate conformity between the views of the representative and his constituent. If the general voice of the people be for an increase, it undoubtedly must take place. They have it in their power to instruct their representatives; and the state legislatures, which appoint the senators, may enjoin it also upon them. Sir, if I believed that the number would remain at sixty-five, I confess I should give my vote for an amendment, though in a different form from the one proposed.

The amendment proposes a ratio of one for twenty thousand. I would ask by what rule or reasoning it is determined that one man is a better representative for twenty than thirty thousand. At present we have three millions of people; in twenty-five years, we shall have six millions; and

in forty years, nine millions. And this is a short period, as it relates to the existence of states. Here, then, according to the ratio of one for thirty thousand, we shall have, in forty years, three hundred representatives. If this be true, and if this be a safe representation, why be dissatisfied? Why embarrass the Constitution with amendments that are merely speculative and useless? I agree with the gentleman, that a very small number might give some color for suspicion. I acknowledge that ten would be unsafe; on the other hand, a thousand would be too numerous. But I ask him, Why will not ninety-one be an adequate and safe representation? This, at present, appears to be the proper medium. Besides, the President of the United States will be himself the representative of the people. From the competition that ever subsists between the branches of government, the President will be induced to protect their rights, whenever they are invaded by either branch. On whatever side we view this subject, we discover various and powerful checks to the encroachments of Congress. The true and permanent interests of the members are opposed to corruption. Their number is vastly too large for easy combination. The rivalry between the houses will forever prove an insuperable obstacle. The people have an obvious and powerful protection in their state governments. Should any thing dangerous be attempted, these bodies of perpetual observation will be capable of forming and conducting plans of regular opposition. Can we suppose the people's love of liberty will not, under the incitement of their legislative leaders, be roused into resistance, and the madness of tyranny be extinguished at a blow? Sir, the danger is too distant; it is beyond all rational calculations.

It has been observed, by an honorable gentleman, that a pure democracy, if it were practicable, would be the most perfect government. Experience has proved that no position in politics is more false than this. The ancient democracies, in which the people themselves deliberated, never possessed one feature of good government. Their very character was tyranny; their figure, deformity. When they assembled, the field of debate presented an ungovernable mob, not only incapable of deliberation, but prepared for every enormity. In these assemblies, the enemies of the people brought forward their plans of ambition systematically. They were opposed by their enemies of another party; and it became a matter of contingency, whether the people subjected themselves to be led blindly by one tyrant or by another.

It was remarked yesterday, that a numerous representation was necessary to obtain the confidence of the people. This is not generally true. The confidence of the people will easily be gained by a good administration. This is the true touchstone. I could illustrate the position by a variety of historical examples, both ancient and modern. In Sparta, the ephori were a body of magistrates, instituted as a check upon the senate, and representing the people. They consisted of only five men; but they were able to protect their rights, and therefore enjoyed their confidence and attachment. In Rome, the people were represented by three tribunes, who were afterwards increased to ten. Every one acquainted with the history of that republic will recollect how powerful a check to the senatorial encroachments this small body proved; how unlimited a confidence was placed in them by the people, whose guardians they were; and to what a conspicuous station in the government their influence at length elevated the plebeians. Massachusetts has three hundred representatives; New York has sixty-five. Have the people in this state less confidence in their representation than the people of that? Delaware has twenty-one. Do the inhabitants of New York feel a higher confidence than those of Delaware? I have stated these examples to prove that the gentleman's principle is not just. The popular confidence depends on circumstances very distinct from considerations of number. Probably the public

attachment is more strongly secured by a train of prosperous events, which are the result of wise deliberation and vigorous execution, and to which large bodies are much less competent than small ones. If the representative conducts with propriety, he will necessarily enjoy the good-will of the constituent. It appears, then, if my reasoning be just, that the clause is perfectly proper, upon the principles of the gentleman who contends for the amendment; as there is in it the greatest degree of present security, and a moral certainty of an increase equal to our utmost wishes.

It has been further, by the gentlemen in the opposition, observed, that a large representation is necessary to understand the interests of the people. This principle is by no means true in the extent to which the gentlemen seem to carry it. I would ask, Why may not a man understand the interests of thirty as well as of twenty? The position appears to be made upon the unfounded presumption that all the interests of all parts of the community must be represented. No idea is more erroneous than this. Only such interests are proper to be represented as are involved in the powers of the general government. These interests come completely under the observation of one or a few men; and the requisite information is by no means augmented in proportion to the increase of number. What are the objects of the government? Commerce, taxation, &c. In order to comprehend the interests of commerce, is it necessary to know how wheat is raised, and in what proportion it is produced in one district and in another? By no means. Neither is this species of knowledge necessary in general calculations upon the subject of taxation. The information necessary for these purposes is that which is open to every intelligent inquirer, and of which five men may be as perfectly possessed as fifty. In royal governments, there are usually particular men to whom the business of taxation is committed. These men have the forming of systems of finance, and the regulation of the revenue. I do not mean to commend this practice. It proves, however, this point — that a few individuals may be competent to these objects, and that large numbers are not necessary to perfection in the science of taxation. But grant, for a moment, that this minute and local knowledge the gentlemen contend for is necessary; let us see if, under the new Constitution, it will not probably be found in the representation. The natural and proper mode of holding elections will be, to divide the state into districts, in proportion to the number to be elected. This state will consequently be divided, at first, into six. One man from each district will probably possess all the knowledge gentlemen can desire. Are the senators of this state more ignorant of the interests of the people than the Assembly? Have they not ever enjoyed their confidence as much? Yet, instead of six districts, they are elected in four; and the chance of their being collected from the smaller divisions of the state consequently diminishes. Their number is but twenty-four; and their powers are coextensive with those of the Assembly, and reach objects which are most dear to the people — life, liberty, and property.

Sir, we hear constantly a great deal which is rather calculated to awake our passions, and create prejudices, than to conduct us to the truth, and teach us our real interests. I do not suppose this to be the design of the gentlemen. Why, then, are we told so often of an aristocracy? For my part, I hardly know the meaning of this word, as it is applied. If all we hear be true, this government is really a very bad one. But who are the aristocracy among us? Where do we find men elevated to a perpetual rank above their fellow-citizens, and possessing powers entirely independent of them? The arguments of the gentlemen only go to prove that there are men who are rich, men who are poor, some who are wise, and others who are not; that, indeed, every distinguished man is an aristocrat. This reminds me of a description of the aristocrats I have seen in a late

publication styled the Federal Farmer. The author reckons in the aristocracy all governors of states, members of Congress, chief magistrates, and all officers of the militia. This description, I presume to say, is ridiculous. The image is a phantom. Does the new government render a rich man more eligible than a poor one? No. It requires no such qualification. It is bottomed on the broad and equal principle of your state constitution.

Sir, if the people have it in their option to elect their most meritorious men, is this to be considered as an objection? Shall the Constitution oppose their wishes, and abridge their most invaluable privilege? While property continues to be pretty equally divided, and a considerable share of information pervades the community, the tendency of the people's suffrages will be to elevate merit even from obscurity. As riches increase and accumulate in few hands, as luxury prevails in society, virtue will be in a greater degree considered as only a graceful appendage of wealth, and the tendency of things will be to depart from the republican standard. This is the real disposition of human nature: it is what neither the honorable member nor myself can correct; it is a common misfortune, that awaits our state constitution as well as all others.

There is an advantage incident to large districts of election, which perhaps the gentlemen, amidst all their apprehensions of influence and bribery, have not adverted to. In large districts, the corruption of the electors is much more difficult; combinations for the purposes of intrigue are less easily formed; factions and cabals are little known. In a small district, wealth will have a more complete influence, because the people in the vicinity of a great man are more immediately his dependants, and because this influence has fewer objects to act upon. It has been remarked, that it would be disagreeable to the middle class of men to go to the seat of the new government. If this be so, the difficulty will be enhanced by the gentleman's proposal. If his argument be true, it proves that the larger the representation is, the less will be your chance of having it filled. But it appears to me frivolous to bring forward such arguments as these. It has answered no other purpose than to induce me, by way of reply, to enter into discussion, which I consider as useless, and not applicable to our subject.

It is a harsh doctrine that men grow wicked in proportion as they improve and enlighten their minds. Experience has by no means justified us in the supposition that there is more virtue in one class of men than in another. Look through the rich and the poor of the community, the learned and the ignorant. Where does virtue predominate? The difference indeed consists, not in the quantity, but kind, of vices which are incident to various classes; and here the advantage of character belongs to the wealthy. Their vices are probably more favorable to the prosperity of the state than those of the indigent, and partake less of moral depravity.

After all, sir, we must submit to this idea, that the true principle of a republic is, that the people should choose whom they please to govern them. Representation is imperfect in proportion as the current of popular favor is checked. This great source of free government, popular election, should be perfectly pure, and the most unbounded liberty allowed. Where this principle is adhered to; where, in the organization of the government, the legislative, executive, and judicial branches are rendered distinct; where, again, the legislature is divided into separate houses, and the operations of each are controlled by various checks and balances, and, above all, by the vigilance and weight of the stale governments, — to talk of tyranny, and the subversion of our liberties, is to speak the language of enthusiasm. This balance between the national and state

governments ought to be dwelt on with peculiar attention, as it is. of the utmost importance. It forms a double security to the people. If one encroaches on their rights, they will find a powerful protection in the other. Indeed, they will both be prevented from overpassing their constitutional limits, by a certain rivalry, which will ever subsist between them. I am persuaded that a firm union is as necessary to perpetuate our liberties as it is to make us respectable; and experience will probably prove that the national government will be as natural a guardian of our freedom as the state legislature themselves.

Suggestions, sir, of an extraordinary nature, have been frequently thrown out in the course of the present political controversy. It gives me pain to dwell on topics of this kind, and I wish they might be dismissed. We have been told that the old Confederation has proved inefficacious, only because intriguing and powerful men, aiming at a revolution, have been forever instigating the people, and rendering them disaffected with it. This, sir, is a false insinuation. The thing is impossible. I will venture to assert, that no combination of designing men under heaven will be capable of making a government unpopular which is in its principles a wise and good one, and vigorous in its operations.

The Confederation was framed amidst the agitation and tumults of society. It was composed of unsound materials, put together in haste. Men of intelligence discovered the feebleness of the structure, in the first stages of its existence; but the great body of the people, too much engrossed with their distresses to contemplate any but the immediate causes of them, were ignorant of the defects of their constitution. But when the dangers of war were removed, they saw clearly what they had suffered, and what they had yet to suffer, from a feeble form of government. There was no need of discerning men to convince the people of their unhappy situation; the complaint was coextensive with the evil, and both were common to all classes of the community. We have been told that the spirit of patriotism and love of liberty are almost extinguished among the people, and that it has become a prevailing doctrine that republican principles ought to be hooted out of the world. Sir, I am confident that such remarks as these are rather occasioned by the heat of argument than by a cool conviction of their truth and justice. As far as my experience has extended, I have heard no such doctrine; nor have I discovered any diminution of regard for those rights and liberties, in defence of which the people have fought and suffered. There have been, undoubtedly, some men who have had speculative doubts on the subject of government; but the principles of republicanism are founded on too firm a basis to be shaken by a few speculative and skeptical reasoners. Our error has been of a very different kind. We have erred through excess of caution, and a zeal false and impracticable. Our counsels have been destitute of consistency and stability. I am flattered with the hope, sir, that we have now found a cure for the evils under which we have so long labored. I trust that the proposed Constitution affords a genuine specimen of representative and republican government, and that it will answer, in an eminent degree, all the beneficial purposes of society.

**The Hon. MELANCTON SMITH rose,**

and observed, that the gentleman might have spared many of his remarks in answer to the ideas he had advanced. The only way to remedy and correct the faults in the proposed Constitution was, he imagined, to increase the representation and limit the powers. He admitted that no precise number could be fixed upon. His object only was to augment the number in such a degree

as to render the government more favorable to liberty. The gentleman had charged his argument, that it would be the interest of Congress to diminish the number of representatives, as being puerile. It was only made in answer to another of the gentleman's, which he thought equally weak — that it would be their interest to increase it. It appeared to him, he said, evident that the relative interests of the states would not be in the least degree increased by augmenting the numbers. The honorable member had assured the committee that the states would be checks upon the general government, and had pledged himself to point out and demonstrate the operation of these checks. For his own part, he could see no possibility of checking a government of independent powers, which extended to all objects and resources without limitation. What he lamented was, that no constitutional checks were provided — such checks as would not leave the exercise of government to the operation of causes which, in their nature, are variable and uncertain.

The honorable member had observed, that the confidence of the people was not necessarily connected with the number of their rulers, and had cited the ephori of Sparta, and the tribunes in Rome, as examples. But it ought to be considered, that, in those places, the people were to contend with a body of hereditary nobles; they would, therefore, naturally have confidence in a few men who were their leaders in the constant struggle for liberty. The comparison between the representations of several states did not better apply. New York had but sixty-five representatives in Assembly. But because sixty-five was a proper representation of two hundred and forty thousand, did it follow that it was also sufficient for three millions? The state legislatures had not the powers of the general government, and were not competent to those important regulations which might endanger liberty.

The gentleman, continued Mr. Smith, had ridiculed his idea of an aristocracy, and had entered into a definition of the word. He himself agreed to this definition, but the dispute was not of words, but things. He was convinced that in every society there were certain men exalted above the rest. These men he did not consider as destitute of morality or virtue. He only insisted that they could not feel sympathetically the wants of the people.

### **The Hon. Mr. LANSING said**

that, in the course of the observations made on the paragraph under consideration, it had been shown that the democratic branch ought to possess the feelings of the people, and be above corruption. It was, therefore, with propriety contended that the House of Representatives ought to be large. This had been objected to, he said, because it was difficult to ascertain the precise number proper for this end. But though we could not always hit the exact medium, yet we could generally avoid the extremes. Allowing that it was the interest of the larger states to increase the representation, yet it would be imprudent to trust a matter of such infinite importance to possibilities, or the uncertain operations of interest. He said, we had it now in our power to fix and provide for the operations of this government; and we ought to embrace the opportunity. An honorable gentleman had said, that the state of New York had trusted her liberties to a few men. But was this a reason why the rights of the United States should be submitted to an equal number? The representatives of New York, in Assembly, were chosen from all parts of the state; they were intimately connected with and dependent on the people. In the general government, they were to be selected from the superior class of citizens, and subject to little or no control.

Would it be prudent, said he, to trust the affairs of this extensive continent to a body of men, forty-six of whom would be competent to pass laws, and twenty-four of these a majority? The House of Commons of Great Britain consisted of more than eight times the number, and yet that house had been frequently corrupted. How much more easily might so small a body as the Congress be infected!

**His Excellency, Gov. CLINTON.**

I rise, Mr. Chairman, to make a few observations, with a view to obtain information, and to discover on which side of this important question the truth rests. I have attended, with pleasure, to the gentlemen who have spoken before me. They appear, however, to have omitted some considerations, which have tended to convince my mind, that the representation in Congress ought to be more comprehensive and full than is proposed by this Constitution. It is said, that the representation of this state in the legislature is smaller than the representation of the United States will be in the general government. Hence it is inferred that the federal government, which, it is said, does not embrace more interesting powers than that of the states, will be more favorable to the liberties of the people, on the principle that safety consists in numbers. This appears plausible at first view; but if we examine it, we shall discover it to be only plausible. The cases, indeed, are so different, as to admit of little comparison; and this dissimilarity depends on the difference of extent of territory. Each state is but a narrow district, compared with the United States. The situation of its commerce, its agriculture, and the system of its resources, will be proportionably more uniform and simple. To a knowledge of these circumstances, therefore, every member of the state legislature will be in some degree competent. He will have a considerable share of information necessary for enacting laws which are to operate in every part of the state. The easy communication with a large number of representatives, from the minute districts of the state, will increase his acquaintance with the public wants. All the representatives, having the same advantages, will furnish a mass of information, which will be the securest defence from error. How different will be the situation of the general government! The body of the legislature will be totally unacquainted with all those local circumstances of any particular state, which mark the proper objects of laws, and especially of taxation. A few men, possessed of but a very general knowledge of these objects, must alone furnish Congress with that information on which they are to act; and on these few men, in the most interesting transactions, must they rely. Do not these considerations afford reasons for an enlargement of the representation?

Another argument may be suggested to show, that there will be more safety in the state than in the federal government. In the state, the legislators, being generally known, and under the perpetual observation of their fellow-citizens, feel strongly the check resulting from the facility of communication and discovery. In a small territory, maladministration is easily corrected, and designs unfavorable to liberty frustrated and punished. But in large confederacies, the alarm excited by small and gradual encroachments rarely extends to the distant members, or inspires a general spirit of resistance. When we take a view of the United States, we find them embracing interests as various as their territory is extensive. Their habits, their productions, their resources, and their political and commercial regulations, are as different as those of any nation upon earth. A general law, therefore, which might be well calculated for Georgia, might operate most disadvantageously and cruelly upon New York. However, I only suggest these observations, for

the purpose of hearing them satisfactorily answered. I am open to conviction, and if my objections can be removed, I shall be ready frankly to acknowledge their weakness.

### **The Hon. Mr. HAMILTON.**

Mr. Chairman, I rise to take notice of the observation of the honorable member from Ulster. I imagine the objections he has stated are susceptible of a complete and satisfactory refutation. But, before I proceed to this, I shall attend to the arguments advanced by the gentleman from Albany and Dutchess. These arguments have been frequently urged, and much confidence has been placed in their strength. The danger of corruption has been dwelt upon with peculiar emphasis, and presented to our view in the most heightened and unnatural coloring. Events merely possible have been magnified, by distempered imagination, into inevitable realities; and the most distant and doubtful conjectures have been formed into a serious and infallible prediction. In the same spirit, the most fallacious calculations have been made. The lowest possible quorum has been contemplated, as the number to transact important business; and a majority of these to decide in all cases on questions of infinite moment. Allowing, for the present, the propriety and truth of these apprehensions, it would be easy, in comparing the two Constitutions, to prove that the chances of corruption under the new are much fewer than those to which the old is exposed. Under the old Confederation, the important powers of declaring war, making peace, &c., can be exercised by nine states. On the presumption that the smallest constitutional number will deliberate and decide, those interesting powers will be committed to fewer men under the ancient than under the new government. In the former, eighteen members, in the latter, not less than twenty-four, may determine all great questions. Thus, on the principles of the gentlemen, the fairer prospect of safety is clearly visible in the new government. That we may have the fullest conviction of the truth of this position, it ought to be suggested, as a decisive argument, that it will ever be the interest of the several states to maintain, under the new government, an ample representation; for, as every member has a vote, the relative influence and authority of each state will be in proportion to the number of representatives she has in Congress. There is not, therefore, a shadow of probability that the number of acting members, in the general legislature, will be ever reduced to a bare quorum; especially as the expense of their support is to be defrayed from a federal treasury. But, under the existing Confederation, each state has but one vote. It will be a matter of indifference, on the score of influence, whether she delegates two or six representatives; and the maintenance of them, forming a striking article in the state expenditures, will forever prove a capital inducement to retain or withdraw from the federal legislatures those delegates which her selfishness may too often consider as superfluous.

There is another source of corruption, in the old government, which the proposed plan is happily calculated to remedy. The concurrence of nine states, as has been observed, is necessary to pass resolves the most important, and on which the safety of the public may depend. If these nine states are at any time assembled, a foreign enemy, by dividing a state, and gaming over and silencing a single member, may frustrate the most indispensable plan of national policy, and totally prevent a measure essential to the welfare or existence of the empire. Here, then, we find a radical, dangerous defect, which will forever embarrass and obstruct the machine of government, and suspend our fate on the uncertain virtue of an individual. What a difference between the old and new Constitution strikes our view! In the one, corruption must embrace a majority; in the other, her poison, administered to a single man, may render the efforts of a

majority totally vain. This mode of corruption is still more dangerous, as its operations are more secret and imperceptible. The exertions of active villainy are commonly accompanied with circumstances which tend to its own exposure; but this negative kind of guilt has so many plausible apologies as almost to elude suspicion.

In all reasonings on the subject of corruption, much use has been made of the examples furnished by the British House of Commons. Many mistakes have arisen from fallacious comparisons between our government and theirs. It is time that the real state of this matter should be explained. By far the greatest part of the House of Commons is composed of representatives of towns or boroughs. These towns had anciently no voice in Parliament; but on the extension of commercial wealth and influence, they were admitted to a seat. Many of them are in the possession and gift of the king; and, from their dependence on him, and the destruction of the right of free election, they are stigmatized with the appellation of *rotten boroughs*.<sup>[2]</sup> This is the true source of the corruption which has so long excited the severe animadversion of zealous politicians and patriots. But the knights of the shire, who form another branch of the House of Commons, and who are chosen from the body of the counties they represent, have been generally esteemed a virtuous and incorruptible set of men. I appeal, sir, to the history of that house: this will show us that the rights of the people have ever been safely trusted to their protection; that they have been the ablest bulwarks of the British commons; and that, in the conflict of parties, by throwing their weight into one scale or the other, they have uniformly supported and strengthened the constitutional claims of the people. Notwithstanding the cry of corruption that has been perpetually raised against the House of Commons, it has been found that that house, sitting at first without any constitutional authority, became, at length, an essential member of the legislature, and have since, by regular gradations, acquired new and important accessions of privilege; that they have, on numerous occasions, impaired the prerogative, and limited the monarchy.

An honorable member from Duchess (Mr. Smith) has observed, that the delegates from New York (for example) can have very little information of the local circumstances of Georgia or South Carolina, except from the representatives of those states; and on this ground insists upon the expediency of an enlargement of the representation; since, otherwise, the majority must rely too much on the information of a few. In order to determine whether there is any weight in this reasoning, let us consider the powers of the national government, and compare them with the objects of state legislation. The powers of the new government are general, and calculated to embrace the aggregate interests of the Union, and the general interest of each state, so far as it stands in relation to the whole. The object of the state governments is to provide for their internal interests, as unconnected with the United States, and as composed of minute parts or districts. A particular knowledge, therefore, of the local circumstances of any state, as they may vary in different districts, is unnecessary for the federal representative. As he is not to represent the interests or local wants of the county of Duchess or Montgomery, neither is it necessary that he should be acquainted with their particular resources. But in the state governments) as the laws regard the interest of the people, in all their various minute divisions, it is necessary that the smallest interests should be represented. Taking these distinctions into view, I think it must appear evident, that one discerning and intelligent man will be as capable of understanding and representing the general interests of a state as twenty; because one man can be as fully acquainted with the general state of the commerce, manufactures, population, production, and

common resources of a state, which are the proper objects of federal legislation. It is presumed that few men originally possess a complete knowledge of the circumstances of other states. They must rely, therefore, on the information to be collected from the representatives of those states. And if the above reasoning be just, it appears evident, I imagine, that this reliance will be as secure as can be desired.

Sir, in my experience of public affairs, I have constantly remarked, in the conduct of members of Congress, a strong and uniform attachment to the interests of their own state. These interests have, on many occasions, been adhered to with an undue and illiberal pertinacity, and have too often been preferred to the welfare of the Union. This attachment has given birth to an unaccommodating spirit of party, which has frequently embarrassed the best measures. It is by no means, however, an object of surprise. The early connections we have formed, the habits and prejudices in which we have been bred, fix our affections so strongly, that no future objects of association can easily eradicate them. This, together with the entire and immediate dependence the representative feels on his constituent, will generally induce him to prefer the particular before the public good.

The subject on which this argument of a small representation has been most plausibly used, is taxation. As to internal taxation, in which the difficulty principally rests, it is not probable that any general regulation will originate in the national legislature. If Congress, in times of great danger and distress, should be driven to this resource, they will undoubtedly adopt such measures as are most conformable to the laws and customs of each state. They will take up your own codes, and consult your own systems. This is a source of information which cannot mislead, and which will be equally accessible to every member. It will teach them the most certain, safe, and expeditious mode of laying and collecting taxes in each state. They will appoint the officers of revenue agreeably to the spirit of your particular establishments, or they will make use of your own.

Sir, the most powerful obstacle to the members of Congress betraying the interest of their constituents, is the state legislatures themselves, who will be standing bodies of observation, possessing the confidence of the people, jealous of federal encroachments, and armed with every power to check the first essays of treachery. They will institute regular modes of inquiry. The complicated domestic attachments, which subsist between the state legislators and their electors, will ever make them vigilant guardians of the people's rights. Possessed of the means and the disposition of resistance, the spirit of opposition will be easily communicated to the people, and, under the conduct of an organized body of leaders, will act with weight and system. Thus it appears that the very structure of the confederacy affords the surest preventives from error, and the most powerful checks to misconduct.

Sir, there is something in an argument that has been urged, which, if it proves any thing, concludes against all union and all governments; it goes to prove that no powers should be intrusted to any body of men, because they may be abused. This is an argument of possibility and chance — one that would render useless all reasonings upon the probable operation of things, and defeat the established principles of natural and moral causes. It is a species of reasoning sometimes used to excite popular jealousies, but is generally discarded by wise and discerning men. I do not suppose that the honorable member who advanced the idea had any such design.

He undoubtedly would not wish to extend his arguments to the destruction of union or government; but this, sir, is its real tendency.

It has been asserted that the interests, habits, and manners of the thirteen states are different; and hence it is inferred that no general free government can suit them. This diversity of habits, &c., has been a favorite theme with those who are disposed for a division of our empire, and, like many other popular objections, seems to be founded on fallacy. I acknowledge that the local interests of the states are in some degree various, and that there is some difference in the manners and habits. But this I will presume to affirm, that, from New Hampshire to Georgia, the people of America are as uniform in their interests and manners as those of any established in Europe. This diversity, to the eye of a speculatist, may afford some marks of characteristic discrimination, but cannot form an impediment to the regular operation of those general powers which the Constitution gives to the united government. Were the laws of the Union to new-model the internal police of any state; were they to alter, or abrogate at a blow, the whole of its civil and criminal institutions; were they to penetrate the recesses of domestic life, and control, in all respects, the private conduct of individuals, — there might be more force in the objection; and the same Constitution, which was happily calculated for one state, might sacrifice the welfare of another. Though the difference of interests may create some difficulty, and apparent partiality, in the first operations of government, yet the same spirit of accommodation, which produced the plan under discussion, would be exercised in lessening the weight of unequal burdens. Add to this, that, under the regular and gentle influence of general laws, these varying interests will be constantly assimilating, till they embrace each other, and assume the same complexion.

### **Gov. CLINTON.**

The gentleman has attempted to give an unjust and unnatural coloring to my observations. I am really at a loss to determine whence he draws his inference. I declare that the dissolution of the Union is, of all events, the remotest from my wishes. That gentleman may wish for a consolidated, I wish for a federal republic. The object of both of us is a firm, energetic government; and we may both have the good of our country in view, though we disagree as to the means of procuring it. It is not fair reasoning to infer that a man wants no government at all, because he attempts to qualify it so as to make it safe and easy.

### **Mr. HAMILTON.**

I only rise to observe that the gentleman has misunderstood me. What I meant to express was this — that if we argued from possibilities only, — if we reasoned from chances, or an ungovernable propensity to evil, instead of taking into view the control which the nature of things, or the form of the Constitution, provided, — the argument would lead us to withdraw all confidence from our fellow-citizens, and discard the chimerical idea of government. This is a true deduction from such reasoning.

### **Mr. SMITH**

then made a few observations; after which the committee rose, and the Convention adjourned to Monday morning at ten o'clock.

**MONDAY, *June 23, 1788.* —**

**Mr. HARRISON.**

The subject under consideration, Mr. Chairman, is of the highest importance. It is a subject with which the liberties, the prosperity, and the glory of our country are most intimately connected. It has very properly employed the time and attention of the greatest and wisest men. Impressed with the most earnest desire to discover truth, and to acquit myself well in defence of its cause, I have listened with attention to the gentlemen who have spoken before me. It may, at first view, appear unnecessary to enlarge on a point which has undergone so thorough a discussion; but I trust the committee will consider no time lost which is spent on this interesting subject.

The gentlemen who have preceded me in the debate, however they may have differed with respect to certain points, they have agreed in others of capital importance, and which I shall beg leave in a concise manner to review. It is conceded that the old Confederation is inadequate to the purposes of good government; that, for its support, it has no other resources but feeble requisitions, which may be complied with or rejected by the states, as whim, caprice, or local interest, may influence them: in this point, gentlemen have agreed that remedy is necessary. The second point agreed on, and which is of equal consequence, is, that a close union is essential to the prosperity of the states; that, therefore, some measures should be pursued to strengthen that union, and prevent a dissolution. But, sir, interesting as these points are, there is another, which, on all sides, has been conceded, and which shall ever govern my conduct. It is, that, although the union ought to be secured, we are by no means to sacrifice to it the liberties of the people. It is our duty, sir, to abandon prejudices, and examine the Constitution closely and candidly; and if we find that it leads to the sacrifice I have mentioned, we shall undoubtedly reject it. But if, on the contrary, we discover that its principles tend to unite the perfect security of liberty with the stability of union, we shall adopt it with a unanimity which will recommend it to the confidence of the people.

I come now, sir, to offer a few ideas on the article under debate. Among the objections, that which has been made to the mode of apportionment of representatives has been relinquished. I think this concession does honor to the gentleman who had stated the objection. He has candidly acknowledged that this apportionment was the result of accommodation, without which no union could have been formed. But, sir, there are other objections, which are certainly plausible, and which, were they made to the paragraph in its genuine sense, I would acknowledge to be forcible. The gentlemen first consider the House of Representatives as too small, and not capable of representing the interests of their constituents. I cannot, by any means, agree with them, that there probably will be a time when six men cannot, in this state, be found sufficiently honest and well informed to represent the feelings, as well as interests, of the body of the people. The gentlemen should, in the debate, have adverted to this circumstance, that the number, as well as the apportionment, of representatives was a matter of conciliation; that some states, impressed with a sense of the public burdens, were willing to oppress the people as little as possible: they were disinclined to have that body more numerous than was requisite to insure and protect their liberties and their true interests. We might suppose the number proposed in the Constitution to be inadequate: they were of a different opinion. But, sir, though the number specified in this article were barely sufficient, or even too small, yet I contend that it is a thing merely temporary, and

that the article itself clearly provides a remedy. An honorable gentleman, who preceded me, has proved that the article contemplates and secures a regular increase of the representation. I confess that my mind is entirely satisfied with his reasoning.

I beg leave, however, sir, to state the subject to the committee in one more point of light. It appears to me that the gentlemen who have supposed that Congress have it in their power to reduce the number, have not attended, with sufficient care, to the language of the paragraph. It is declared that the representation shall be in proportion to the number of inhabitants, and that every state shall have at least one. The state of Delaware may contain about thirty-three thousand inhabitants. Every gentleman acquainted with that state knows that it has been long settled, and probably has been for some time stationary in point of population. While the large tracts of vacant territory in the states, which surround it hold out so many allurements to emigration, I am convinced there is no prospect of its increasing, at least for a very long period of years. When I make this observation, I think I argue from established principles. From this I infer that there is the utmost probability that the number of Delaware will be taken as the standard. If this be done, the number composing the House of Representatives, after the first census, will be more than sixty-five, which is the present number; because this specified number is calculated on the ratio of about one for forty thousand. Upon the same principles, while Delaware is stationary, and the population of the other states advances rapidly, the number of Delaware will continue to be the standard. Thus, if Delaware, at the first census, contains thirty-five thousand inhabitants, New York may then contain about two hundred and sixty-five thousand, and will be entitled to eight representatives. To pursue the argument a little further: It will ever be the interest of the larger states to keep the ratio uniform, by assuming the number of the smallest state as the standard; because, by this, as the smallest state will be confined to one, the relative influence of the larger states will be augmented. For example: if Delaware possesses thirty thousand, and Maryland a hundred thousand, it will be the interest of Maryland to fix the ratio at one for thirty, and not one for forty thousand, because, in the first case, she will have three representatives, or two more than Delaware; in the latter, she will have only two representatives, or one more than Delaware. This reasoning appears to me to lead to mathematical certainty.

According to the *ratio* established in the Constitution, as the number of the inhabitants in the United States increases, the number of representatives would also increase to a great degree, and in a century would become an unwieldy mob. It is therefore expedient and necessary that the Constitution should be so framed as to leave to the general legislature a discretionary power to limit the representation by forming a new ratio. These considerations have left no doubt in my mind of the propriety of the article under debate. I am clear that it contemplates an increase, till the extensive population of the country shall render a limitation indispensable. What, then, is the object of our fears? I am convinced that a legislature composed of ninety-one members is amply sufficient for the present state of our country. I have too high an opinion of the integrity of my fellow-citizens to believe they will or can be corrupted in three years, and at the expiration of this term, the increase I mention will most assuredly take place. Let us, therefore, dispel all visionary apprehensions on this subject, and, disregarding possible dangers, let us reason from the probable operation of things, and rely on this for our safety.

**The Hon. Mr. LANSING.**

I do not rise, Mr. Chairman, to answer any of the arguments of the gentlemen, but to mention a few facts. In this debate, much reliance has been placed on an accommodation which took place in the *general Convention*. I will state the progress of that business. When the subject of the apportionment of representatives came forward, the large states insisted that the equality of suffrage should be abolished. This the small states opposed, contending that it would reduce them to a state of subordination. There was such a division that a dissolution of the Convention appeared unavoidable, unless some conciliatory measure was adopted. A committee of the states was then appointed, to agree upon some plan for removing the embarrassment. They recommended, in their report, the inequality of representation, which is the groundwork of the section under debate. With respect to the ratio of representation, it was at first determined that it should be one for forty thousand. In this situation the subject stood when I left the Convention. The objection to a numerous representation, on account of the expense, was not considered as a matter of importance: other objections to it, however, were fully discussed; but no question was taken.

Sir, I rose only to state this subject in the point of view in which it appeared to me: I shall, however, since I am up, pay some attention to the arguments which have been advanced. It is acknowledged that this clause may be so construed, as that, if the people of the smallest state shall amount to fifty thousand, this number may be taken as the ratio. What, then, is to control the general government? If I understand the gentlemen right, they grant that, by the plain construction of the clause, Congress may fix the ratio as high as they please: if so, they will have no other control than the precarious operation of interest. Now, the very argument of the gentlemen on the point of interest seems to imply that it will be the interest of the small states to limit the representation; for these states, like Delaware, not increasing, will be interested in allowing the growing states as small a number of representatives as possible, in proportion to their own. If, then, it be the interest of the larger states to augment the representation, it will be equally the interest of the smaller states to diminish it; and their equal suffrage in the *Senate* will enable them to oppose the policy of the large states with success.

In the discussion of this subject, it has been found necessary to bring several objections into view, which will not be very strongly insisted on. The gentleman who suggested them declared that he did not intend they should embarrass or prolong the debates. He only mentioned them to show that it would be our disposition to conciliate in certain points of inferior magnitude, provided we could secure such essential rights of the people as we supposed this Constitution would have a tendency to infringe. The question has been fully discussed; and I believe few new lights can be thrown on it. Much time will be spent, if we pursue the investigation in so slow and minute a manner. However, if the subject can receive any further elucidation, I shall not think the time lost.

### **Hon. Mr. HAMILTON.**

It is not my design, Mr. Chairman, to extend this debate by any new arguments on the general subject. I have delivered my sentiments so fully on what has been advanced by the gentlemen this morning, that any further reasoning from me will be easily dispensed with. I only rise to state a fact with respect to the motives which operated in the general Convention. I had the honor to state to the committee the diversity of interests which prevailed between the navigating and

non-navigating, the large and the small states, and the influence which those states had upon the conduct of each. It is true, a difference did take place between the large and the small states, the latter insisting on equal advantages in the House of Representatives. Some private business calling me to New York, I left the Convention for a few days: on my return, I found a plan, reported by the committee of details; and soon after, a motion was made to increase the number of representatives. On this occasion, the members rose from one side and the other, and declared that the plan reported was entirely a work of accommodation, and that to make any alterations in it would destroy the Constitution. I discovered that several of the states, particularly New Hampshire, Connecticut, and New Jersey, thought it would be difficult to send a great number of delegates from the extremes of the continent to the national government: they apprehended their constituents would be displeased with a very expensive government; and they considered it as a formidable objection. After some debate on this motion, it was withdrawn. Many of the facts stated by the gentleman and myself are not substantially different. The truth is, the plan, in all its parts, was a plan of accommodation.

**Mr. LANSING.**

I will enter no further into a discussion of the motives of the Convention; but there is one point in which the gentleman and myself do not agree. The committee of details recommend an equality in the Senate. In addition to this, it was proposed that every forty thousand should send one representative to the general legislature. Sir, if it was a system of accommodation, and to remain untouched, how came that number afterwards to be reduced to thirty thousand?

**Mr. HAMILTON.**

I recollect well the alteration which the gentleman alludes to; but it by no means militates against my idea of the principles on which the Convention acted, at the time the report of the committee was under deliberation. This alteration did not take place till the Convention was near rising, and the business completed; when his excellency, the president, expressing a wish that the number should be reduced to thirty thousand, it was agreed to without opposition.

**Mr. Chancellor LIVINGSTON.**

The gentleman from Duchess appears to have misapprehended some of the ideas which dropped from me. My argument was, that a republic might very properly be formed by a league of states, but that the laws of the general legislature must act, and be enforced upon individuals. I am contending for this species of government. The gentlemen who have spoken in opposition to me have either misunderstood or perverted my meaning; but, sir, I natter myself it has not been misunderstood by the Convention at large.

If we examine the history of federal republics, whose legislative powers were exercised only in states, in their collective capacity, we shall find in their fundamental principles the seeds of domestic violence and consequent annihilation. This was the principal reason why I thought the old Confederation would be forever impracticable.

Much has been said, sir, about the number which ought to compose the House of Representatives; and the question has been debated with great address by the gentlemen on both sides of the house. It is agreed that the representative body should be so small as to prevent the disorder inseparable from the deliberations of a mob, and yet sufficiently numerous to represent the interests of the people, and to be a safe depository of power. There is, unfortunately, no standard by which we can determine this matter. Gentlemen who think that a hundred may be the medium, in which the advantages of regular deliberation and the safety of the people are united, will probably be disposed to support the plan as it stands; others, who imagine that no number less than three or four hundred can insure the preservation of liberty, will contend for an alteration. Indeed, these effects depend so much upon contingency, and upon circumstances totally unconnected with the idea of numbers, that we ought not to be surprised at the want of a standing criterion. On so vague a subject, it is very possible that the opinions of no two gentlemen in this Assembly, if they were governed by their own original reflections, would entirely coincide. I acknowledge myself one of those who suppose the number expressed in the Constitution, to be about the proper medium; and yet future experience may induce me to think it too small or too large. When I consider the objects and powers of the general government, I am of opinion that one hundred men may at all times be collected of sufficient information and integrity to manage well the affairs of the Union. Some gentlemen suppose that, to understand and provide for the general interests of commerce and manufactures, our legislators ought to know how all commodities are produced, from the first principle of vegetation to the last polish of mechanical labor; that they ought to be minutely acquainted with all the process of all the arts. If this were true, it would be necessary that a great part of the British House of Commons should be woollen-draperies; yet we seldom find such characters in that celebrated assembly.

As to the idea of representing the feelings of the people, I do not entirely understand it, unless by their feelings are meant their interests. They appear to me to be the same thing. But if they have feelings which do not rise out of their interests, I think they ought not to be represented. What! shall the unjust, the selfish, the unsocial feelings, be represented? Shall the vices, the infirmities, the passions, of the people, be represented? Government, sir, would be a monster; laws made to encourage virtue and maintain peace would have a preposterous tendency to subvert the authority and outrage the principles on which they were founded; besides, the feelings of the people are so variable and inconstant, that our rulers should be chosen every day: people have one sort of feeling to-day, another to-morrow, and the voice of the representative must be incessantly changing in correspondence with these feelings. This would be making him a political weathercock.

The honorable gentleman from Duchess, [Mr. Smith,] who has so copiously declaimed against all declamation, has pointed his artillery against the rich and the great. I am not interested in defending rich men: but what does he mean by telling us that the rich are vicious and intemperate? Will he presume to point out to us the class of men in which intemperance is not to be found? Is there less intemperance in feeding on beef than on turtle? or in drinking rum than wine? I think the gentleman does not reason from facts. If he will look round among the rich men of his acquaintance, I fancy he will find them as honest and virtuous as any class in the community. He says the rich are unfeeling; I believe they are less so than the poor; for it seems to me probable that those who are most occupied by their own cares and distresses have the least

sympathy with the distresses of others. The sympathy of the poor is generally selfish, that of the rich a more disinterested emotion.

The gentleman further observes, that ambition is peculiarly the vice of the wealthy. But have not all classes of men their objects of ambition? Will not a poor man contend for a constable's staff with as much assiduity and eagerness as a man of rank will aspire to the chief magistracy? The great offices in the state are beyond the view of the poor and ignorant man: he will therefore contemplate an humbler office as the highest alluring object of ambition; he will look with equal envy on a successful competitor, and will equally sacrifice to the attainment of his wishes the duty he owes to his friends or to the public. But, says the gentleman, the rich will be always brought forward; they will exclusively enjoy the suffrages of the people. For my own part, I believe that, if two men of equal abilities set out together in life, one rich, the other of small fortune, the latter will generally take the lead in your government. The rich are ever objects of envy; and this, more or less, operates as a bar to their advancement. What is the fact? Let us look around us: I might mention gentlemen in office who have not been advanced for their wealth; I might instance, in particular, the honorable gentleman who presides over this state, who was not promoted to the chief magistracy for his riches, but his virtue.

The gentleman, sensible of the weakness of this reasoning, is obliged to fortify it by having recourse to the phantom aristocracy. I have heard much of this. I always considered it as the bugbear of the party. We are told that, in every country, there is a natural aristocracy, and that this aristocracy consists of the rich and the great: nay, the gentleman goes further, and ranks in this class of men the wise, the learned, and those eminent for their talents or great virtues. Does a man possess the confidence of his fellow-citizens for having done them important services? He is an *aristocrat*. Has he great integrity? Such a man will be greatly trusted: he is an aristocrat. Indeed, to determine that one is an aristocrat, we need only be assured he is a man of merit. But I hope we have many such. I hope, sir, we are all aristocrats. So sensible am I of that gentleman's talents, integrity, and virtue, that we might at once hail him the first of the nobles, the very prince of the Senate. But whom, in the name of common sense, will we have to represent us? Not the rich, for they are sheer aristocrats. Not the learned, the wise, the virtuous, for they are all aristocrats. Whom then? Why, those who are not virtuous; those who are not wise; those who are not learned: these are the men to whom alone we can trust our liberties. He says further, we ought not to choose these aristocrats, because the people will not have confidence in them; that is, the people will not have confidence in those who best deserve and most possess their confidence. He would have his government composed of other classes of men: where will we find them? Why, he must go out into the highways, and pick up the rogue and the robber; he must go to the hedges and ditches, and bring in the poor, the blind, and the lame. As the gentleman has thus settled the definition of aristocracy, I trust that no man will think it a term of reproach; for who among us would not be wise? Who would not be virtuous? Who would not be above want? How, again, would he have us to guard against aristocracy? Clearly by doubling the representation, and sending twelve aristocrats instead of six. The truth is, in these republican governments, we know no such ideal distinctions. We are all equally aristocrats. Offices, emoluments, honors, are open to all.

Much has been said by the gentleman about corruption: he calculates that twenty-four may give the voice of Congress; that is, they will compose a bare majority of a bare quorum of both

houses. He supposes here the most singular, and I might add, the most improbable combination of events. First, there is to be a power in the government who has the means, and whose interest it is to be corrupt. Next, twenty-four men are to compose the legislature; and these twenty-four, selected by their fellow-citizens as the most virtuous, are all, in violation of their oath and their real interests, to be corrupted. Then he supposes the virtuous minority inattentive, regardless of their own honor, and the good of their country; making no alarm, no struggle; a whole people suffering the injury of a ruinous law, yet ignorant, inactive, and taking no measures to redress the grievance.

Let us take a view of the present Congress. The gentleman is satisfied with our present federal government, on the score of corruption. Here he has confidence. Though each state may delegate seven, they generally send no more than three; consequently thirty-nine men may transact any business under the old government; while the new legislature, which will be, in all probability, constantly full, will consist of ninety-one. But, say the gentlemen, our present Congress have not the same powers. I answer, They have the very same. Congress have the power of making war and peace, of levying money and raising men; they may involve us in a war at their pleasure; they may negotiate loans to any extent, and make unlimited demands upon the states. Here the gentleman comes forward, and says that the states are to carry these powers into execution; and they have the power of non-compliance. But is not every state bound to comply? What power have they to control Congress in the exercise of those rights which they have pledged themselves to support? It is true they have broken, in numerous instances, the compact by which they were obligated; and they may do it again; but will the gentleman draw an argument of security from the facility of violating their faith? Suppose there should be a majority of creditor states, under the present government; might they not combine, and compel us to observe the covenant by which we had bound ourselves?

We are told that this Constitution gives Congress the power over the purse and the sword. Sir, have not all good governments this power? Nay, does any one doubt that, under the old Confederation, Congress holds the purse and the sword? How many loans did they procure, which we are bound to pay! How many men did they raise, whom we are bound to maintain! How will gentlemen say, that that body, which is indeed extremely small, can be more safely trusted than a much larger body, possessed of the same authority? What is the ground of such entire confidence in the one — what the cause of so much jealousy of the other?

An honorable member from New York has viewed the subject of representation in a point of light which had escaped me, and which I think clear and conclusive. He says, that the state of Delaware must have one; and, as that state will not probably increase for a long time, it will be the interest of the larger states to determine the ratio by what Delaware contains. The gentlemen in opposition say, suppose Delaware contains fifty thousand, why not fix one ratio at sixty thousand? Clearly, because by this the other states will give up a sixth part of their interests. The members of Congress, also, from a more private motive, will be induced to augment the representation. The chance of their own reëlection will increase with the number of their colleagues.

It has been further observed that the sense of the people is for a larger representation, and that this ought to govern us — that the people generally are of opinion, that even our House of

Assembly is too small. I very much doubt this fact. As far as my observation has extended, I have found a very different sentiment prevail. It seems to be the predominant opinion of our state government; and I presume that the people have as much confidence in their Senate of twenty-four as in their Assembly of sixty-five. All these considerations have united to give my mind the most perfect conviction, that the number specified in the Constitution is fully adequate to the present wants of the country, and that this number will be increased to the satisfaction of the most timid and jealous.

**Hon. Mr. SMITH.**

I did not intend to make any more observations on this article. Indeed, I have heard nothing to-day which has not been suggested before, except the polite reprimand I have received for my declamation. I should not have risen again, but to examine who has proved himself the greatest declaimer. The gentleman wishes me to describe what I meant by representing the feelings of the people. If I recollect right, I said the representative ought to understand and govern his conduct by the true interest of the people. I believe I stated this idea precisely. When he attempts to explain my ideas, he explains them away to nothing; and, instead of answering, he distorts, and then sports with them. But he may rest assured that, in the present spirit of the Convention, to irritate is not the way to conciliate. The gentleman, by the false gloss he has given to my argument, makes me an enemy to the rich: this is not true. All I said was, that mankind were influenced, in a great degree, by interests and prejudices; that men, in different ranks of life, were exposed to different temptations, and that ambition was more peculiarly the passion of the rich and great. The gentleman supposes the poor have less sympathy with the sufferings of their fellow-creatures, for that those who feel most distress themselves, have the least regard to the misfortunes of others. Whether this be reasoning or declamation, let all who hear us determine. I observed, that the rich were more exposed to those temptations which rank and power hold out to view; that they were more luxurious and intemperate, because they had more fully the means of enjoyment; that they were more ambitious, because more in the hope of success. The gentleman says my principle is not true, for that a poor man will be as ambitious to be a constable as a rich man to be a governor; but he will not injure his country so much by the party he creates to support his ambition.

The next object of the gentleman's ridicule is my idea of an aristocracy; and, indeed, he has done me the honor to rank me in the order. If, then, I am an aristocrat, and yet publicly caution my countrymen against the encroachments of the aristocrats, they will surely consider me as one of the most disinterested friends. My idea of aristocracy is not new; it is embraced by many writers on government. I would refer the gentleman for a definition of it to the Hon. JOHN ADAMS, one of our natural aristocrats. This writer will give him a description the most ample and satisfactory. But I by no means intended to carry my idea of it to such a ridiculous length as the gentleman would have me; nor will any of my expressions warrant the construction he imposes on them. My argument was, that, in order to have a true and genuine representation, you must receive the middling class of people into your government, such as compose the body of this assembly. I observed that a representation from the United States could not be so constituted as to represent completely the feelings and interests of the people; but that we ought to come as near this object as possible. The gentlemen say, that the exactly proper number of representatives is so indeterminate and vague, that it is impossible for them to ascertain it with any precision.

But surely they are able to see the distinction between twenty and thirty. I acknowledge that a complete representation would make the legislature too numerous; and therefore it is our duty to limit the powers, and form the checks on the government, in proportion to the smallness of the number.

The honorable gentleman next animadverted on my apprehensions of corruption, and instances the present Congress, to prove an absurdity in my argument. But is this fair reasoning? There are many material checks to the operations of that body, which the future Congress will not have. In the first place, they are chosen annually. What more powerful check? They are subject to *recall*. Nine states must agree to any important resolution, which will not be carried into execution till it meets the approbation of the people in the state legislatures. Admitting what he says, that they have pledged their faith to support the acts of Congress, yet, if these be contrary to the essential interests of the people, they ought not to be acceded to; for they are not bound to obey any law which tends to destroy them.

It appears to me that, had economy been a motive for making the representation small, it might have operated more properly in leaving out some of the offices which this Constitution requires. I am sensible that a great many of the common people, who do not reflect, imagine that a numerous representation involves a great expense; but they are not aware of the real security it gives to an economical management in all the departments of government.

The gentleman further declared that, as far as his acquaintance extended, the people thought sixty-five a number fully large enough for our state Assembly; and hence inferred that sixty-five is to two hundred and forty thousand as sixty-five is to three millions. This is curious reasoning.

I feel that I have troubled the committee too long. I should not have risen again upon this subject, had not my ideas been grossly misrepresented.

### **The Hon. Mr. JAY.**

I will make a few observations on this article, Mr. Chairman, though I am sensible it may not appear very useful to travel over the field which has been already so fully explored.

Sir, it seems to be, on all sides, agreed that a strong, energetic federal government is necessary for the United States.

It has given me pleasure to hear such declarations come from all parts of the house. If gentlemen are of this opinion, they give us to understand that such a government is the favorite of their desire; and also that it can be instituted; that, indeed, it is both necessary and practicable; or why do they advocate it?

The gentleman last on the floor has informed us that, according to his idea of a complete representation, the extent of our country is too great for it. [Here he called on Mr. Smith, to know if he had mistaken him; who replied, My idea is not that a proper representation for a strong federal government is unattainable; but that such a representation, under the proposed Constitution, is impracticable.] Sir, continued Mr. Jay, I now understand the gentleman in a

different sense: however, what I shall say will reach equally his explanation. I take it that no federal government is worth having, unless it can provide for the general interests of the United States. If this Constitution be so formed as to answer these purposes, our object is obtained. The providing for the general interests of the Union requires certain powers in government, which the gentleman seems to be willing it should possess; that is, the important powers of war and peace. These powers are peculiarly interesting; their operation reaches objects the most dear to the people; and every man is concerned in them; yet, for the exercise of these powers the gentleman does not think a very large representation necessary. But, sir, if the proposed Constitution provides for a representation adequate to the purposes I have described, why not adequate to all other purposes of a federal government? The adversaries of the plan seem to consider the general government as possessing all the minute and local powers of the state governments. The direct inference from this, according to their principle, would be, that the federal representation should be proportionably large. In this state, as the gentleman says, we have sixty-five. If the national representation is to be extended in proportion, what an unwieldy body shall we have! If the United States contain three millions of inhabitants, in this ratio, the Congress must consist of more than eight hundred. But, sir, let us examine whether such a number is necessary or reasonable. What are the objects of our state legislatures? Innumerable things of small moment occupy their attention; matters of a private nature, which require much minute and local information. The objects of the general government are not of this nature. They comprehend the interests of the states in relation to each other, and in relation to foreign powers. Surely there are men in this state fully informed of the general interests of its trade, its agriculture, its manufactures. Is any thing more than this necessary? Is it requisite that our representatives in Congress should possess any particular knowledge of the local interests of the county of Suffolk, distinguished from those of Orange and Ulster? The Senate is to be composed of men appointed by the state legislatures: they will certainly choose those who are most distinguished for their general knowledge. I presume they will also instruct them, that there will be a constant correspondence supported between the senators and the state executives, who will be able, from time to time, to afford them all that particular information which particular circumstances may require. I am in favor of large representations: yet, as the minds of the people are so various on this subject, I think it best to let things stand as they are. The people in Massachusetts are satisfied with two hundred: many others suppose either number unnecessarily large. There is no point on which men's opinions vary more materially. If the matter be doubtful, — and much may be rationally said on both sides, — gentlemen ought not to be very strenuous on such points. The Convention who decided this question took all these different opinions into consideration, and were directed by a kind of necessity of mutual accommodation, and by reasons of expediency; it would therefore be unfair to censure them. Were I asked if the number corresponds exactly with my own private judgment, I should answer, No. But I think it is best, under our present circumstances, to acquiesce. Yet, sir, if I could be convinced that danger would probably result from so small a number, I should certainly withhold my acquiescence. But whence will this danger arise? Sir, I am not fearful of my countrymen: we have yet known very little of corruption: we have already experienced great distresses and difficulties; we have seen perilous times, when it was the interest of Great Britain to hold out the most seducing temptations to every man worth gaining. I mention this as a circumstance to show that, in case of a war with any foreign power, there can be little fear of corruption; and I mention it to the honor of the American character. At the time I allude to, how many men had you in Congress? Generally fewer than sixty-five.

Sir, all the arguments offered on the other side serve to show that it will be easier to corrupt under the old than under the new government: such arguments, therefore, do not seem to answer the gentleman's purpose. In the federal government, as it now stands, there are but thirteen votes, though there may be sixty or seventy voices. Now, what is the object of corruption? To gain votes. In the new government there are to be ninety-one votes. Is it easier to buy many than a few? In the present Congress, you cannot declare war, make peace, or do any other important act, without the concurrence of nine states. There are rarely more than nine present. A full Congress is an extraordinary thing. Is it necessary to declare war, or pass a requisition of money to support it? A foreign prince says, this will be against my interest; I must prevent it. How? By having recourse to corruption. If there are eleven states on the floor, it will be necessary to corrupt three. What measure shall I take? Why, it is common for each state to have no more than two members in Congress. I will take off one, and the vote of that state is lost. I will take off three, and their most important plan is defeated. Thus, in the old government, it is only necessary to bribe the few; in the new government, it is necessary to corrupt the many. Where lies the greater security? The gentleman says, the election is annual, and you may recall your delegate when you please. But how are you to form your opinion of his conduct? He may excuse himself from acting without giving any reason. Nay, on a particular emergency, he has only to go home, for which he may have a thousand plausible reasons to offer, and you have no mode of compelling his attendance. To detect corruption is at all times difficult, but, under these circumstances, it appears almost impossible I give out these hints to show that, on the score of corruption, we have much the best chance under the new Constitution; and that, if we do not reach perfection, we certainly change for the better. But, sir, suppose corruption should infect one branch of the government, — for instance, the House of Representatives; what a powerful check you have in the Senate! You have a double security; you have two chances in your favor to one against you. The two houses will naturally be in a state of rivalry: this will make them always vigilant, quick to discern a bad measure, and ready to oppose it. Thus the chance of corruption is not only lessened by an increase of the number, but vastly diminished by the necessity of concurrence. This is the peculiar excellence of a division of the legislature.

Sir, I argue from plain facts. Here is no sophistry, no construction, no false glosses, but simple inferences from the obvious operation of things. We did not come here to carry points. If the gentleman will convince me I am wrong, I will submit. I mean to give my ideas frankly upon the subject. If my reasoning is not good, let them show me the folly of it. It is from this reciprocal interchange of ideas that the truth must come out. My earnest wish is, that we may go home attended with the pleasing consciousness that we have industriously and candidly sought the truth, and have done our duty. I cannot conclude without repeating that, though I prefer a large representation, yet, considering our present situation, I see abundant reason to acquiesce in the wisdom of the general Convention, and to rest satisfied that the representation will increase in a sufficient degree to answer the wishes of the most zealous advocate for liberty.

**The Hon. Mr. SMITH rose,**

and said, it appeared to him probable that it would be the interest of the state having the least number of inhabitants to make its whole number the measure of the representation; that it would be the interest of Delaware, supposing she has forty thousand, and consequently only one vote, to make this whole number the ratio; so if she had fifty thousand, or any number under sixty

thousand. The interest also of some other of the small states would correspond with hers; and thus the representation would be reduced in proportion to the increase of Delaware. He still insisted that the number of representatives might be diminished.

He would make one observation more upon the gentleman's idea of corruption. His reasoning, he said, went only to prove that the present Congress might be restrained from doing good by the wilful absence of two or three members. It was rare, he said, that the people were oppressed by a government's not doing; and little danger to liberty could flow from that source.

After some further desultory conversation on this point, the committee rose, and the Convention adjourned.

## **TUESDAY, *June 24th*, 1788. —**

Convention assembled; and being resolved into a committee, the 1st paragraph of the 3d section of the 1st article was read; when

**Mr. G. LIVINGSTON rose,**

and addressed the chair.

He, in the first place, considered the importance of the *Senate* as a branch of the legislature, in three points of view: —

First, they would possess legislative powers coextensive with those of the House of Representatives except with respect to originating revenue laws; which, however, they would have power to reject or amend, as in the case of other bills. Secondly, they would have an importance, even exceeding that of the representative house, as they would be composed of a smaller number, and possess more firmness and system. Thirdly, their consequence and dignity would still further transcend those of the other branch, from their longer continuance in office. These powers, Mr. Livingston contended, rendered the Senate a dangerous body.

He went on, in the second place, to enumerate and animadvert on the powers with which they were clothed in their judicial capacity, and in their capacity of council to the President, and in the forming of treaties. In the last place, as if too much power could not be given to this body, they were made, he said, a council of appointment, by whom ambassadors and other officers of state were to be appointed. These are the powers, continued he, which are vested in this small body of twenty-six men; in some cases, to be exercised by a bare quorum, which is fourteen; a majority of which number, again, is eight. What are the checks provided to balance this great mass of power? Our present Congress cannot serve longer than three years in six: they are at any time subject to recall. These and other checks were considered as necessary at a period which I choose to honor with the name of *virtuous*. Sir, I venerate the spirit with which every thing was done at the trying time in which the Confederation was formed. America had then a sufficiency of this virtue to resolve to resist perhaps the first nation in the universe, even unto bloodshed. What was her aim? Equal liberty and safety. What ideas had she of this equal liberty? Read them in her Articles of Confederation. True it is, sir, there are some powers wanted to make this glorious

compact complete. But, sir, let us be cautious that we do not err more on the other hand, by giving power too profusely, when, perhaps, it will be too late to recall it. Consider, sir, the great influence which this body, armed at all points, will have. What will be the effect of this? Probably a security of their reëlection, as long as they please. Indeed, in my view, it will amount nearly to an appointment for life. What will be their situation in a federal town? Hallowed ground! Nothing so unclean as state laws to enter there, surrounded, as they will be, by an impenetrable wall of adamant and gold, the wealth of the whole country flowing into it. [Here a member, who did not fully understand, called out to know what WALL the gentleman meant; on which he turned, and replied, "A wall of gold — of adamant, which will flow in from all parts of the continent." At which flowing metaphor, a great laugh in the house.] The gentleman continued: Their attention to their various business will probably require their constant attendance. In this Eden will they reside with their families, distant from the observation of the people. In such a situation, men are apt to forget their dependence, lose their sympathy, and contract selfish habits. Factions are apt to be formed, if the body becomes permanent. The senators will associate only with men of their own class, and thus become strangers to the condition of the common people. They should not only return, and be obliged to live with the people, but return to their former rank of citizenship, both to revive their sense of dependence, and to gain a knowledge of the country. This will afford opportunity to bring forward the genius and information of the states, and will be a stimulus to acquire political abilities. It will be the means of diffusing a more general knowledge of the measures and spirit of the administration. These things will confirm the people's confidence in government. When they see those who have been high in office residing among them as private citizens, they will feel more forcibly that the government is of their own choice. The members of this branch having the idea impressed on their minds, that they are soon to return to the level whence the suffrages of the people raised them, — this good effect will follow: they will consider their interests as the same with those of their constituents, and that they legislate for themselves as well as others. They will not conceive themselves made to receive, enjoy, and rule, nor the people solely to earn, pay, and submit.

Mr. Chairman, I have endeavored, with as much perspicuity and candor as I am master of, shortly to state my objections to this clause. I would wish the committee to believe that they are not raised for the sake of opposition, but that I am very sincere in my sentiments in this important investigation. The Senate, as they are now constituted, have little or no check on them. Indeed, sir, too much is put into their hands. When we come to that part of the system which points out their powers, it will be the proper time to consider this subject more particularly.

I think, sir, we must relinquish the idea of safety under this government, if the time for services is not further limited, and the power of recall given to the state legislatures. I am strengthened in my opinion by an observation made yesterday, by an honorable member from New York, to this effect — "that there should be no fear of corruption of the members in the House of Representatives; especially as they are, in two years, to return to the body of the people." I therefore move that the committee adopt the following resolution, *as* an amendment to this clause: —

*"Resolved*, That no person shall be eligible as a senator for more than six years in any term of twelve years, and that it shall be in the power of the legislatures of the several states to recall

their senators, or either of them, and to elect others in their stead, to serve for the remainder of the time for which such senator or senators, so recalled, were appointed."

**Hon. Mr. LANSING.**

I beg the indulgence of the committee, while I offer some reasons in support of the motion just made; in doing which, I shall confine myself to the point, and shall hear with attention, and examine with candor, the objections which may be opposed to it.

The representation of the United States, by the proposed system, is vested in two bodies. On the subject of one of these, we have debated several days, and now come to the organization and powers of the other. I believe it was undoubtedly the intention of the framers of this Constitution to make the lower house the proper, peculiar representative of the interests of the people; the Senate, of the sovereignty of the states.

Some very important powers are given to the latter, to be executed without the concurrence of the representative house. Now, if it was the design of the plan to make the Senate a kind of bulwark to the independence of the states, and a check to the encroachments of the general government, certainly the members of this body ought to be peculiarly under the control, and in strict subordination to the state who delegated them. In proportion to their want of dependence, they will lose their respect for the power from whom they receive their existence, and, consequently, will disregard the great object for which they are instituted. The idea of rotation has been taken from the articles of the old Confederation. It has thus far, in my opinion, operated with great advantage. The power of recall, too, has been an excellent check, though it has, in fact, never been exercised. The thing is of so delicate a nature, that few men will step forward to move a recall, unless there is some strong ground for it.

Sir, I am informed by gentlemen who have been conversant in public affairs, and who have had seats in Congress, that there have been, at different times, violent parties in that body — an evil that a change of members has contributed, more than any other thing, to remedy. If, therefore, the power of recall should be never exercised, if it should have no other force than that of a check to the designs of the bad, and to destroy party spirit, certainly no harm, but much good, may result from adopting the amendment. If my information be true, there have been parties in Congress which would have continued to this day, if the members had not been removed. No inconvenience can follow from placing the powers of the Senate on such a foundation as to make them feel their dependence. It is only a check calculated to make them more attentive to the objects for which they were appointed. Sir, I would ask, Is there no danger that the members of the Senate will sacrifice the interest of their state to their own private views? Every man in the United States ought to look with anxious concern to that body. Their number is so exceedingly small, that they may easily feel their interests distinct from those of the community. This smallness of number also renders them subject to a variety of accidents, that may be of the highest disadvantage. If one of the members is sick, or if one or both are prevented occasionally from attending, who are to take care of the interests of their state?

Sir, we have frequently observed that deputies have been appointed for certain purposes, who have not punctually attended to them, when it was necessary. Their private concerns may often

require their presence at home. In what manner is this evil to be corrected? The amendment provides a remedy. It is the only thing which can give the states a control over the Senate. It will be said, there is a power in Congress to compel the attendance of absent members; but will the members from the other states be solicitous to compel such attendance, except to answer some particular view, or promote some interest of their own? It. it be the object of the senators to protect the sovereignty of their several states, and if, at any time, it be the design of the other states to make encroachments on the sovereignty of any one state, will it be for their interest to compel the members from this state to attend, in order to oppose and check them? This would be strange policy indeed.

A number of other reasons might be adduced on this point; but those which have been advanced are sufficient, I imagine, to convince the committee that such a provision is necessary and proper. If it be not adopted, the interests of any one state may be easily sacrificed to the ambition of the others, or to the private advantage of individuals.

### **Mr. R. R. LIVINGSTON.**

The amendment appears to have in view two objects — that a rotation shall be established in the Senate, and that its members shall be subject to recall by the state legislatures. It is not contended that six years are too long a time for the senators to remain in office. Indeed, this cannot be objected to, when the purposes for which this body is instituted are considered. They are to form treaties with foreign nations. This requires a comprehensive knowledge of foreign politics, and an extensive acquaintance with characters, whom, in this capacity, they have to negotiate with, together with such an intimate conception of our best interests, relative to foreign powers, as can only be derived from much experience in this business. What singular policy, to cut off the hand which has just qualified itself for action! But, says the gentleman, as they are the representatives of the states, those states have a control. Will this principle hold good? The members of the lower house are the representatives of the people. Have the people any power to recall them? What would be the tendency of the power contended for? Clearly this: The state legislatures, being frequently subject to factious and irregular passions, may be unjustly disaffected and discontented with their delegates; and a senator may be appointed one day and recalled the next. This would be a source of endless confusion. The Senate are indeed designed to represent the state governments; but they are also the representatives of the United States, and are not to consult the interest of any one state alone, but that of the Union. This could never be done, if there was a power of recall; for sometimes it happens that small sacrifices are absolutely indispensable for the good and safety of the confederacy; but, if a senator should presume to consent to these sacrifices, he would be immediately recalled. This reasoning turns on the idea that a state, not being able to comprehend the interest of the whole, would, in all instances, adhere to her own, even to the hazard of the Union.

I should disapprove of this amendment, because it would open so wide a door for faction and intrigue, and afford such scope for the arts of an evil ambition. A man might go to the Senate with an incorruptible integrity, and the strongest attachment to the interest of his state. But if he deviated, in the least degree, from the line which a prevailing *party* in a popular assembly had marked for him, he would be immediately recalled. Under these circumstances, how easy would it be for an ambitious, factious demagogue to misrepresent him, to distort the features of his

character, and give a false color to his conduct! How easy for such a man to impose upon the public, and influence them to recall and disgrace their faithful delegate! The general government may find it necessary to do many things which some states might never be willing to consent to. Suppose Congress should enter into a war to protect the fisheries, or any of the northern interests; the Southern States, loaded with their share of the burden which it would be necessary to impose, would condemn their representatives in the Senate for acquiescing in such a measure. There are a thousand things which an honest man might be obliged to do, from a conviction that it would be for the general good, which would give great dissatisfaction to his constituents.

Sir, all the arguments drawn from an imaginary prospect of corruption have little weight with me. From what source is this corruption to be derived? One gentleman tells you that this dreadful Senate is to be surrounded by a wall of adamant — of gold, and that this wall is to be a liquid one, and to flow in from all quarters. Such arguments as these seem rather the dreamings of a distempered fancy, than the cool, rational deductions of a deliberate mind. Whence is this corruption to be derived? Are the people to corrupt the senators with their own gold? Is *bribery* to enter the *federal city*, with the amazing influx of adamant the gentleman so pathetically contemplates? Are not Congress to publish, from time to time, an account of their receipts and expenditures? Can there be any appropriation of money by the Senate, without the concurrence of the Assembly? And can we suppose that a majority of both houses can be corrupted? At this rate we must suppose a miracle indeed.

But to return: The people are the best judges who ought to represent them. To dictate and control them, to tell them whom they shall not elect, is to abridge their natural rights. This rotation is an absurd species of ostracism — a mode of proscribing eminent merit, and banishing from stations of trust those who have filled them with the greatest faithfulness. Besides, it takes away the strongest stimulus to public virtue — the hope of honors and rewards. The acquisition of abilities is hardly worth the trouble, unless one is to enjoy the satisfaction of employing them for the good of one's country. We all know that experience is indispensably necessary to good government. Shall we, then, drive experience into obscurity? I repeat that this is an absolute abridgment of the people's rights.

As to the Senate's rendering themselves perpetual, or establishing such a power as to prevent their being removed, it appears to me chimerical. Can they make interest with their legislatures, who are themselves varying every year, sufficient for such a purpose? Can we suppose two senators will be able to corrupt the whole legislature of this state? The idea, I say, is chimerical. The thing is impossible.

### **Hon. Mr. LANSING.**

The objects of this amendment are, first, to place the senators in such a situation of dependence on their several state legislatures, as will induce them to pay a constant regard to the good of their constituents; secondly, to oblige them to return, at certain periods, to their fellow-citizens, that, by mingling with the people, they may recover that knowledge of their interests, and revive that sympathy with their feelings, which power and an exalted station are too apt to efface from the minds of rulers.

It has been urged that the senators should be acquainted with the interests of the states in relation to each other, and to foreign powers, and that they should remain in office, in order to acquire extensive political information. If these were the only objects, the argument would extend to the rendering their dignity perpetual — an idea which probably none of the gentlemen will consent to; but, if one third of the senators go out every two years, cannot those who succeed them acquire information from the remaining members, with respect to the relative interests of the states? It is to be presumed that the Senate will be composed of the best informed men, and that no such men will be incapable of comprehending the interests of the states either singly or collectively. If it be the design of representation that the sense and spirit of the people's interests and feelings should be carried into the government, it is obvious that this design can be accomplished in no way so perfectly as by obliging our rulers, at certain periods, to relinquish their offices and rank. The people cannot be represented by men who are perpetually separated from them.

It is asked, Why not place the senators in the same situation as the representatives? or, Why not give the people a power of recall? Because, sir, this is impracticable, and contrary to the first principles of representative government. There is no regular way of collecting the people's sentiments. But a power in the state legislatures to recall their senators, is simple and easy, and will be attended with the highest advantages.

An honorable gentleman, who has spoken largely on the preceding question, has acknowledged that a variety of views, and great diversity of sentiment, prevailed in the federal Convention; that particularly there was a difference of interest between the navigating and non-navigating states. The same opposition of interests will probably ever remain; and the members of Congress will retain the same disposition to regard as their principal object the genuine good of their respective states. If they do not, if they presume to sacrifice the fundamental advantages of their state, they betray the confidence reposed in them, and violate their duty. I wish gentlemen would uniformly adhere to the distinction between the grand design of the House of Representatives and that of the Senate. Does not one represent the individuals, the people of a state, and the other its collective sovereignty? This distinction is properly noticed, when it is convenient and useful to the gentlemen's argument; but when it stands in their way, it is easily passed by and disregarded.

Sir, it is true there have been no instances of the success of corruption under the old Confederation; and may not this be attributed to the power of recall, which has existed from its first formation? It has operated effectually, though silently. It has never been exercised, because no great occasion has offered. The power has by no means proved a discouragement to individuals, in serving their country. A seat in Congress has always been considered a distinguished honor, and a favorite object of ambition: I believe no public station has been sought with more avidity. If this power has existed for so many years, and through so many scenes of difficulty and danger, without being exerted, may it not be rationally presumed that it never will be put in execution, unless the indispensable interest of a state shall require it? I am perfectly convinced that, in many emergencies, mutual concessions are necessary and proper; and that, in some instances, the smaller interests of the states should be sacrificed to great national objects. But when a delegate makes such sacrifices as tend to political destruction, or to reduce sovereignty to subordination, his state ought to have the power of defeating his design, and reverting to the people. It is observed, that the appropriation of money is not in the power of

the Senate alone; but, sir, the exercise of certain powers, which constitutionally and necessarily involve the disposal of money, belongs to the Senate: they have, therefore, a right of disposing of the property of the United States. If the Senate declare war, the lower house must furnish the supplies.

It is further objected to this amendment, that it will restrain the people from choosing those who are most deserving of their suffrages, and will thus be an abridgment of their rights. I cannot suppose this last inference naturally follows. The rights of the people will be best supported by checking, at a certain point, the current of popular favor, and preventing the establishment of an influence which may leave to elections little more than the form of freedom. The Constitution of this state says, that no man shall hold the office of sheriff or coroner beyond a certain period. Does any one imagine that the rights of the people are infringed by this provision? The gentlemen, in their reasoning on the subject of corruption, seem to set aside experience, and to consider the Americans as exempt from the common vices and frailties of human nature. It is unnecessary to particularize the numerous ways in which public bodies are accessible to corruption. The poison always finds a channel, and never wants an object. Scruples would be impertinent arguments would be in vain, checks would be useless, if we were certain our rulers would be good men; but for the virtuous government is not instituted: its object is to restrain and punish vice; and all free constitutions are formed with two views — to deter the governed from crime, and the governors from tyranny.

### **The CHANCELLOR rose**

only to correct an error which had appeared in the course of the debate. It had been intimated that the Senate had a right to declare war. This was a mistake. The power could not be exercised except by the whole legislature; nor, indeed, had the Senate a right alone to appoint a single federal officer. The President, with the advice and consent of the Senate, made these appointments. He believed that the power of recall would have a tendency to bind the senators too strongly to the interests of their respective states; and for that reason he objected to it. It will destroy, said he, that spirit of independence and free deliberation which ought to influence the senator. Whenever the interests of a state clash with those of the Union, it will oblige him to sacrifice the great objects of his appointment to local attachments. He will be subjected to all the caprices, the parties, the narrow views, and illiberal politics, of the state governments, and become a slave to the ambitions and factions at home.

These observations, continued the chancellor, are obvious inferences from a principle which has been already explained — that the state legislatures will be ever more or less incapable of comprehending the interests of the Union. They cannot perceive the propriety, or feel the necessity, of certain great expedients in politics, which may seem, in their immediate operation, to injure the private interests of the members.

### **Hon. R. MORRIS.**

I am happy, Mr. Chairman, to perceive that it is a principle on all sides conceded, and adopted by this committee, that an energetic federal government is essential to the preservation of our Union; and that a constitution for these states ought to unite firmness and vigor in the national

operations, with the full security of our rights and liberties. It is our business, then, to examine whether the proposed Constitution be agreeable to this description. I am pretty well convinced that, on this examination, the system will be found capable of accomplishing these purposes; but if the event of our deliberations should be different, I hope we shall not adopt any amendments which will defeat their own design. Let us be cautious, that, in our eager pursuit of the great object, we do not run into those errors which disfigure the old Confederation. We may render useless all our provisions for security, by urging and straining them too far: we may apply checks which may have a direct tendency to impede the most salutary operations of the government, and ultimately deprive it of the strength and vigor necessary to preserve our national freedom. I fear the proposed amendment, were it adopted, would have such an effect. My reason has been anticipated by my honorable colleague. It is, that it would create a slavish subjection to the contracted views and prevailing factions of the state governments, or, in its exercise, would deprive the national council of its members in many difficult emergencies, and thus throw the Union into disorder, take away the means of defence, and expose it an easy prey to its enemies.

The gentlemen, in all their zeal for liberty, do not seem to see the danger to be apprehended from foreign power; they consider that all the danger is derived from a fancied tyrannical propensity in their rulers; and against this they are content to provide. I am sorry their views are so confined and partial. An extensive and liberal survey of the subject should teach us that vigor in the government is as necessary to the protection of freedom, as the warmest attachment to liberty in the governors. Sir, if the proposed amendment had been originally incorporated in the Constitution, I should consider it as a capital objection: I believe it would have ultimately defeated the very design of our Union.

### **Mr. G. LIVINGSTON**

asked if any reasonable man could suppose that the United States of America would suffer a sister state to be invaded, and refuse to assist in repelling the enemy? If so, we might conclude that they would be so dishonorable as to recall their senators in such a conjuncture. The gentleman's reasoning would apply, when such a flagrant violation of the principles of the Union became probable, and not till then.

### **Mr. HARRISON.**

I have but a few observations to make, in addition to those which have been already offered. it seems, sir, to be granted by all parties, not only that a vigorous government is necessary, but that the national legislature ought to be divided into two branches, and that these branches should be organized in a different mode, and possess different powers. The object of this difference of formation is a very important one. The design of the House of Representatives is to represent the people of the United States, and to protect their liberties. The design of the Senate is to give stability and energy to the government. A single democratic assembly would be subject to changes and inconstancy incompatible with a regular administration. But the gentlemen carry their amendment further than the power of recall; they say that a rotation in office ought to be established; that the senators may return to the private walks of life, in order to recover their sense of dependence. I cannot agree with them in this. If the senator is conscious that his reëlection depends only on the will of the people, and is not fettered by any law, he will feel an

ambition to deserve well of the public. On the contrary, if he knows that no meritorious exertions of his own can procure a reappointment, he will become more unambitious, and regardless of the public opinion. The love of power, in a republican government, is ever attended by a proportionable sense of dependence. As the Constitution now stands, I see no possible danger of the senators' losing their attachment to the states; but the amendment proposed would tend to weaken this attachment, by taking away the principal incentives to public virtue. We may suppose two of the most enlightened and eminent men in the state, in whom the confidence of the legislature and the love of the people are united, engaged, at the expiration of their office, in the most important negotiations, in which their presence and agency may be indispensable. In this emergency, shall we incapacitate them? Shall we prohibit the legislature from reappointing them? It might endanger our country, and involve us in inextricable difficulties. Under these apprehensions, and with a full conviction of the imprudence of depriving the community of the services of its most valuable citizens, I feel very strongly the impropriety of this amendment, and hope it may not be adopted.

**Mr. Chancellor LIVINGSTON**

rose to suggest an idea which had not been before expressed. It is necessary, said he, that every government should have the power of continuing itself. It ought never to be destroyed, or fundamentally changed, but by the people who gave it birth; and yet the gentleman's amendment would enable the state legislatures to annihilate the government by recalling the senators.

**Hon. Mr. M. SMITH,**

in answer to the chancellor, observed that, if the gentleman's position was true, that every government should have the power of continuing itself, it followed that the Senate should be capable of perpetuating itself, and assuming a complete independent authority. But, according to his argument, the state legislatures had already a power to destroy the government; for, at the expiration of six years, they had only to neglect to reappoint, and the government would fall of course.

**Hon. Mr. LANSING.**

I trust the committee will indulge me with a few additional observations. It has been an argument urged with considerable zeal, that, if the state legislatures possessed the power of recall, its exercise would be governed by faction or caprice, and be subject to the impulses of the moment. Sir, it has been sufficiently proved to the committee, that, although there have been factions in the state governments — though they have been subject, in some instances, to inconstant humors and a disaffected spirit, — they have never yet exercised the power of recall which was vested in them. As far, therefore, as experience is satisfactory, we may safely conclude that none of these factious humors will operate to produce the evils which the gentlemen apprehend. If, however, the legislature should be so deluded as to recall an honest and faithful senator, certainly every opportunity would be allowed him of defending himself, of explaining his motives which influenced him, and of convincing them of the injustice of the imputation. If the state has been imposed upon by ambitious and designing men, the intrigue, on full examination, will be

detected and exposed. If misinformation or false views have produced the measure, the error may easily be corrected.

It has been observed, that the power of recall might be exercised to the destruction of the Union. Gentlemen have expressed their apprehensions that, if one part of the continent was invaded, the states most distant from the danger might refuse their aid, and consequently the whole fall a sacrifice. Is this reasoning upon probability? Is not every state fully convinced that her interest and safety are involved in those of the Union? It is impossible, sir, for such an event to happen, till, in the decline of the human species, the social principles, on which our union is founded, are utterly lost and forgotten. It is by no means necessary that the state which exercises the power contended for, should continue unrepresented. I have no objection that a clause should be added to the amendment, obliging the state, in case of a recall, to choose immediately other senators, to fill the vacancy. Such a provision would probably, in some measure, remove the apprehensions which are entertained.

In the gentlemen's reasoning on the subject, there appears an inconsistency which I cannot but notice. It is observed, that one design of the Senate, as it is now organized, is to form a counterpoise to the local prejudices which are incompatible with a liberal view of national objects, and which commonly accompany the representatives of a state. On the other hand, it is said, the amendment will have a tendency to lessen the attachment of the senators to their constituents, and make them regardless of the public sentiments, by removing the motive to virtue; that is, a continuation of honors and employments. This reasoning seems to be calculated upon the idea of dependence on the state governments, and a close connection between the interest of the several states and that of their representatives. But this dependence, say the gentlemen, is the very source of all those local prejudices which are so unfavorable to good government, and which the design of the Senate was to correct and remove. I am, however, sir, by no means in sentiment with the honorable gentleman, that the rotation proposed would diminish the senator's ambition to merit the good-will of the people. Though, at the expiration of his office, he would be incapacitated for a term of six years, yet to the end of this term he would look forward with as earnest ambition as if he were constantly the object of the public suffrages. Nay, while in office, he would have an additional motive to act well; for, conscious of the people's inconstant disposition, he would be obliged, in order to secure a future election, to fix in their minds the most lasting impression of his services. It is entirely probable that local interests, opinions, and prejudices, will ever prevail in the general government, in a greater or less degree. It was upon this presumption that the small states were induced to join themselves to the Union.

### **Hon. Mr. HAMILTON.**

I am persuaded, Mr. Chairman, that I, in my turn, shall be indulged in addressing the committee. We all, in equal sincerity, profess to be anxious for the establishment of a republican government on a safe and solid basis. It is the object of the wishes of every honest man in the United States; and I presume I shall not be disbelieved, when I declare that it is an object, of all others, the nearest and most dear to my own heart. The means of accomplishing this great purpose become the most important study which can interest mankind. It is our duty to examine all those means with peculiar attention, and to choose the best and most effectual. It is our duty to draw from nature, from reason, from examples, the best principles of policy, and to pursue and to apply

them in the formation of our government. We should contemplate and compare the systems which, in this examination, come under our view; distinguish, with a careful eye, the defects and excellences of each, and, discarding the former, incorporate the latter, as far as circumstances will admit, into our Constitution. If we pursue a different course, and neglect this duty, we shall probably disappoint the expectation of our country and of the world.

In the commencement of a revolution which received its birth from the usurpations of tyranny, nothing was more natural than that the public mind should be influenced by an extreme spirit of jealousy. To resist these encroachments, and to nourish this spirit, was the great object of all our public and private institutions. The zeal for liberty became predominant and excessive. In forming our Confederation, this passion alone seemed to actuate us, and we appear to have had no other view than to secure ourselves from despotism. The object certainly was a valuable one, and deserved our utmost attention; but, sir, there is another object, equally important, and which our enthusiasm rendered us little capable of regarding: I mean a principle of *strength* and *stability* in the organization of our government, and *vigor* in its operations. This purpose could never be accomplished but by the establishment of some select body, formed particularly upon this principle. There are few positions more demonstrable than that there should be, in every republic, some permanent body to correct the prejudices, check the intemperate passions, and regulate the fluctuations, of a popular assembly. It is evident that a body instituted for these purposes must be so formed as to exclude, as much as possible, from its own character, those infirmities, and that mutability, which it is designed to remedy. It is, therefore, necessary that it should be small, that it should hold its authority during a considerable period, and that it should have such an independence in the exercise of its powers, as will divest it, as much as possible, of local prejudices. It should be so formed as to be the centre of political knowledge, to pursue always a steady line of conduct, and to reduce every irregular propensity to system. Without this establishment, we may make experiments without end, but shall never have an efficient government.

It is an unquestionable truth, that the body of the people, in every country, desire sincerely its prosperity; but it is equally unquestionable, that they do not possess the discernment and stability necessary for systematic government. To deny that they are frequently led into the grossest errors by misinformation and passion, would be a flattery which their own good sense must despise. That branch of administration, especially, which involves our political relation with foreign states, a community will ever be incompetent to. These truths are not often held up in public assemblies; but they cannot be unknown to any who hear me.

From these principles it follows that there ought to be two distinct bodies in our government — one which shall be immediately constituted by and peculiarly represent the people, and possess all the popular features; another formed upon the principle and for the purposes before explained. Such considerations as these induced the Convention who formed your state Constitution to institute a Senate upon the present plan. The history of ancient and modern republics had taught them that many of the evils which these republics suffered arose from the want of a certain balance and mutual control indispensable to a wise administration; they were convinced that popular assemblies were frequently misguided by ignorance, by sudden impulses, and the intrigues of ambitious men, and that some firm barrier against these operations was necessary:

they, therefore, instituted your Senate, and the benefits we have experienced have fully justified their conceptions.

Now, sir, what is the tendency of the proposed amendment? To take away the stability of government by depriving the Senate of its permanency; to make this body subject to the same weakness and prejudices which are incident to popular assemblies, and which it was instituted to correct; and, by thus assimilating the complexion of the two branches, destroy the balance between them. The amendment will render the senator a slave to all the capricious humors among the people. It will probably be here suggested, that the legislatures, not the people, are to have the power to recall. Without attempting to prove that the legislatures must be, in a great degree, the image of the multitude, in respect to federal affairs, and that the same prejudices and factions will prevail, I insist that, in whatever body the power of recall is vested, the senator will perpetually feel himself in such a state of vassalage and dependence, that he never can possess that firmness which is necessary to the discharge of his great duty to the Union.

Gentlemen, in their reasoning, have placed the interests of the several states, and those of the United States, in contrast; this is not a fair view of the subject; they must necessarily be involved in each other. What we apprehend is, that some sinister prejudice, or some prevailing passion, may assume the form of a genuine interest. The influence of these is as powerful as the most permanent conviction of the public good; and against this influence we ought to provide. The local interests of a state ought, in every case, to give way to the interests of the Union; for when a sacrifice of one or the other is necessary, the former becomes only an apparent partial interest, and should yield, on the principle that the small good ought never to oppose the great one. When you assemble from your several counties in the legislature, were every member to be guided only by the apparent interest of his county, government would be impracticable. There must be a perpetual accommodation and sacrifice of local advantage to general expediency; but the spirit of a mere popular assembly would rarely be actuated by this important principle. It is therefore absolutely necessary that the Senate should be so formed as to be unbiased by false conceptions of the real interests or undue attachment to the apparent good of their several states.

Gentlemen indulge too many unreasonable apprehensions of danger to the state governments; they seem to suppose that, the moment you put men into a national council, they become corrupt and tyrannical, and lose all affection for their fellow-citizens. But can we imagine that the senators will ever be so insensible of their own advantage as to sacrifice the genuine interest of their constituents? The state governments are essentially necessary to the form and spirit of the general system. As long, therefore, as Congress have a full conviction of this necessity, they must, even upon principles purely national, have as firm an attachment to the one as to the other. This conviction can never leave them, unless they become madmen. While the Constitution continues to be read, and its principles known, the states must, by every rational man, be considered as essential, component parts of the Union; and therefore the idea of sacrificing the former to the latter is wholly inadmissible.

The objectors do not advert to the natural strength and resources of state governments, which will ever give them an important superiority over the general government. If we compare the nature of their different powers, or the means of popular influence which each possesses, we shall find the advantage entirely on the side of the states. This consideration, important as it is,

seems to have been little attended to. The aggregate number of representatives throughout the states may be two thousand. The personal influence will, therefore, be proportionably more extensive than that of one or two hundred men in Congress. The state establishments of civil and military officers of every description, infinitely surpassing in number any possible correspondent establishments in the general government, will create such an extent and complication of attachments, as will ever secure the predilection and support of the people. Whenever, therefore, Congress shall meditate any infringement of the state constitutions, the great body of the people will naturally take part with their domestic representatives. Can the general government withstand such a united opposition? Will the people suffer themselves to be stripped of their privileges? Will they suffer their legislatures to be reduced to a shadow and name? The idea is shocking to common sense.

From the circumstances already explained, and many others which might be mentioned, results a complicated, irresistible check, which must ever support the existence and importance of the state governments. The danger, if any exists, flows from an opposite source. The probable evil is, that the general government will be too dependent on the state legislatures, too much governed by their prejudices, and too obsequious to their humors; that the states, with every power in their hands, will make encroachments on the national authority, till the Union is weakened and dissolved.

Every member must have been struck with an observation of a gentleman from Albany. Do what you will, says he, local prejudices and opinions will go into the government. What! shall we then form a constitution to cherish and strengthen these prejudices? Shall we confirm the distemper, instead of remedying it? It is undeniable that there must be a control somewhere. Either the general interest is to control the particular interests, or the contrary. If the former, then certainly the government ought to be so framed, as to render the power of control efficient to all intents and purposes; if the latter, a striking absurdity follows: the controlling powers must be as numerous as the varying interests, and the operations of government must therefore cease; for the moment you accommodate these different interests, which is the only way to set the government in motion, you establish a general controlling power. Thus, whatever constitutional provisions are made to the contrary, every government will be at last driven to the necessity of subjecting the partial to the universal interest. The gentlemen ought always, in their reasoning, to distinguish between the real, genuine good of a state, and the opinions and prejudices which may prevail respecting it. The latter may be opposed to the general good, and consequently ought to be sacrificed; the former is so involved in it, that it never can be sacrificed. Sir, the main design of the Convention, in forming the Senate, was to prevent fluctuations and cabals. With this view, they made that body small, and to exist for a considerable period. Have they executed this design too far? The senators are to serve six years. This is only two years longer than the senators of this state hold their places. One third of the members are to go out every two years; and in six, the whole body will be changed. Prior to the revolution, the representatives in the several colonies were elected for different periods — for three years, for seven years, &c Were those bodies ever considered as incapable of representing the people, or as too independent of them? There is one circumstance which will have a tendency to increase the dependence of the senators on the states, in proportion to the duration of their appointments. As the state legislatures are in continual fluctuation, the senator will have more attachments to form, and consequently a greater difficulty

of maintaining his place, than one of shorter duration. He will, therefore, be more cautious and industrious to suit his conduct to the wishes of his constituents.

Sir, when you take a view of all the circumstances which have been recited, you will certainly see that the senators will constantly look up to the state governments with an eye of dependence and affection. If they are ambitious to continue in office, they will make every prudent arrangement. for this purpose, and, whatever may be their private sentiments or politics, they will be convinced that the surest means of obtaining a reëlection will be a uniform attachment to the interests of their several states.

The gentlemen, to support their amendment, have observed that the power to recall, under the old government, has never been exercised. There is no reasoning in this. The experience of a few years, under peculiar circumstances, can afford no probable security that it never will be carried into execution with unhappy effects. A seat in Congress has been less an object of ambition; and the arts of intrigue, consequently, have been less practised. Indeed, it has been difficult to find men who were willing to suffer the mortifications to which so feeble a government, and so dependent a station, exposed them.

Sir, if you consider but a moment the purposes for which the *Senate* was instituted, and the nature of the business which they are to transact, you will see the necessity of giving them duration. They, together with the President, are to manage all our concerns with foreign nations; they must understand all their interests, and their political systems. This knowledge is not soon acquired; but a very small part is gained in the closet. Is it desirable, then, that new and unqualified members should be continually thrown into that body? When public bodies are engaged in the exercise of general powers, you cannot judge of the propriety of their conduct, but from the result of their systems. They may be forming plans which required time and diligence to bring to maturity. It is necessary, therefore, that they should have a considerable and fixed duration, that they may make their calculations accordingly. If they are to be perpetually fluctuating, they can never have that responsibility which is so important in republican governments. In bodies subject to frequent changes, great political plans must be conducted by members in succession. A single assembly can have but a partial agency in them, and, consequently, cannot properly be answerable for the final event. Considering the Senate, therefore, with a view to responsibility, duration is a very interesting and essential quality. There is another view in which duration in the Senate appears necessary. A government changeable in its policy must soon lose its sense of national character, and forfeit the respect of foreigners. Senators will not be solicitous for the reputation of public measures, in which they had but a temporary concern, and will feel lightly the burden of public disapprobation, in proportion to the number of those who partake of the censure. Our political rivals will ever consider our mutable counsels as evidence of deficient wisdom, and will be little apprehensive of our arriving at any exalted station in the scale of power.

Such are the internal and external disadvantages which would result from the principle contended for. Were it admitted, I am fully persuaded, sir, that prejudices would govern the public deliberations, and passions rage in the counsels of the Union. If it were necessary, I could illustrate my subject by historical facts. I could travel through an extensive field of detail, and

demonstrate that wherever the fatal principle, of the head suffering the control of the members, has operated, it has proved a fruitful source of commotions and disorder.

This, sir, is the first fair opportunity that has been offered of deliberately correcting the errors in government. Instability has been a prominent and very defective feature in most republican systems. It is the first to be seen, and the last to be lamented, by a philosophical inquirer. It has operated most banefully in our infant republics. It is necessary that we apply an immediate remedy, and eradicate the poisonous principle from our government. If this be not done, sir, we shall feel, and posterity will be convulsed by, a painful malady.

**The Hon. Mr. LANSING said,**

he had very closely attended to the arguments which had been advanced on the subject; but, however strongly and ingenuously they had been urged, he confessed they had not had a tendency to change his sentiments. The principles which the gentleman had laid down, with respect to a division of the legislature, and the necessity of a balance, he admitted. If he had been inclined to dispute the expediency of two distinct branches in the government, he should not now be taking up the time of the committee in a contest respecting the form and powers of these two branches. He granted, therefore, that there ought to be two houses, to afford a mutual check. The gentleman seemed disposed to render the federal government entirely independent, and to prevent the possibility of its ever being influenced by the interests of the several states; and yet he had acknowledged them to be necessary, fundamental parts of the system. Where, then, was the check? The states, having no constitutional control, would soon be found unnecessary and useless, and would be gradually extinguished. When this took place, the people would lose their liberties, and be reduced from the condition of citizens to that of subjects. It had been remarked, that there were more than two thousand state representatives throughout the Union, and that the number of civil and military officers on the state establishments would far exceed those of the United States; and these circumstances, it has been said, would create such an attachment and dependence on the state governments, as would give them a superiority over the general government. But, said he, were the states arrayed in all the powers of sovereignty? Could they maintain armies? Had they the unlimited power of taxation? There was no comparison, he said, between the powers of the two governments. The circumstances the gentleman had enumerated, which seemed to be in favor of the states, only proved that the people would be under some advantages to discern the encroachments of *Congress*, and to take the alarm; but what would this signify? The gentleman did not mean that his principles should encourage rebellion; what other resource had they? None, but to wait patiently till the long terms of their senators were expired, and then elect other men. All the boasted advantages enjoyed by the states were finally reduced to this. The gentleman had spoken of an enmity which would subsist between the general and state governments: what, then, would be the situation of both? His wish, he said, was to prevent any enmity, by giving the states a constitutional and peaceable mode of checking maladministration, by recalling their senators, and not driving them into hostilities, in order to obtain redress.

**The Hon. Mr. SMITH observed,**

that, when he had the honor to address the committee on the preceding question of the *representation*, he stated to them his idea, that it would be impossible, under the new Constitution as it stands, to have such a genuine representation of the people as would itself form a check in the government; that therefore it became our duty to provide checks of another nature. The honorable gentleman from New York had made many pertinent observations on the propriety of giving stability to the Senate. The general principles laid down, he thought, were just. He only disputed the inferences drawn from them, and their application to the proposed amendments. The only question was, whether the checks attempted in the amendment were incompatible with that stability which, he acknowledged, was essential to good government. Mr. Smith said he did not rise to enter at present into the debate at large. Indisposition compelled him to beg leave of the committee to defer what he had to offer to them till the succeeding day.

## WEDNESDAY, *June 25.* —

Section the third was again read, when

Mr. SMITH resumed his argument, as follows: The amendment embraces two objects — first, that the senators shall be eligible for only six years in any term of twelve years; second, that they shall be subject to the recall of the legislatures of their several states. It is proper that we take up these points separately. I concur with the honorable gentleman that there is a necessity for giving this branch a greater stability than the House of Representatives. I think his reasons are conclusive on this point. But, sir, it does not follow, from this position, that the *senators* ought to hold their places during life. Declaring them ineligible during a certain term after six years, is far from rendering them less stable than necessary. We think the amendments will place the Senate in a proper medium between a fluctuating and a perpetual body. As the clause now stands, there is no doubt that senators will hold their office perpetually; and in this situation they must of necessity lose their dependence, and attachments to the people. It is certainly inconsistent with the established principles of republicanism that the Senate should be a fixed and unchangeable body of men. There should be, then, some constitutional provision against this evil. A rotation I consider as the best possible mode of effecting a remedy. The amendment will not only have a tendency to defeat any plots which may be formed against the liberty and authority of the state governments, but will be the best means to extinguish the factions which often prevail, and which are sometimes so fatal to legislative bodies. This appears to me an important consideration. We have generally found that perpetual bodies have either combined in some scheme of usurpation, or have been torn and distracted with cabals. Both have been the source of misfortunes to the state. Most people acquainted with history will acknowledge these facts. Our Congress would have been a fine field for party spirit to act in. That body would undoubtedly have suffered all the evils of faction, had it not been secured by the rotation established by the Articles of Confederation. I think a *rotation* in the government is a very important and truly republican institution. All good republicans, I presume to say, will treat it with respect.

It is a circumstance strongly in favor of rotation, that it will have a tendency to diffuse a more general spirit of emulation, and to bring forward into office the genius and abilities of the continent: the ambition of gaining the qualifications necessary to govern will be in some proportion to the chance of success. If the office is to be perpetually confined to a few, other men, of equal talents and virtue, but not possessed of so extensive an influence, may be

discouraged from aspiring to it. The more perfectly we are versed in the political science, the more firmly will the happy principles of republicanism be supported. The true policy of constitutions will be to increase the information of the country, and disseminate the knowledge of government as universally as possible. If this be done, we shall have, in any dangerous emergency, a numerous body of enlightened citizens, ready for the call of their country. As the Constitution now is, you only give an opportunity to two men to be acquainted with the public affairs. It is a maxim with me that every man employed in a high office by the people, should, from time to time, *return* to them, that he may be in a situation to satisfy them with respect to his conduct and the measures of administration. If I recollect right, it was observed by an honorable member from New York, that this amendment would be an infringement on the natural rights of the people. I humbly conceive, if the gentleman reflects maturely on the nature of his argument, he will acknowledge its weakness. What is government itself but a restraint upon the natural rights of the people? What constitution was ever devised that did not operate as a restraint on their original liberties? What is the whole system of qualifications, which take place in all free governments, but a restraint? Why is a certain age made necessary? why a certain term of citizenship? This Constitution itself, sir, has restraints innumerable. The amendment, it is true, may exclude two of the best men; but it can rarely happen that the state will sustain any material loss by this. I hope and believe that we shall always have more than two men who are capable of discharging the duty of a senator. But, if it should so happen that the state possessed only two capable men, it would be necessary they should return home, from time to time, to inspect and regulate our domestic affairs. I do not conceive the state can suffer any inconvenience. The argument, indeed, might have some weight, were the representation very large; but, as the power is to be exercised upon only two men, the apprehensions of the gentleman are entirely without foundation.

With respect to the second part of the amendment, I would observe, that, as the senators are the representatives of the *state legislatures*, it is reasonable and proper that they should be under their control. When a state sends an agent commissioned to transact any business, or perform any service, it certainly ought to have a power to recall. These are plain principles, and so far as they apply to the case under examination, they ought to be adopted by us. Form this government as you please, you must, at all events, lodge in it very important powers. These powers must be in the hands of a few men, so situated as to procure a small degree of responsibility. These circumstances ought to put us upon our guard, and the inconvenience of this necessary delegation of power should be corrected, by providing some suitable checks.

Against this part of the amendment a great deal of argument has been used, and with considerable plausibility. It is said, if the amendment takes place, the senators will hold their office only during the pleasure of the state legislatures, and consequently will not possess the necessary firmness and stability. I conceive, sir, there is a fallacy in this argument, founded upon the suspicion that the legislature of a state will possess the qualities of a mob, and be incapable of any regular conduct. I know that the impulses of the multitude are inconsistent with systematic government. The people are frequently incompetent to deliberate discussion, and subject to errors and imprudences. Is this the complexion of the state legislatures? I presume it is not. I presume that they are never actuated by blind impulses; that they rarely do things hastily and without consideration. My apprehension is, that the power of recall would not be exercised as often as it ought. It is highly improbable that a man in whom the state has confided, and who has

an established influence, will be recalled, unless his conduct has been notoriously wicked. The arguments of the gentleman, therefore, do not apply in this case. It is further observed, that it would be improper to give the legislatures this power, because the local interests and prejudices ought not to be admitted into the general government; and that, if the senator is rendered too dependent on his constituents, he will sacrifice the interests of the Union to the policy of his state. Sir, the Senate has been generally held up, by all parties, as a safeguard to the rights of the several states. In this view, the closest connection between them has been considered as necessary. But now, it seems, we speak in a different language; we now look upon the least attachment to their states as dangerous; we are now for separating them, and rendering them entirely independent, that we may root out the last vestige of state sovereignty.

An honorable gentleman from New York observed yesterday, that the *states* would always maintain their importance and authority, on account of their superior influence over the people. To prove this influence, he mentioned the aggregate number of the state representatives throughout the continent. But I ask him how long the people will retain their confidence for two thousand representatives who shall meet once in a year to make laws for regulating the height of your fences and the repairing of your roads. Will they not, by and by, be saying, Here, we are paying a great number of men for doing nothing: we had better give up all the civil business of our state, with its powers, to Congress, who are sitting all the year round: we had better get rid of the useless burden. That matters will come to this at last, I have no more doubt than I have of my existence. The state governments, without object or authority, will soon dwindle into insignificance, and be despised by the people themselves. I am, sir, at a loss to know how the *state legislatures* will spend their time. Will they make laws to regulate agriculture? I imagine this will be best regulated by the sagacity and industry of those who practise it. Another reason offered by the gentleman is, that the states will have a greater number of officers than the general government. I doubt this. Let us make a comparison. In the first place, the federal government must have a complete set of judicial officers of different ranks throughout the continent; then, a numerous train of executive officers, in all the branches of the revenue, both internal and external; and all the civil and military departments. Add to this, their *salaries* will probably be larger and better secured than those of any state officers. If these numerous offices are not at once established, they are in the power of Congress, and will all in time be created. Very few offices will be objects of ambition in the states. They will have no establishment at all to correspond with some of those I have mentioned; in other branches, they will have the same as Congress. But I ask, What will be their comparative influence and importance? I will leave it, sir, to any man of candor to determine whether there will not probably be more lucrative and honorable places in the gift of Congress than in the disposal of the states altogether. But the whole reasoning of the gentlemen rests upon the principle that the states will be able to check the general government, by exciting the people to opposition: it only goes to prove that the state officers will have such influence over the people as to impel them to hostility and rebellion. This kind of check, I contend, would be a pernicious one, and certainly ought to be prevented. *Checks* in government ought to act silently, and without public commotion. I think that the harmony of the two powers should by all means be maintained: if it be not, the operation of government will be baneful; one or the other of the parties must finally be destroyed in the conflict. The constitutional line between the authority of each should be so obvious, as to leave no room for jealous apprehensions or violent contests.

It is further said, that the operation of local interests should be counteracted; for which purpose the Senate should be rendered permanent. I conceive that the true interest of every state is the interest of the whole; and that, if we should have a well-regulated government, this idea will prevail. We shall, indeed, have few local interests to pursue, under the new Constitution, because it limits the claims of the states by so close a line, that on their part there can be but little dispute, and little worth disputing about. But, sir, I conceive that partial interests will grow continually weaker, because there are not those fundamental differences between the real interests of the several states, which will long prevent their coming together, and becoming uniform. Another argument advanced by the gentlemen is, that our amendment would be the means of producing factions among the electors; *that aspiring men* would misrepresent the conduct of a faithful senator, and by intrigue procure a *recall upon false grounds*, in order to make room for themselves. But, sir, men who are ambitious for places will rarely be disposed to render those places unstable. A truly ambitious man will never do this, unless he is mad. It is not to be supposed that a state will recall a man once in twenty years, to make way for another. Dangers of this kind are very remote: I think they ought not to be brought seriously into view.

More than one of the gentlemen have ridiculed my apprehensions of corruption. How, say they, are the people to be corrupted? By their own money? Sir, in many countries, the people pay money to corrupt themselves: why should it not happen in this? Certainly, the Congress will be as liable to *corruption* as other bodies of men. Have they not the same frailties, and the same temptations? With respect to the corruption arising from the disposal of offices, the gentlemen have treated the argument as insignificant. But let any one make a calculation, and see whether there will not be good offices enough to dispose of to every man who goes there, who will then freely resign his seat; for can any one suppose that a member of Congress will not go out and relinquish his four dollars a day, for two or three thousand pounds a year? It is here objected that no man can hold an office created during the time he is in Congress. But it will be easy for a man of influence, who has in his eye a favorite office previously created, and already tilled, to say to his friend who holds it, Here, I will procure you another place of more emolument, provided you will relinquish yours in favor of me. The Constitution appears to be a restraint, when, in fact, it is none at all. I presume, sir, there is not a government in the world in which there is a greater scope for influence and corruption in the disposal of offices. Sir, I will not declaim, and say all men are dishonest; but I think, in forming a constitution, if we presume this, we shall be on the safest side. This extreme is certainly less dangerous than the other. It is wise to multiply checks to a greater degree than the present state of things requires. It is said that corruption has never taken place under the old government: I believe gentlemen hazard this assertion without proofs. That it has taken place in some degree is very probable. Many millions of money have been put into the hands of government, which have never yet been accounted for: the accounts are not yet settled, and Heaven only knows when they will be.

I have frequently observed a restraint upon the state governments, which Congress never can be under, construct that body as you please. It is a truth capable of demonstration, that the nearer the representative is to his constituents, the more attached and dependent he will be. In the states, the elections are frequent, and the representatives numerous: they transact business in the midst of their constituents, and every man must be called upon to account for his conduct. In this state, the council of appointment are elected for one year. The proposed Constitution establishes a council of appointment who will be perpetual. Is there any comparison between the two governments in

point of security? It is said that the governor of this state is always eligible; but this is not in point. The governor of this state is limited in his powers; indeed, his authority is small and insignificant, compared to that of the Senate of the United States.

**The Hon. Mr. HAMILTON.**

Mr. Chairman, in debates of this kind, it is extremely easy, on either side, to say a great number of plausible things. It is to be acknowledged that there is even a certain degree of truth in the reasonings on both sides. In this situation, it is the province of judgment and good sense to determine their force and application, and how far the arguments advanced on one side are balanced by those on the other. The ingenious dress in which both may appear renders it a difficult task to make this decision, and the mind is frequently unable to come to a safe and solid conclusion. On the present question, some of the principles on each side are admitted, and the conclusions from them denied, while other principles, with their inferences, are rejected altogether. It is the business of the committee to seek the truth in this labyrinth of argument.

There are two objects in forming systems of government — *safety* for the people, and *energy* in the administration. When these objects are united, the certain tendency of the system will be to the public welfare. If the latter object be neglected, the people's security will be as certainly sacrificed as by disregarding the former. Good constitutions are formed upon a comparison of the liberty of the individual with the strength of government: if the tone of either be too high, the other will be weakened too much. It is the happiest possible mode of conciliating these objects, to institute one branch peculiarly endowed with sensibility, another with knowledge and firmness. Through the opposition and mutual control of these bodies, the government will reach, in its operations, the perfect balance between liberty and power. The arguments of the gentlemen chiefly apply to the former branch — the House of Representatives. If they will calmly consider the different nature of the two branches, they will see that the reasoning which justly applies to the representative house, will go to destroy the essential qualities of the Senate. If the former is calculated perfectly upon the principles of caution, why should you impose the same principles upon the latter, which is designed for a different operation? Gentlemen, while they discover a laudable anxiety for the safety of the people, do not attend to the important distinction I have drawn. We have it constantly held up to us, that, as it is our chief duty to guard against tyranny, it is our policy to form all the branches of government for this purpose.

Sir, it is a truth sufficiently illustrated by experience, that when the *people* act by their representatives, they are commonly *irresistible*. The gentleman admits the position, that stability is essential to the government, and yet enforces principles which, if true, ought to banish stability from the system. The gentleman observes, that there is a fallacy in my reasoning, and informs us that the legislatures of the states, not the people, are to appoint the senators. Does he reflect that they are the immediate agents of the people, that they are so constituted as to feel all their prejudices and passions, and to be governed, in a great degree, by their misapprehensions? Experience must have taught him the truth of this. Look through their history: what factions have arisen from the most trifling causes! What intrigues have been practised for the most illiberal purposes! Is not the state of Rhode Island, at this moment, struggling under difficulties and distresses, for having been led blindly by the spirit of the multitude? What is her legislature but the picture of a *mob*? In this state, we have a senate, possessed of the proper qualities of a

permanent body. Virginia, Maryland, and a few other states, are in the same situation. The rest are either governed by a single democratic assembly, or have a senate constituted entirely upon democratic principles. These have been more or less embroiled in factions, and have generally been the image and echo of the multitude. It is difficult to reason on this point, without touching on certain delicate chords. I could refer you to periods and conjunctures when the people have been governed by improper passions, and led by factious and designing men. I could show that the same passions have infected their representatives. Let us beware that we do not make the state legislatures a vehicle in which the evil humors may be conveyed into the national system. To prevent this, it is necessary that the *Senate* should be so formed, as in some measure to check the *state governments*, and preclude the communication of the false impressions which they receive from the people. It has been often repeated, that the legislatures of the states can have only a partial and confined view of national affairs; that they can form no proper estimate of great objects which are not in the sphere of their interests. The observation of the gentleman, therefore, cannot take off the force of argument.

Sir, the senators will constantly be attended with a reflection, that their future existence is absolutely in the power of the states. Will not this form a powerful check? It is a reflection which applies closely to their feelings and interests; and no candid man, who thinks deliberately, will deny that it would be alone a sufficient check. The legislatures are to provide the mode of electing the President, and must have a great influence over the electors. Indeed, they convey their influence, through a thousand channels, into the general government. Gentlemen have endeavored to show that there will be no clashing of local and general interests: they do not seem to have sufficiently considered the subject. We have, in this state, a duty of sixpence per pound on salt, and it operates lightly and with advantage; but such a duty would be very burdensome to some of the states. If Congress should, at any time, find it convenient to impose a salt tax, would it not be opposed by the Eastern States? Being themselves incapable of feeling the necessity of the measure, they could only feel its apparent injustice. Would it be wise to give the New England States a power to defeat this measure, by recalling their senators who may be engaged for it? I beg the gentlemen once more to attend to the distinction between the real and the apparent interests of the states. I admit that the aggregate of individuals constitute the government; yet every state is not the government; every petty district is not the government. Sir, in our state legislatures, a *compromise* is frequently necessary between the interests of counties: the same must happen, in the general government, between states. In this, the few must yield to the many; or, in other words, the particular must be sacrificed to the general interest. If the members of Congress are too dependent on the state legislatures, they will be eternally forming secret combinations from local views. This is reasoning from the plainest principles. Their interest is interwoven with their dependence, and they will necessarily yield to the impression of their situation. Those who have been in Congress have seen these operations. The first question has been, How will such a measure affect my constituents, and, consequently, how will the part I take affect my reëlection? This consideration may be in some degree proper; but to be dependent from day to day, and to have the idea perpetually present, would be the source of numerous evils. *Six years*, sir, is a period short enough for a proper degree of dependence. Let us consider the peculiar state of this body, and see under what impressions they will act. *One third* of them are to go out at the end of two years, *two thirds* at four years, and the *whole* at six years. When one year is elapsed, there is a number who are to hold their places for one year, others for three, and others for five years. Thus there will not only be a constant and frequent change of members, but there

will be some whose office is near the point of expiration, and who, from this circumstance, will have a lively sense of their dependence. The *biennial* change of members is an excellent invention for increasing the difficulty of combination. Any scheme of usurpation will lose, every two years, a number of its oldest advocates, and their places will be supplied by an equal number of new, unaccommodating, and virtuous men. When two principles are equally important, we ought, if possible, to reconcile them, and sacrifice neither. We think that safety and permanency in this government are completely reconcilable. The state governments will have, from the causes I have described, a sufficient influence over the Senate, without the check for which the gentlemen contend.

It has been remarked, that there is an inconsistency in our admitting that the *equal vote in the Senate* was given to secure the rights of the states, and at the same time holding up the idea that their interests should be sacrificed to those of the Union. But the committee certainly perceive the distinction between the rights of a state and its interests. The rights of a state are defined by the Constitution, and cannot be invaded without a violation of it; but the interests of a state have no connection with the Constitution, and may be, in a thousand instances, constitutionally sacrificed. A uniform tax is perfectly constitutional; and yet it may operate oppressively upon certain members of the Union. The gentlemen are afraid that the state governments will be abolished. But, sir, their existence does not depend upon the laws of the United States. Congress can no more abolish the state governments, than they can dissolve the Union. The whole Constitution is repugnant to it, and yet the gentlemen would introduce an additional useless provision against it. It is proper that the influence of the states should prevail to a certain extent. But shall the individual states be the judges how far? Shall an unlimited power be left them to determine in their own favor? The gentlemen go into the extreme: instead of a wise government, they would form a fantastical Utopia. But, sir, while they give it a plausible, popular shape, they would render it impracticable. Much has been said about factions. As far as my observation has extended, factions in Congress have arisen from attachment to *state prejudices*. We are attempting, by this Constitution, to abolish factions, and to unite all parties for the general welfare. That a man should have the power, in private life, of recalling his agent, is proper; because, in the business in which he is engaged, he has no other object but to gain the approbation of his principal. Is this the case with the senator? Is he simply the agent of the state? No. He is an agent for the Union, and he is bound to perform services necessary to the good of the whole, though his state should condemn them.

Sir, in contending for a rotation, the gentlemen carry their zeal beyond all reasonable bounds. I am convinced that no government, founded on this feeble principle, can operate well: I believe also that we shall be singular in this proposal. We have not felt the embarrassments resulting from rotation that other states have; and we hardly know the strength of their objection to it. There is no probability that we shall ever persuade a majority of the states to agree to this amendment. The gentlemen deceive themselves; the amendment would defeat their own design. When a man knows he must quit his station, let his merit be what it may, he will turn his attention chiefly to his own emolument: nay, he will feel temptations, which few other situations furnish, to perpetuate his power by unconstitutional usurpations. Men will pursue their interests. It is as easy to change human nature as to oppose the strong current of the selfish passions. A wise legislator will gently divert the channel, and direct it, if possible, to the public good.

It has been observed, that it is not possible there should be in a state only two men qualified for senators. But, sir, the question is not, whether there may be no more than two men; but whether, in certain emergencies, you could find two equal to those whom the amendment would discard. Important negotiations, or other business to which they shall be most competent, may employ them at the moment of their removal. These things often happen. The difficulty of obtaining men capable of conducting the affairs of a nation in dangerous times, is much more serious than the gentlemen imagine

As to corruption, sir, admitting, in the *President*, a disposition to corrupt, what are the instruments of bribery? It is said he will have in his *disposal* a great number of *offices*. But how many offices are there, for which a man would relinquish the senatorial dignity? There may be some in the judicial, and some in other principal departments. But there are few whose respectability can, in any measure, balance that of the office of senator. Men who have been in the Senate once, and who have a reasonable hope of a reëlection, will not be easily bought by offices. This reasoning shows that a *rotation* would be productive of many *disadvantages*: under particular circumstances, it might be extremely inconvenient, if not fatal to the prosperity of our country.

The Hon. Mr. SMITH.

Few observations have fallen from the gentleman which appear to be new. He supposes *factions* cannot exist in the Senate without the knowledge of the state legislatures, who may, at the expiration of their office, elect other men. I believe, sir, that factions may prevail to a considerable degree without being known. Violent factions have sometimes taken place in Congress, respecting foreign matters, of which the public are ignorant. Some things have happened which are not proper to be divulged. So it by no means appears probable that the clashing of state interests will be the only cause of parties in the government. It has also been observed that the Senate has the check of the House of Representatives. The gentlemen are not accurate in stating this matter. The Senate is vested with certain great exclusive powers; and in the exercise of these powers, factions may as probably take place as in any transactions whatever. The honorable member further remarks that, from the intimate connection between the state legislatures and the people, the former will be the image of the latter, and subject to the same passions and prejudices. Now, I will ask every candid man if this is a true position. Certainly, it cannot be supposed that a small body of men, selected from the people for the purpose of making laws, will be incapable of a calm and deliberate view of political subjects. Experience has not proved that our legislatures are commonly guilty of errors arising from this source. There always has been, and ever will be, a considerable proportion of moderate and well-informed men among them. Though factions have prevailed, there are no instances of tumultuous proceedings; no instances to prove that they are not capable of wise deliberations. It is perhaps useless for me to continue this discussion, in order to answer arguments which have been answered before. I shall not, therefore, trouble the committee any more at present.

**Mr. Chancellor LIVINGSTON observed,**

that it would not, perhaps, be altogether impertinent to remind the committee, that, since the intelligence of yesterday, it had become evident that the circumstances of the country were

greatly altered, and the ground of the present debate changed. The Confederation, he said, was now *dissolved*. The question before the committee was now a question of policy and expediency. He presumed the Convention would consider the situation of their country. He supposed, however, that some might contemplate disunion without pain. They might natter themselves that some of the Southern States would form a league with us; but he could not look without horror at the dangers to which any such confederacy would expose the state of New York. He said, it might be political cowardice in him, but he had felt since yesterday an alteration of circumstances, which had made a most solemn impression on his mind. The amendment he considered as derogatory to the principles of the Constitution, and contrary to the design of the institution of the Senate. It was as clear as any position proved by experience, that the people, in many instances, could not know their own good; that, as a body, they were not capable of pursuing the true road to happiness; and that they were rarely competent to judge of the politics of a great nation, or the wisdom of public measures. This principle, he said, seemed to be admitted. But the gentlemen had remarked that, though the argument was a good one with respect to the people at large, it did not apply to the state legislatures. The chancellor acknowledged that the application in the last case was not so forcible; yet he contended that the people at large were little less capable of judging of the civil interests of their state, than the state legislatures were of comprehending the great political interests of the Union. He said that no single member of a body could judge properly of the affairs of that body. The sphere in which *the states* moved was of a different nature; the transactions in which they were engaged were of a different complexion the objects which came under their view wore an aspect totally dissimilar. The legislatures of the states, he said, were not elected with a political view, nor for the same purposes as the members of Congress. Their business was to regulate the *civil affairs* of their several states, and therefore they ought not to possess powers, to a proper exercise of which they were not competent. The Senate was to transact all foreign business: of this the states, from the nature of things, must be entirely ignorant. The Constitution of New York (continued the chancellor) had contemplated a deficiency of wisdom in the legislature, even in their domestic regulations: it had provided a council of revision, to correct their errors. Would the gentlemen, then, acknowledge that the legislatures are liable to frequent mistakes in civil affairs, and yet maintain that they are infallible with respect to the general politics of the Union?

One gentleman had enumerated the formidable powers of *the Senate*, and closed the detail by a piteous description of the flowing, adamant wall. He had mentioned the power to try *impeachments*. But the power of impeaching was in the House of Representatives, and that was the important power. It could hardly be supposed that the representatives would exercise this power for the purposes of tyranny; but if they should, it certainly could be of no disadvantage to enable the Senate to check them. In the next place, he said, the power of *appointing officers* was mentioned. This was unfairly stated; the Senate had but a negative upon the President; they had only an advisory power. In making laws they had only a partial agency; they were checked by the representatives and President. To any unprejudiced examiner, he said, it would appear that the Constitution had provided every reasonable check, and that the authority of the Senate was sufficiently circumscribed. But the gentlemen would multiply checks till the new government was as relaxed and nerveless as the old one.

**The Hon. Mr. SMITH**

took notice of the remark of one of the gentlemen, that a majority of the states would not agree to the amendment. He wondered whence the gentleman derived his knowledge. It was true no state had yet proposed it; but it was equally true that we had not yet fully obtained the sentiments of any Convention respecting amendments. The Constitution had been carried in most of the states, in such a manner that no opportunity was afforded of bringing forward and discussing them.

With respect to the change of circumstances which had such a solemn effect upon the honorable gentleman, he confessed it had not altered his feelings or wishes on the subject. He had long been convinced that nine states would receive the Constitution. The gentleman had taken great pains to prove that the state legislatures would be influenced by the same passions and erroneous views which actuated the people at large. For his own part, he did not understand such reasoning; he had always been taught that the state legislatures were select bodies of men, chosen for their superior wisdom, and so organized as to be capable of calm and regular conduct. It had been observed, that the Senate was only *a check*; if this was true, he begged to be informed where the positive power was lodged. The House of Representatives had been held up as a check; the Senate had been held up as a check. At this rate, it was a government of negative powers. It had also been remarked that no man could be qualified for the office of senator till he had had a long experience, because there was a certain kind of knowledge necessary, which could only be acquired in the Senate. But, if the policy of the government was such, said he, as to keep in the senators till they died, or were displaced, we should always have but a few men who were acquainted with the duties of their office. The best way was to limit them to six years; and then let them come home. We should then always have a large number of men capable of serving their country in any dangerous conjuncture.

### **Hon. Mr. LANSING.**

Mr. Chairman, I do not rise to speak to the paragraph under consideration, but to make some remarks on the sentiments of the honorable gentleman from New York, respecting the change in our situation. That our particular circumstances are in fact altered since yesterday, I cannot agree. It is true, we have received information that the *ninth state has ratified the Constitution*; but I contend that no such event ought to influence our deliberations. I presume I shall not be charged with rashness, if I continue to insist that it is still our duty to maintain our rights. We acknowledge that our dissent cannot prevent the operation of the government: since nine states have acceded to it, let them make the experiment. It has been said that some might contemplate disunion without terror. I have heard no sentiment from any gentleman that can warrant such an insinuation. We ought not, however, to suffer our fears to force us to adopt a system which is dangerous to liberty. The idea of the importance of this state has not been entertained by any in sentiment with me. The suggestion first came from the other side of the house. It was nothing more than a false construction of our argument, that if, unfortunately, a disunion should take place, we were not in so bad a situation that we could not provide for our safety independently of the other states. Sir, I know not any gentleman who wishes for a dissolution of the Union. I make this remark because an idea has been circulated, that there are certain persons in this body who are disposed to dissolve the Union, which I am persuaded is utterly false.

Several paragraphs of section 3d being passed over without debate, the 4th section of article I was read; when

## **Mr. JONES**

rose, and observed, that it was a fact universally known, that the present Confederation had not proved adequate to the purposes of good government. Whether this arose from the want of powers in the federal head, or from other causes, he would not pretend to determine. Some parts of the proposed plan appeared to him imperfect, or at least not satisfactory. He did not think it right that Congress should have the power of prescribing or altering the time, place, and manner of holding elections. He apprehended that the clause might be so construed as to deprive the states of an essential right, which, in the true design of the Constitution, was to be reserved to them. He therefore wished the clause might be explained, and proposed, for the purpose, the following amendment: —

"*Resolved*, as the opinion of this committee, that nothing in the Constitution, now under consideration, shall be construed to authorize the Congress to make or alter *any regulations*, in any state, respecting the times, places, or manner of holding elections for senators or representatives, unless the legislature of such state shall neglect or refuse to make laws or regulations for the purpose, or, from any circumstance, be incapable of making the same, and then only until the legislature of such state shall make provision in the premises."

## **The Hon. Mr. JAY**

said that, as far as he understood the ideas of the gentleman, he seemed to have doubts with respect to this paragraph, and feared it might be misconstrued and abused. He said that every government was imperfect, unless it had a power of preserving itself. Suppose that, by design or accident, the states should *neglect to appoint representatives*; certainly there should be some constitutional remedy for this evil. The obvious meaning of the paragraph was, that, if this neglect should take place, Congress should have power, by law, to support the government, and prevent the dissolution of the Union. He believed this was the design of the federal Convention.

## **The Hon. R. MORRIS**

suggested, that, so far as the people, distinct from their legislatures, were concerned in the operation of the Constitution, it was absolutely necessary that the existence of the general government should not depend, for a moment, on the will of the state legislatures. The power of perpetuating the government ought to belong to their federal representatives; otherwise, the right of the people would be essentially abridged.

## **His excellency, Governor CLINTON,**

rose, just to notice the attempts that had been made to influence the committee by fear, and to introduce gloomy reflections upon the situation of the state. This had been done in heightened colors, and, he thought, in an indelicate manner. He said, he had observed also, in the course of the debates, that a distinction had been kept up between the state legislatures and the representatives of the people, and also between the legislatures and the senators. He did not think these distinctions warrantable. They were distinctions which would never appear in operation, while the government was well administered. It was true, he said, the representatives of the

people, and the senators, might deviate from their duty, and express a will distinct from that of the people, or that of the legislatures; but any body might see that this must arise from corruption. Congress, in all its branches, was to speak the will of the people, and that will was law, and must be uniform. The distinction, therefore, of the honorable gentleman could have no proper weight in the discussion of this question.

**Mr. JAY**

did not think the gentleman had taken up the matter right. The *will of the people* certainly ought to be the law, but the only question was, How was this will to be expressed: — whether the will of the people, with respect to the time, place, and manner of holding elections, ought to be expressed by the general government, or by the state legislatures.

**Mr. M. SMITH**

proposed the following addition to Mr. Jones's motion: —

"And that each state shall be divided into as many districts as the representatives it is entitled to, and that each representative shall be chosen by a majority of votes."

But on suggestion that this motion was ill timed, it was withdrawn for the present.

**THURSDAY, *June 26.* —**

**Mr. SMITH**

again moved the additional amendment proposed the preceding day; when the

**Hon. Mr. DUANE**

called on him to explain the motives which induced his proposal.

**Mr. SMITH**

expressed his surprise that the gentleman should want such an explanation. He conceived that the amendment was founded on the fundamental principles of representative government. As the Constitution stood, the whole state might be a single district for election. This would be improper. The state should be divided into as many districts as it sends representatives. The whole number of representatives might otherwise be taken from a small part of the state, and the bulk of the people, therefore, might not be fully represented. He would say no more at present on the propriety of the amendment. The principle appeared to him so evident, that he hardly knew how to reason upon it, until he heard the arguments of the gentlemen in opposition.

**Mr. DUANE.**

I will not examine the merits of the measure the gentleman recommends. If the proposed mode of election be the best, the legislature of this state will undoubtedly adopt it. But I wish the gentleman to prove that his plan will be practicable, and will succeed. By the Constitution of this state, the representatives are apportioned among the counties, and it is wisely left to the people to choose whom they will, in their several counties, without any further division into districts. Sir, how do we know the proposal will be agreeable to the other states? Is every state to be compelled to adopt our ideas on all subjects? If the gentleman will reflect, I believe he will be doubtful of the propriety of these things. Will it not seem extraordinary that any one state should presume to dictate to the Union? As the Constitution stands, it will be in the power of each state to regulate this important point. While the legislatures do their duty, the exercise of their discretion is sufficiently secured. Sir, this measure would carry with it a presumption which I should be sorry to see in the acts of this state. It is laying down, as a principle, that whatever may suit our interest or fancy should be imposed upon our sister states. This does not seem to correspond with that moderation which I hope to see in all the proceedings of this Convention.

**Mr. SMITH.**

The gentleman misunderstands me. I did not mean the amendment to operate on the other states: they may use their discretion. The amendment is in the negative. The very design of it is to enable the states to act their discretion, without the control of Congress. So the gentleman's reasoning is directly against himself.

If the argument had any force, it would go against proposing any amendment at all; because, says the gentleman, it would be dictating to the Union. What is the object of our consultations? For my part, I do not know, unless we are to express our sentiments of the Constitution before we adopt it. It is only exercising the privilege of freemen; and shall we be debarred from this? It is said, it is left to the discretion of the states. If this were true, it would be all we contend for. But, sir, Congress can alter as they please any mode adopted by the states. What discretion is there here? The gentleman instances the Constitution of New York, as opposed to my argument. I believe that there are now gentlemen in this house, who were members of the Convention of this state, and who were inclined for an amendment like this. It is to be regretted that it was not adopted. The fact is, as your Constitution stands, a man may have a seat in your legislature, who is not elected by a majority of his constituents. For my part, I know of no principle that ought to be more fully established than the right of election by a majority.

**Mr. DUANE.**

I neglected to make one observation which I think weighty. The mode of *election* recommended by the gentleman must be attended with great embarrassments. His idea is, that a *majority* of all the votes should be necessary to return a member.

I will suppose a state divided into *districts*. How seldom will it happen that a majority of a district will unite their votes in favor of one man! In a neighboring state, where they have this mode of election, I have been told that it rarely happens that more than one half unite in a choice. The consequence is, they are obliged to make provision, by a previous election, for *nomination*, and another election for appointment; thus suffering the inconvenience of a double election. If

the proposition was adopted, I believe we should be seldom represented — the election must be lost. The gentleman will, therefore, I presume, either abandon his project, or propose some remedy for the evil I have described.

**Mr SMITH.**

I think the example the gentleman adduces is in my favor. The states of Massachusetts and Connecticut have regulated elections in the mode I propose; but it has never been considered inconvenient, nor have the people ever been unrepresented. I mention this to show that the thing has not proved impracticable in those states. If not, why should it in New York?

**Mr. LANSING**

After some further conversation, proposed the following modification of Mr. Smith's motion —

"And that nothing in this Constitution shall be construed to prevent the legislature of any state to pass laws, from time to time, to divide such state into as many convenient districts as the state shall be entitled to elect representatives for Congress, nor to prevent such legislature from making provision, that the electors in each district shall choose a citizen of the United States, who shall have been an inhabitant of the district, for the term of one year immediately preceding the time of his election, for one of the representatives of such state."

Which being added to the motion of Mr. Jones, the committee passed the succeeding paragraphs without debate, till they came to the 2d clause of section 6. Mr. LANSING then proposed the following amendment: —

"No senator or representative shall, during the time for which he was elected, be appointed to any office under the authority of the United States, and no person holding any office under the United States shall be a member of either house during his continuance in office."

On which no debate took place. The 7th section was also passed over, and the first paragraph of section 8 was read; when

**The Hon. Mr. WILLIAMS**

spoke as follows: In the preamble, the intent of the Constitution, among other things, is declared to be, "to provide for the common defence, and promote the general welfare;" and in the clause under consideration, the power is in express words given to Congress "to provide for the common defence and general welfare." And in the last paragraph of the same section, there is an express authority to make all laws which shall be necessary and proper for the carrying into execution this power. It is therefore evident that the legislature, under this Constitution, may pass any law which they may think proper. It is true, the 9th section restrains their power with respect to certain objects. But these restrictions are very limited, some of them improper, some unimportant, and others not easily understood. Sir, Congress have authority to lay and collect

taxes, duties, imposts, and excises, and to pass all laws which shall be necessary and proper for carrying this power into execution; and what limitation, if any, is set to the exercise of this power by the Constitution?

Sir, to detail the particulars comprehended in the general terms, *taxes, duties, imposts, and excises*, would take up more time than would be proper at present; indeed, it would be a task far beyond my ability, and to which no one can be competent, unless possessed of a mind capable of comprehending every possible source of revenue; for they extend to every possible means of raising money, whether by direct or indirect taxation. Under this clause may be imposed a poll-tax, a tax on houses and buildings, on windows and fireplaces, on cattle, and on all kinds of personal property. It extends to duties on all kinds of goods, to tonnage and poundage of vessels, to duties on written instruments, newspapers, almanacs, &c. It comprehends an excise on all kinds of liquors, spirits, wine, cider, beer, &c.; indeed, on every necessary or convenience of life, whether of foreign or home growth or manufacture. In short, we can have no conception of any way in which a government can raise money from the people, but what is included in one or the other of these general terms. Every source of revenue is therefore committed to the hands of the general legislature. Not only these terms are very comprehensive, and extend to a vast number of objects, but the power to lay and collect has great latitude: it will lead to the passing of a vast number of laws, which may affect the personal rights of the citizens of the states, and put their lives in jeopardy. It will open a door to the appointment of a swarm of revenue and excise officers, to prey upon the honest and industrious part of the community.

Let us inquire also what is implied in the authority to pass all laws which shall be necessary and proper to carry this power into execution. It is perhaps utterly impossible fully to define this power. The authority granted in the first clause can only be understood, in its full extent, by descending to all the particular cases in which a revenue can be raised. The number and variety of these cases are so endless, that no man hath yet been able to reckon them up. The greatest geniuses of the world have been for ages employed in the research, and when mankind had supposed the subject was exhausted, they have been astonished with the refined improvements that have been made in modern times, and especially in the English nation, on the subject. If, then, the objects of this power cannot be comprehended, how is it possible to understand the extent of that power which can pass all laws that may be necessary and proper for carrying it into execution? A case cannot be conceived which is not included in this power. It is well known that the subject of revenue is the most difficult and extensive in the science of government: it requires the greatest talents of a statesman, and the most numerous and exact provisions of a legislature. The command of the revenues of a state gives the command of every thing in it. He that hath the purse will have the sword; and they that have both have every thing; so that Congress will have every source from which money can be drawn.

I should enlarge on this subject, but as the usual time draws near for an adjournment, I conclude with this remark, — that I conceive the paragraph gives too great a power to Congress; and in order that the state governments should have some resource of revenue, and the means of support, I beg leave to offer the following resolution: —

*"Resolved*, That no excise shall be imposed on any article of the growth or manufacture of the United States, or any part of them; and that Congress do not lay direct taxes, but when moneys

arising from the impost and excise are insufficient for the public exigencies; nor then, until Congress shall first have made a requisition upon the states, to assess, levy, and pay their respective proportion of such requisition, agreeably to the census fixed in the said Constitution, in such way and manner as the legislatures of the respective states shall judge best; and in such case, if any state shall neglect or refuse to pay its proportion, pursuant to such requisition, then Congress may assess and levy such state's proportion, together with interest thereon, at the rate of six per cent. per annum, from the time of payment prescribed in such requisition."

## **FRIDAY, *June 27,***

Section 8 was again read, and

The Hon. Mr. SMITH rose.

We are now come to a part of the system which requires our utmost attention and most careful investigation. It is necessary that the powers vested in government should be precisely denned, that the people may be able to know whether it moves in the circle of the Constitution. It is the more necessary in governments like the one under examination, because Congress here is to be considered as only a part of a complex system. The *state governments* are necessary for certain local purposes; the *general government* for national purposes. The latter ought to rest on the former, not only in its form, but in its operations. It is therefore of the highest importance that the line of jurisdiction should be accurately drawn; it is necessary, sir, in order to maintain harmony between the governments, and to prevent the constant interference which must either be the cause of perpetual differences, or oblige one to yield, perhaps unjustly, to the other. I conceive the system cannot operate well, unless it is so contrived as to preserve harmony. If this be not done, in every contest, the weak must submit to the strong. The clause before us is of the greatest importance: it respects the very vital principle of government. The power is the most efficient and comprehensive that can be delegated, and seems in some measure to answer for all others. I believe it will appear evident that money must be raised for the support of both governments. If, therefore, you give to one or the other a power which may, in its operation, become exclusive, it is obvious that one can exist only at the will of the other, and must ultimately be sacrificed. The power of the general government extends to the raising of money, in all possible ways, except by duties on exports; to the laying taxes on imports, lands, buildings, and even on persons. The individual states, in time, will be allowed to raise no money at all: the United States will have a right to raise money from every quarter. The general government has, moreover, this advantage — all disputes relative to jurisdiction must be decided in a federal court.

It is a general maxim, that all governments find a use for as much money as they can raise. Indeed, they have commonly demands for more. Hence it is that all, as far as we are acquainted, are in debt. I take this to be a settled truth, that they will all spend as much as their revenue; that is, will live at least up to their income. Congress will ever exercise their powers to levy as much money as the people can pay. They will not be restrained from direct taxes by the consideration that necessity does not require them. If they forbear, it will be because the people cannot answer their demands. There will be no possibility of preventing the clashing of jurisdictions, unless some system of accommodation is formed. Suppose taxes are laid by both governments on the same article. It seems to me impossible that they can operate with harmony. I have no more

conception, that, in taxation, two powers can act together, than that two bodies can occupy the same place. They will therefore not only interfere, but they will be hostile to each other. Here are to be two lists of all kinds of officers — supervisors, assessors, constables, &c., employed in this business. It is unnecessary that I should enter into a minute detail, to prove that these complex powers cannot operate peaceably together, and without one being overpowered by the other. On one day, the continental collector calls for the tax; he seizes a horse: the next, the state collector comes, procures a replevin, and retakes the horse, to satisfy the state tax. I just mention this to show that the people will not submit to such a government, and that finally it must defeat itself.

It must appear evident that there will be a constant jarring of claims and interests. Now, will the states, in this contest, stand any chance of success? If they will, there is less necessity for our amendment. But consider the superior advantages of the general government. Consider their extensive, exclusive revenues, the vast sums of money they can command, and the means they thereby possess of supporting a powerful standing force. The states, on the contrary, will not have the command of a shilling or a soldier. The two governments will be like two men contending for a certain property. The one has no interest but that which is the subject of the controversy, while the other has money enough to carry on the lawsuit for twenty years. By this clause unlimited powers in taxation are given. Another clause declares that Congress shall have power to make all laws necessary to carry the Constitution into effect. Nothing, therefore, is left to *construction*; but the powers are most express. How far the state legislatures will be able to command a revenue, every man, on viewing the subject, can determine. If he contemplates the ordinary operation of causes, he will be convinced that the powers of the confederacy will swallow up those of the members. I do not suppose that this effect will be brought about suddenly. As long as the people feel universally and strongly attached to the state governments, Congress will not be able to accomplish it. If they act prudently, their powers will operate and be increased by degrees. The tendency of taxation, though it be moderate, is to lessen the attachment of the citizens. If it becomes oppressive, it will certainly destroy their confidence. While the general taxes are sufficiently heavy, every attempt of the states to enhance them will be considered as a tyrannical act, and the people will lose their respect and affection for a government which cannot support itself without the most grievous impositions upon them. If the Constitution is accepted as it stands, I am convinced that in seven years as much will be said against the state governments as is now said in favor of the proposed system.

Sir, I contemplate the abolition of the *state constitutions* as an event fatal to the liberties of America. These liberties will not be violently wrested from the people; they will be undermined and gradually consumed. On subjects of the kind we cannot be too critical. The investigation is difficult, because we have no examples to serve as guides. The world has never seen such a government over such a country. If we consult authorities in this matter, they will declare the impracticability of governing a free people on such an extensive plan. In a country where a portion of the people live more than twelve hundred miles from the centre, I think that one body cannot possibly legislate for the whole. Can the legislature frame a system of taxation that will operate with uniform advantages? Can they carry any system into execution? Will it not give occasion for an innumerable swarm of officers, to infest our country and consume our substance? People will be subject to impositions which they cannot support, and of which their complaints can never reach the government.

Another idea is in my mind, which I think conclusive against a simple government for the United States. It is not possible to collect a set of representatives who are acquainted with all parts of the continent. Can you find men in Georgia who are acquainted with the situation of New Hampshire, who know what taxes will best suit the inhabitants, and how much they are able to bear? Can the test men make laws for the people of whom they are entirely ignorant? Sir, we have no reason to hold our state governments in contempt, or to suppose them incapable of acting wisely. I believe they have operated more beneficially than most people expected, who considered that those governments were erected in a time of war and confusion, when they were very liable to errors in their structure. It will be a matter of astonishment to all unprejudiced men hereafter, who shall reflect upon our situation, to observe to what a great degree good government has prevailed. It is true some bad laws have been passed in most of the states; but they arose from the difficulty of the times rather than from any want of honesty or wisdom. Perhaps there never was a government which, in the course of ten years, did not do something to be repented of. As for Rhode Island, I do not mean to justify her; she deserves to be condemned. If there were in the world but one example of political depravity, it would be hers; and no nation ever merited, or suffered, a more genuine infamy than a wicked administration has attached to her character. Massachusetts also has been guilty of errors, and has lately been distracted by an internal convulsion. Great Britain, notwithstanding her boasted constitution, has been a perpetual scene of revolutions and civil war. Her Parliaments have been abolished; her kings have been banished and murdered. I assert that the majority of the governments in the Union have operated better than any body had reason to expect, and that nothing but experience and habit is wanting to give the state laws all the stability and wisdom necessary to make them respectable. If these things be true, I think we ought not to exchange our condition, with a hazard of losing our state constitutions. We all agree that a general government is necessary; but it ought not to go so far as to destroy the authority of the members. We shall be unwise to make a new experiment, in so important a matter, without some known and sure grounds to go upon. The state constitutions should be the guardians of our domestic rights and interests, and should be both the support and the check of the federal government.

The want of the means of raising a general revenue has been the principal cause of our difficulties. I believe no man will doubt that, if our present Congress had money enough, there would be but few complaints of their weakness. Requisitions have perhaps been too much condemned. What has been their actual operation? Let us attend to experience, and see if they are such poor, unproductive things as is commonly supposed. If I calculate right, the requisitions for the ten years past have amounted to thirty-six millions of dollars; of which twenty-four millions, or two thirds, have been actually paid. Does not this fact warrant a conclusion that some reliance is to be placed on this mode? Besides, will any gentleman say that the states have generally been able to collect more than two thirds of their taxes from the people? The delinquency of some states has arisen from the fluctuations of paper money, &c. Indeed, it is my decided opinion, that no government, in the difficult circumstances which we have passed through, will be able to realize more than two thirds of the taxes it imposes. I might suggest two other considerations which have weight with me. there has probably been more money called for than was actually wanted, on the expectation of delinquencies; and it is equally probable that, in a short course of time, the increasing ability of the country will render requisitions a much more efficient mode of raising a revenue. The war left the people under very great burdens, and oppressed with both

public and private debts. They are now fast emerging from their difficulties. Many individuals, without doubt, still feel great inconveniences; but they will find a gradual remedy.

Sir, has any country which has suffered distresses like ours exhibited, within a few years, more striking marks of improvement and prosperity? How its population has grown! How its agriculture, commerce, and manufactures have been extended and improved! How many forests have been cut down! How many wastes have been cleared and cultivated! How many additions have been made to the extent and beauty of our towns and cities! I think our advancement has been rapid. In a few years, it is to be hoped that we shall be relieved from our embarrassments, and, unless new calamities come upon us, shall be flourishing and happy. Some difficulties will ever occur in the collection of taxes by any mode whatever. Some states will pay more, some less. If New York lays a tax, will not one county or district furnish more, another less, than its proportion? The same will happen to the United States as happens in New York, and in every other country. Let them impose a duty equal and uniform, those districts where there is plenty of money will pay punctually. Those in which money is scarce will be in some measure delinquent. The idea that Congress ought to have *unlimited powers* is entirely novel. I never heard it till the meeting of this Convention. The general government once called on the states to invest them with the command of funds adequate to the exigencies of the Union; but they did not ask to command all the resources of the states. They did not wish to have a control over all the property of the people. If we now give them this control, we may as well give up the state governments with it. I have no notion of setting the two powers at variance; nor would I give a farthing for a government which could not command a farthing. On the whole, it appears to me probable, that, unless some certain specific source of *revenue* is reserved to the states, their governments, with their independency, will be totally annihilated.

### **Mr. WILLIAMS.**

Yesterday I had the honor of laying before the committee objections to the clause under consideration, which I flatter myself were forcible. They were, *however, treated by the gentlemen on the other side as general observations*, and unimportant in their nature. It is not necessary, nor indeed would it consist with delicacy, to give my opinion as to what cause their silence is imputable. Let them now step forward, and refute the objections which have been stated by an honorable gentleman from Duchess, who spoke last, and those which I expect will be alleged by gentlemen more capable than myself — by gentlemen who are able to advance arguments which require the exertion of their own great abilities to overcome. In the mean time, I request the indulgence of the committee, while I make a few recapitulatory and supplementary remarks.

Sir, I yesterday expressed my fears that this clause would tend to annihilate the state governments. I also observed, that the powers granted by it were indefinite, since the Congress are authorized to provide for the common defence and general welfare, and to pass all laws necessary for the attainment of those important objects. The legislature is the highest power in a government. Whatever they judge necessary for the proper administration of the powers lodged in them, they may execute without any check or impediment. Now, if the Congress should judge it a proper provision, for the common defence and general welfare, that the state governments should be essentially destroyed, what, in the name of common sense, will prevent them? Are

they not constitutionally authorized to pass such laws? Are not the terms, *common defence and general welfare*, indefinite, undefinable terms? What checks have the state governments against such encroachments? Why, they appoint the senators once in six years. So do the electors of Germany appoint their emperor. And what restraint have they against tyranny in their head? Do they rely on any thing but arms, the *ultima ratio*? And to this most undesirable point must the states recur, in order to secure their rights. But have they the means necessary for the purpose? Are they not deprived of the command of the purse and the sword of their citizens? Is not the power, both over taxation and the militia, wrested from their hands by this Constitution, and bestowed upon the general government? Yes, sir, it is. But it may be said (I expect to be answered) that the states have concurrent jurisdiction with Congress, as to taxation I answer, that the Constitution does not say so: it is a mere opinion, a mere construction, a thing of too much uncertainty to risk the rights of the states upon, which I have heard, with peculiar pleasure, an honorable gentleman from New York acknowledge to be of great utility to the people. The Constitution grants the power of taxation to Congress, but is silent with regard to the power in the states. If it is inferred from this that it is not taken away from the states, we may, sir, with equal justice, deduce, from the positive establishment of the trial by jury in criminal cases, that it is annihilated in civil. Ingenious men may assign ingenious reasons for opposite constructions of the same clause. They may heap refinement upon refinement, and subtilty upon subtilty, until they construe away every republican principle, every right sacred and dear to man. I am, sir, for certainty in the establishment of a constitution which is not only to operate upon us, but upon millions yet unborn. I would wish that little or no latitude might be left to the sophistical constructions of men who may be interested in betraying the rights of the people, and elevating themselves upon the ruins of liberty. Sir, it is an object of infinitely too much importance to be committed to the sport of caprice, and the construction of interested men. If we adopt this Constitution, it is impossible, absolutely impossible, to know what we give up, and what we retain. I wish that this may, as far forth as possible, be ascertained; and, for this purpose, it is absolutely necessary that this clause should be amended.

Suppose, however, that the states have concurrent jurisdiction with Congress in *taxation*; it is evident, as the laws of Congress are the supreme laws of the land, that their taxes, whenever they interfere with the taxes laid by the states, must and will claim a priority as to the collection; in fact, that they may, in order to pass the laws necessary for the end, abolish the *state taxes*; and that they may constitutionally monopolize every source of revenue, and thus indirectly overturn the state governments; for how can the latter exist without revenue? How can they exist, I say, when they cannot raise one sixpence for their support, without the sovereign will and pleasure of Congress? Let us suppose, however, that both governments have and exercise the right of taxation; will there not be a struggle between them continually? Will there not be jealousies, contentions, and animosities? Every man that knows human nature will answer in the affirmative. Is this, then, a desirable thing? Will it promote the public good, the great end of all government? Sir, the questions admit of easy answers. This must evidently be the result of two taxing powers — either that the people are doubly taxed, or that the state governments are destroyed. Both will be pernicious. There must necessarily be a double set of revenue officers if the first happens, which will be an enormous expense. I know, sir, that these ideas will be considered struggle by some as bugbears; but, sir, if we reason from the practice of all governments, we must acknowledge at least the probability of the thing. In England, for instance, the people are not only oppressed with a variety of other heavy taxes, but, if my information is

right, absolutely pay taxes for births, marriages, and deaths, for the light of heaven, and even for paying their debts. What reason have we to suppose that our rulers will be more sympathetic, and heap lighter burdens upon their constituents than the rulers of other countries? If crossing the Atlantic can make men virtuous and just, I acknowledge that they will be forever good and excellent rulers; but otherwise, I must consider them as I do the magistrates of all other countries. Sir, a capitation is an oppressive species of tax. This may be laid by the general government. Where an equality in property exists, it is a just and good tax; it is a tax easy to assess, and on this account eligible; but, where a great disparity of fortune exists, as in this state, I insist upon it, that it is a most unjust, unequal, and ruinous tax. It is heaping all the support of the government upon the poor; it is making them beasts of burden to the rich; and it is probable it will be laid, if not stifled in the womb; because I think it almost morally certain that this new government will be administered by the wealthy. Will they not be interested in the establishment of a tax that will cause them to pay no more, for the defraying the public expenditures, than the poorest man in America?

The great Montesquieu says, that a poll tax upon the person is indicative of despotism, and that a tax upon property is congenial with the spirit of a free government. These, sir, are a few of the many reasons that render the clause defective, in my mind. I might here mention the dangers to freedom from an excise; but I forbear. I ought not to engross the attention of the committee, when it can be more usefully improved by gentlemen of more abilities than myself — gentlemen who, I trust, will paint in the clearest colors the impropriety and danger of this, as well as they have done of the other paragraphs. Sir, as I remarked before, if this power is given to the general government, without some such amendment as I proposed, it will annihilate all the powers of the state governments. There cannot be a greater solecism in politics than to talk of power in government without the command of any revenue: it is as absurd as to talk of an animal without blood, or of subsistence without food.

### **Mr. Chancellor LIVINGSTON.**

Mr. Chairman, I shall readily agree with the honorable member from Duchess, that no government can exist without revenues; that we ought to avoid a consolidation of the states; and that the extent of our country will not admit of a representation upon principles in any great degree democratic. These concessions are entirely indifferent to the point of dispute. But, sir, we will examine the amendment particularly, and adduce only such principles as immediately apply to it.

The first proposition in the amendment is, that no *excise* shall be laid on the manufactures of the United States; the second, that a requisition shall precede the imposition of a direct tax. The object of the first is to prevent our infant manufactures from being overburdened. Sir, if the manufactures of this country were always to be in a state of infancy, if the amendment were only a temporary expedient, the provision might consist with good policy; but, at a future day, an enlarged population will render us a manufacturing people. The imposts will then necessarily lessen, and the public wants will call for new sources of revenue. These sources will be multiplied with the increase of our wealth; and necessity, as well as policy, will induce us to improve them. We may naturally suppose that wines, brandy, spirits, malt liquors, &c., will be among the first subjects of excise. These are proper objects of taxation, not only as they will be

very productive, but as charges on them will be favorable to the morals of the citizens. It should be considered that the burdens of government will be supported by the United States. They are to pay the interest of loans; they are to maintain the army and navy, and the most expensive civil establishment. If the individual states had any concern in these capital expenses, it would be proper that they should command the means of defraying them. But if you impose upon the Union all the burdens, and take from them a principal resource, what will they do when the imposts diminish, and the expenses of government increase? Why, they must have recourse to direct taxes; that is, taxes on land, and specific duties. Will this be a mode of raising money the most agreeable and satisfactory to the people? The gentlemen seem to calculate only from present appearances: they would insert in the Constitution a clause which in time may deprive the United States of a fruitful and indispensable branch of revenue. I presume, sir, that, on deliberate reflection, they will see the impropriety of this part of the amendment.

The second part is of the greatest importance; its object is to prevent Congress from laying *direct taxes* in any of the states till they have previously made requisitions. Let us examine whether this measure will be compatible with sound policy: let us reason from experience. We have seen something of requisitions — enough, one would suppose, to make us exceedingly suspicious of them. We all know how they have hitherto operated. There are no arguments so forcible as those drawn from facts within our own knowledge. We may form as many conjectures and hypotheses as we please, but shall ever recur at last to experience as a sure guide. The gentlemen will, without doubt, allow that the United States will be subject to the same kind of expenses, and will have the same demand for money, as other nations. There are no governments that have not been obliged to levy direct taxes, and even procure loans, to answer the public wants; there are no governments which have not, in certain emergencies, been compelled to call for all the capital resources of the country. This may be the situation of the United States: we hope not in our day; but we must not presume it will never happen. Indeed, the motion itself is made upon the contemplation of this event. We conclude, therefore, that the gentleman who brought it forward is convinced that the necessities of government will call for more money than external and indirect taxation can produce. Our business, then, is to consider the mode recommended by the gentleman, and see whether it can possibly furnish supplies adequate to the exigencies of government. He says, Let requisitions precede coercion. Sir, what are these requisitions? What are these pompous petitions for public charity, which have made so much noise, and brought so little cash into the treasury? Have we not sported with the bubble long enough to discover its emptiness? What have requisitions done? Have they paid off our foreign and domestic debts? Have they supported our civil and small military establishments? The gentleman declares that a great sum has been paid; he includes the bounties given to the soldiers. Were not these obtained by coercion on individuals? Let him deduct these bounties, and he will find the amount actually paid to be extremely small. We know that the states which have paid most have not fully complied with the requisitions: some have contributed little, and some nothing. The gentleman also says, that delinquencies have been occasioned by the distresses of the war. Facts prove the contrary. New Hampshire has hardly felt the calamities of the war, and yet that state has paid little or nothing to the treasury. These circumstances show that the motives for compliance, which, during the contest, were as strong as they could be in any possible situation, have never been sufficient to produce any considerable exertions. Necessity of circumstances, which operates with almost a physical energy, alone procured any tolerable supplies. Thus the state of New York, which was continually the seat of war, was more punctual than the other states. The

neighboring states afforded something, apparently in proportion to their sense of danger. When the enemy appeared in any state, we find them making efforts, and wearing at once a very federal complexion. If we look at the accounts of South Carolina, we shall find that they are credited for supplies furnished in their own state, and furnished only while the enemy were in the midst of them.

I imagine, sir, that *indirect taxes* will be generally sufficient in time of peace. But a constitution should be calculated for all circumstances — for the most critical and dangerous conjunctures. Let us suppose a sudden emergency, in which the ordinary resources are entirely inadequate to the public wants, and see what difficulties present themselves on the gentleman's plan. First, a requisition is to go out to all the states. It is by no means probable that half their legislatures will be in session; perhaps none of them. In the next place, they must be convened solely to consider the requisition. When assembled, some may agree to it; some may totally refuse; others may be dilatory, and contrive plausible excuses for delay. This is an exact picture of the proceedings on this subject which have taken place for a number of years. While these complicated and lingering operations are going on, the crisis may be passed, and the Union may be thrown into embarrassments, or involved in ruin. But immediately on refusal, the amendment proposes compulsion. This supposes that a complete establishment of executive officers must be constantly maintained, and that they will have firmness enough to oppose and set aside the law of the state. Can it be imagined, by any rational man, that the legislature of a state, which has solemnly declared that it will not grant a requisition, will suffer a tax for the same to be immediately levied on its citizens? We are then brought to this dilemma — either the collectors could not be so hardy as to disregard the laws of the states, or an internal war will take place. But, on either of these events, what becomes of the requisition and the tax? Sir, is there a people under heaven, who, countenanced and imboldened by the voice of their state legislatures, will ever pay a farthing of such a tax? They will resist it as they would a foreign tribute, or the invasion of an enemy. Under such circumstances, will Congress be able to borrow? We all know what has been the difficulty of procuring *loans*: we are sensible that foreign loans could not have been procured at all, had not the lenders been greatly interested in the success of the revolution. Besides, they undoubtedly expected such a change in our government as would enable the United States to provide efficient funds. Now, we are forming a constitution for ages, which will forever preclude the establishment of any certain funds. What hopes have we of borrowing, unless we have something to pledge for payment? And the avails of direct taxes are the only positive fund which can be pledged. I presume the impost and excise will not be more than sufficient to fund the debts we now owe. If future wars should lead us into extraordinary expenses, it will be necessary not only to lay direct taxes, but to procure new loans, to support those expenses.

Sir, if these reflections should have little weight with other states, they ought certainly to influence us, as we are a navigating state, and, from our local situation, shall be the first to suffer. This state will probably be the theatre of war. Gentlemen should remember that for a time we were compelled to bear almost the whole weight of the last war. If we form this Constitution so as to take away from the Union the means of protecting us, we must, in a future war, either be ruined by the enemy, or ruined by our exertions to protect ourselves. If the gentlemen acknowledge the necessities I have described may exist, they should be willing to give Congress the fullest power to provide for them

But the point on which gentlemen appear to dwell with most attention and concern, is *the jurisdiction* of the united and individual states, in taxation. They say a concurrent jurisdiction cannot exist, and that the two powers will clash, and one or the other must be overpowered. Their arguments are considerably plausible; but if we investigate this matter properly, we shall see that the dangers they apprehend are merely ideal. Their fears originate in a supposed corruption of Congress; for, if the state governments are valuable and necessary to the system, it cannot be imagined that the representatives of the people, while they have a single principle of honesty, will consent to abolish them. If I proceeded here to prove the improbability of corruption, I should only repeat arguments which the committee have already heard most clearly and copiously detailed. The fact is, that, in our present state of society, and under the operation of this Constitution, interest and integrity will be connected by the closest ties. Interest will form a check which nothing can overcome. On interest, sir, we rest our principal hopes of safety. Your state government has the unlimited power over the purse and the sword: why do you not fear that your rulers will raise armies, to oppress and enslave the citizens? Clearly, because you feel a confidence in the men you elect; and that confidence is founded on the conviction you have that tyranny is totally inconsistent with their interest. You will give up to your state legislatures every thing dear and valuable; but you will give no power to Congress, because it may be abused; you will give them no revenue, because the public treasures may be squandered. But do you not see here a capital check? Congress are to publish, from time to time, an account of their receipts and expenditures. These may be compared together; and if the former, year after year, exceed the latter, the corruption will be detected, and the people may use the constitutional mode of redress. The gentleman admits that corruption will not take place immediately: its operations can only be conducted by a long series and a steady system of measures. These measures will be easily defeated, even if the people are unapprized of them. They will be defeated by that continual change of members, which naturally takes place in free governments, arising from the disaffection and inconstancy of the people. A changeable assembly will be entirely incapable of conducting a system of mischief; they will meet with obstacles and embarrassments on every side.

It is observed that, if the general government are disposed, they can levy taxes exclusively. But, sir, they have not an exclusive right, except in a few specific cases. Their right is only concurrent. Let us see if the taxes will be exclusive in their operation. Whatever the gentleman may conjecture, I think it hardly possible that, when a state has laid a large duty upon a particular article, the Congress will be so unwise as to impose another upon the same, unless in extraordinary emergencies. There are certain capital subjects of taxation, which both the general and state governments must improve. But it is remarked that two taxes cannot operate together without confusion. Sir, experience has proved the contrary. We have state taxes, county taxes, and corporation taxes. How do these operate together? It is true that in some places they are collected by the same man; and probably also the federal and state taxes will be. But this is not material. It is the taxes, not the collectors, that are to contend; and if the taxes are incompatible with each other, a single collector, acting in different capacities, must go through the same ceremony of seizure, replevin, &c., which the gentleman has so humorously described. If the state collector gets the horse first, I suppose he will have the first satisfaction; and so the federal collector. Of what importance is it, whether a man pays forty shillings to one, or twenty shillings each, to two officers? I have never learned that there has been any clashing or confusion in the collection of our taxes. It is to be supposed that we have resources sufficient for the support of

both the general and state governments: if this be not true, we may as well discard the system altogether, and either dissolve our Union, or form a simple consolidated government. But we presume, very justly, that the system will find ample resources for its support, as it stands. If this be acknowledged, I see no difficulty in the matter. The people have so much to pay; if they can afford this, if it be ready for the proper officers, what should occasion a quarrel between them? As for the gentleman's principle, that every government can raise more money than it can use, I confess I do not understand it.

It appears to me that the people cannot be very anxious about the particular channel through which their money flows into the federal treasury. They have such and such taxes to pay: can it be a matter of concern to them whether they are levied by a law of their state, or by a law of Congress? If they have any preference, one would suppose it would be for the latter mode; for that will be the least expensive.

In this argument, sir, I have endeavored to confine myself to the true point of dispute, and have taken notice of those observations only which appeared to me to be applicable. I beg the committee to keep in mind, as an important idea, that the accounts of the general government are, "from time to time," to be submitted to the public inspection.

### **Hon. Mr. SMITH**

remarked, that "from time to time" might mean from century to century, or any period of twenty or thirty years.

### **The CHANCELLOR**

asked if the public were more anxious about any thing under heaven than the expenditure of money. Will not the representatives, said he, consider it as essential to their popularity, to gratify their constituents with full and frequent statements of the public accounts? There can be no doubt of it.

### **The Hon. Mr. HAMILTON.**

This is one of those subjects, Mr. Chairman, on which objections very naturally arise, and assume the most plausible shape. Its address is to the passions, and its first impressions create a prejudice, before cool examination has an opportunity for exertion. It is more easy for the human mind to calculate the evils than the advantages of a measure; and vastly more natural to apprehend the danger than to see the necessity of giving powers to our rulers. Hence I may justly expect that those who hear me will place less confidence in those arguments which oppose, than in those which favor, their prepossessions.

After all our doubts, our suspicions, and speculations, on the subject of government, we must return at last to this important truth — that, when we have formed a constitution upon free principles, when we have given a proper balance to the different branches of administration, and fixed representation upon pure and equal principles, we may, with safety, furnish it with all the

powers necessary to answer, in the most ample manner, the purposes of government. The great *desiderata* are, *free representation* and *mutual checks*.

When these are obtained, all our apprehensions of the extent of power are unjust and imaginary. What, then, is the structure of this Constitution? One branch of the legislature is to be elected *by* the people — by the same people who choose your state representatives. Its members are to hold their offices two years, and then *return to their constituents*. Here, sir, the people govern; here they act by their immediate representatives. You have also a Senate, constituted by your state legislatures, by men in whom you place the highest confidence, and forming another representative branch. Then, again, you have an executive magistrate, created by a form of election which merits universal admiration. In the form of this government, and in the mode of legislation, you find all the checks which the greatest politicians and the best writers have ever conceived. What more can reasonable men desire? Is there any one branch in which the whole legislative and executive powers are lodged? No. The legislative authority is lodged in three distinct branches, properly *balanced*; the executive is divided between two branches; and the judicial is still reserved for an independent body, who hold their office during good behavior. This organization is so complex, so skilfully contrived, that it is next to impossible that an impolitic or wicked measure should pass the scrutiny with success. Now, what do gentlemen mean by coming forward and declaiming against this government? Why do they say we ought to limit its power, to disable it, and to destroy its capacity of blessing the people? Has philosophy suggested, has experience taught, that such a government ought not to be trusted with every thing necessary for the good of society? Sir, when you have divided and nicely balanced the departments of government; when you have strongly connected the virtue of your rulers with their interest; when, in short, you have rendered your system as perfect as human forms can be, — you must place confidence; you must give power.

We have heard a great deal of the sword and the purse. It is said our liberties are in danger, if both are possessed by Congress. Let us see what is the true meaning of this maxim, which has been so much used, and so little understood. It is, that you shall not place these powers either in the legislative or executive, singly; neither one nor the other shall have both, because this would destroy that division of powers on which political liberty is founded, and would furnish one body with all the means of tyranny. But where the purse is lodged in one branch, and the sword in another, there can be no danger. All governments have possessed these powers: they would be monsters without them, and incapable of exertion. What is your state government? Does not your legislature command what money it pleases? Does not your executive execute the laws without restraint? These distinctions between the purse and the sword have no application to the system, but only to its separate branches. Sir, when we reason about the great interests of a free people, it is high time that we dismiss our prejudices, and banish declamation. In order to induce us to consider the powers given by this Constitution as dangerous, in order to render plausible an attempt to take away the life and spirit of the most important power in government, the gentleman complains that we shall not have a true and safe *representation*. I asked him what a safe representation was; and he has given no satisfactory answer. The Assembly of New York has been mentioned as a proper standard; but if we apply this standard to the general government, our Congress will become a mere *mob*, exposed to every irregular impulse, and subject to every breeze of faction. Can such a system afford security? Can you have confidence in such a body? The idea of taking the ratio of representation, in a small society, for the ratio of a

great one, is a fallacy which ought to be exposed. It is impossible to ascertain to what point our representation will increase; it may vary from one, to two, three, or four hundred: it depends upon the progress of population. Suppose it to rest at two hundred; is not this number sufficient to secure it against corruption? Human nature must be a much more weak and despicable thing than I apprehend it to be, if two hundred of our fellow-citizens can be corrupted in two years. But suppose they are corrupted; can they, in two years, accomplish their designs? Can they form a combination, and even lay a foundation for a system of tyranny, in so short a period? It is far from my intention to wound the feelings of any gentleman; but I must, in this most interesting discussion, speak of things as they are, and hold up opinions in the light in which they ought to appear; and I maintain that all that has been said of corruption, of the purse and the sword, and of the danger of giving powers, is not supported by principles or fact; that it is mere verbiage and idle declamation. The true principle of government is this — make the system complete in its structure, give a perfect proportion and balance to its parts, and the powers you give it will never affect your security. The question, then, of the *division of powers* between the general and state governments, is a question of convenience: it becomes a prudential inquiry, what powers are proper to be reserved to the latter; and this immediately involves another inquiry into the proper objects of the two governments. This is the criterion by which we shall determine the just distribution of powers.

The great leading objects of the federal government, in which revenue is concerned, are to maintain domestic peace, and provide for the common defence. In these are comprehended the regulation of commerce, — that is, the whole system of foreign intercourse, — the support of armies and navies, and of the civil administration. It is useless to go into detail. Every one knows that the objects of the general government are numerous, extensive, and important. Every one must acknowledge the necessity of giving powers, in all respects, and in every degree, equal to these objects. This principle assented to, let us inquire what are the objects of the state governments. Have they to provide against foreign invasion? Have they to maintain fleets and armies? Have they any concern in the regulation of commerce, the procuring alliances, or forming treaties of peace? No. Their objects are merely civil and domestic — to support the legislative establishment, and to provide for the administration of the laws.

Let any one compare the expense of supporting the civil list in a state with the expense of providing for the defence of the Union. The difference is almost beyond calculation. The experience of Great Britain will throw some light on this subject. In that kingdom, the ordinary expenses of peace to those of war are as one to fourteen. But there they have a monarch, with his splendid court, and an enormous civil establishment, with which we have nothing in this country to compare. If, in Great Britain, the expenses of war and peace are so disproportioned, how wide will be their disparity in the United States! How infinitely wider between the general government and each individual state! Now, sir, where ought the great resources to be lodged? Every rational man will give an immediate answer. To what extent shall these resources be possessed? Reason says, As far as possible exigencies can require; that is, without limitation. A constitution cannot set bounds to a nation's wants; it ought not, therefore, to set bounds to its resources. Unexpected invasions, long and ruinous wars, may demand all the possible abilities of the country. Shall not your government have power to call these abilities into action? The contingencies of society are not reducible to calculations. They cannot be fixed or bounded, even in imagination. Will you limit the means of your defence, when you cannot ascertain the force or extent of the invasion?

Even in ordinary wars, a government is frequently obliged to call for *supplies*, to the temporary oppression of the people.

Sir, if we adopt the idea of *exclusive revenues*, we shall be obliged to fix some distinguished line, which neither government shall overpass. The inconvenience of this measure must appear evident on the slightest examination. The resources appropriated to one may diminish or fail, while those of the other may increase beyond the wants of government. One may be destitute of revenues, while the other shall possess an unnecessary abundance; and the Constitution will be an eternal barrier to a mutual intercourse and relief. In this case, will the individual state stand on so good a ground as if the objects of taxation were left free and open to the embrace of both the governments? Possibly, in the advancement of commerce, the imposts may increase to such a degree as to render direct taxes unnecessary. These resources, then, as the Constitution stands, may be occasionally relinquished to the states; but on the gentleman's idea of prescribing exclusive limits, and precluding all reciprocal communication, this would be entirely improper. The laws of the states must not touch the appropriated resources of the United States, whatever may be their wants. Would it not be of much more advantage to the states to have a concurrent jurisdiction, extending to all the sources of revenue, than to be confined to such a small resource, as, on calculation of the objects of the two governments, should appear to be their due proportion? Certainly you cannot hesitate on this question. The gentleman's plan would have a further ill effect; it would tend to dissolve the connection and correspondence of the two governments, to estrange them from each other, and to destroy that mutual dependence which forms the essence of union.

Sir, a number of arguments have been advanced by an honorable member from New York, which to every unclouded mind must carry conviction. He has stated that, in certain emergencies, it may be necessary to *borrow*; and that it is impossible to borrow, unless you have funds to pledge for the payment of your debts. Limiting the powers of government to certain resources, is rendering the fund precarious; and obliging the government to ask, instead of empowering them to command, is to destroy all confidence and credit. If the power of taxing is restricted, the consequence is, that, on the breaking out of a war, you must divert the funds, appropriated to the payment of debts, to answer immediate exigencies. Thus you violate your engagements, at the very time you increase the burden of them. Besides, sound policy condemns the practice of accumulating debts. A government, to act with energy, should have the possession of all its revenues to answer present purposes. The principle for which I contend is recognized in all its extent by our old constitution. Congress is authorized to raise troops, to call for supplies without limitation, and to borrow money to any amount. It is true they must use the form of recommendations and requisitions; but the states are bound by the solemn ties of honor, of justice, of religion, to comply without reserve.

Mr. Chairman, it has been advanced as a principle, that no government but a despotism can exist in a very extensive country. This is a melancholy consideration indeed. If it were founded on truth, we ought to dismiss the idea of a republican government, even for the state of New York. This idea has been taken from a celebrated writer, who, by being misunderstood, has been the occasion of frequent fallacies in our reasoning on political subjects. But the position has been misapprehended; and its application is entirely false and unwarrantable: it relates only to democracies, where the whole body of the people meet to transact business, and where

representation is unknown. Such were a number of ancient and some modern independent cities. Men who read without attention have taken these maxims respecting the extent of country, and, contrary to their meaning, have applied them to republics in general. This application is wrong in respect to all representative governments. but especially in relation to a confederacy of states, in which the supreme legislature has only general powers, and the civil and domestic concerns of the people are regulated by the laws of the several states. This distinction being kept in view, all the difficulty will vanish, and we may easily conceive that the people of a large country may be represented as truly as those of a small one. An assembly constituted for general purposes may be fully competent to every federal regulation, without being too numerous for deliberate conduct. If the state governments were to be abolished, the question would wear a different face; but this idea is inadmissible. They are absolutely necessary to the system. Their existence must form a leading principle in the most perfect constitution we could form.

I insist that it never can be the interest or desire of the national legislature to destroy the *state governments*. It can derive no advantage from such an event; but, on the contrary, would lose an indispensable support, a necessary aid in executing the laws, and conveying the influence of government to the doors of the people. The Union is dependent on the will of the state governments for its chief magistrate, and for its Senate. The blow aimed at the members must give a fatal wound to the head; and the destruction of the states must be at once a political suicide. Can the national government be guilty of this madness? What inducements, what temptations, can they have? Will they attach new honors to their station? Will they increase the national strength? Will they multiply the national resources? Will they make themselves more respectable in the view of foreign nations, or of their fellow-citizens, by robbing the states of their constitutional privileges? But imagine, for a moment, that a political frenzy should seize the government; suppose they should make the attempt. Certainly, sir, it would be forever impracticable. This has been sufficiently demonstrated by reason and experience. It has been proved that the members of republics have been, and ever will be, stronger than the head. Let us attend to one general historical example: in the ancient *feudal governments* of Europe, there were, in the first place, a monarch; subordinate to him, a body of nobles; and subject to these, the vassals, or the whole body of the people. The authority of the kings was limited, and that of the *barons* considerably independent. A great part of the early wars in Europe were contests between the king and his nobility. In these contests, the latter possessed many advantages derived from their influence, and the immediate command they had over the people; and they generally prevailed. The history of the feudal wars exhibits little more than a series of successful encroachments on the prerogatives of monarchy. Here, sir, is one great proof of the superiority which the members in limited governments possess over their head. As long as the barons enjoyed the confidence and attachment of the people, they had the strength of the country on their side, and were irresistible. I may be told that, in some instances, the barons were overcome; but how did this happen? Sir, they took advantage of the depression of the royal authority, and the establishment of their own power, to oppress and tyrannize over the vassals. As commerce enlarged, and as wealth and civilization increased, *the people* began to feel their own weight and consequence: they grew tired of their oppressions, united their strength with that of the prince, and threw off the yoke of *aristocracy*. These very instances prove what I contend for. They prove that in whatever direction the popular weight leans, the current of power will flow; wherever the popular attachments lie, there will rest the political superiority. Sir, can it be supposed that the state will become the oppressors of the people? Will they forfeit their affections? Will they

combine to destroy the liberties and happiness of their fellow-citizens, for the sole purpose of involving themselves in ruin? God forbid! The idea, sir, is shocking. It outrages every feeling of humanity, and every dictate of common sense.

There are certain social principles in human nature, from which we may draw the most solid conclusion with respect to the conduct of individuals and of communities. We love our families more than our neighbors; we love our neighbors more than our countrymen in general. The human affections, like the solar heat, lose their intensity as they depart from the centre, and become languid in proportion to the expansion of the circle in which they act. On these principles, the attachment of the individual will be first and forever secured by the state governments: they will be a mutual protection and support. Another source of influence, which has already been pointed out, is the various official connections in the states. Gentlemen endeavor to evade the force of this by saying that these officers will be insignificant. This is by no means true. The state officers will ever be important, because they are necessary and useful. Their powers are such as are extremely interesting among the people; such as affect their property, their liberty, and life. What is more important than the administration of justice and the execution of the civil and criminal laws? Can the state governments become insignificant while they have the power of raising money independently, and without control? If they are really useful, if they are calculated to promote the essential interests of the people, they must have their confidence and support. The states can never lose their powers till the whole people of America are robbed of their liberties. These must go together; they must support each other, or meet one common fate. On the gentleman's principle we may safely trust the state governments, though we have no means of resisting them; but we cannot confide in the national government, though we have an effectual constitutional guard against every encroachment. This is the essence of their argument, and it is false and fallacious beyond conception.

With regard to the *jurisdiction* of the two governments, I shall certainly admit that the Constitution ought to be so formed as not to prevent the states from providing for their own existence; and I maintain that it is so formed, and that their power of providing for themselves is sufficiently established. This is conceded by one gentleman, and in the next breath the concession is retracted. He says, Congress have but one exclusive right in taxation — that of duties on imports; certainly, then, their other powers are only concurrent. But, to take off the force of this obvious conclusion, he immediately says that the laws of the United States are supreme; and that where there is one supreme, there cannot be concurrent authority; and further, that where the laws of the Union are supreme, those of the states must be subordinate, because there cannot be two supremes. This is curious sophistry. That two supreme powers cannot act together, is false. They are inconsistent only when they are aimed at each other, or at one indivisible object. The laws of the United States are supreme, as to all their proper, constitutional objects: the laws of the states are supreme in the same way. These supreme laws may act on different objects without clashing, or they may operate on different parts of the same object, with perfect harmony. Suppose both governments should lay a tax of a penny on a certain article: had not each an independent and uncontrollable power to collect its own tax? The meaning of the maxim, there cannot be two supremes, is simply this — two powers cannot be supreme over each other. This meaning is entirely perverted by the gentleman. But it is said, disputes between collectors are to be referred to the federal courts. This is again wandering in the field of conjecture. But suppose the fact certain; is it not to be presumed that they will express the true

meaning of the Constitution and the laws? Will they not be bound to consider the concurrent jurisdiction; to declare that both the taxes shall have equal operation; that both the powers, in that respect, are sovereign and coëxtensive? If they transgress their duty, we are to hope that they will be punished. Sir, we can reason from probabilities alone. When we leave common sense, and give ourselves up to conjecture, there can be no certainty, no security in our reasonings.

I imagine I have stated to the committee abundant reasons to prove the entire *safety of the state governments* and of the people. I would go into a more minute consideration of the nature of the concurrent jurisdiction, and the operation of the laws, in relation to revenue; but at present I feel too much indisposed to proceed. I shall, with the leave of the committee, improve another opportunity of expressing to them more fully my ideas on this point. I wish the committee to remember that the Constitution under examination is framed upon truly republican principles; and that, as it is expressly designed to provide for the common protection and the general welfare of the United States, it must be utterly repugnant to this Constitution to subvert the state governments, or oppress the people.

**SATURDAY, *June 28*, 1788. —**

**The Hon. Mr. HAMILTON.**

Mr. Chairman, in the course of these debates, it has been suggested that the state of New York has sustained peculiar misfortune from the mode of raising revenues by requisitions. I believe we shall now be able to prove that this state, in the course of the late revolution, suffered the extremes of distress on account of this delusive system. To establish these facts, I shall beg leave to introduce a series of official papers, and resolutions of this state, as evidence of the sentiments of the people during the most melancholy periods of the war. I shall request the secretary to read these papers, in the order in which I point them out.

**His excellency, Gov. CLINTON.**

I presume the introduction of this kind of evidence is occasioned by a conversation I had with one of the gentlemen yesterday. It would have been fair to mention to me, at that time, the intention of bringing these matters forward. Some new lights might then have been thrown on the subject, relative to the particular circumstances which produced the resolutions alluded to. An opportunity would also have been given of showing what the sense of Congress and of this state was, after those circumstances were changed. I believe these resolutions were previous to the accession of all the states to the Confederation. I could wish that these matters might be set in a clear point of light.

**The Hon. Mr. DUANE.**

I hope the honorable member will not suppose that I have dealt unfairly. It is true I had some conversation with him yesterday, which led me to a conclusion that it would be fair and proper that these papers should be produced. But independently of that conversation, sir, I should have thought it my duty to bring them forward, because I believe that the melancholy experience of

our country ought to have more influence on our conduct, than all the speculations and elaborate reasonings of the ablest men. I trust that this evidence will come home; that it will be felt. I am convinced that our greatest misfortunes originated in the want of such a government as is now offered to us. I assure the gentleman that the Conversation I had with him yesterday was not the cause of bringing these papers into view. I declare that, if I know my own heart, I have no intention of acting uncandidly.

**Gov. CLINTON.**

I do not mean to create any dispute respecting the subject of these resolutions. I did inform the gentleman that there were several papers which would throw light on this question. All I say is, it would have been fair to produce all of them together, that the committee might not be deceived by a partial statement. I observed that all these resolutions were at a period antecedent to the completion of the Union, when Congress had no power at all. The gentlemen are mistaken if they suppose I wish to prevent the reading of them.

**Mr. DUANE.**

I believe we shall find that there are resolutions subsequent, as well as antecedent, to the completion of the Confederation. This we shall endeavor to show. I am clear, sir, that these exhibits will furnish more effectual arguments than all that can be said. But I shall not enlarge. The papers will speak for themselves.

**Mr. M. SMITH.**

I shall not oppose the reading of any papers the gentlemen may think proper to produce. But we shall reserve to ourselves the privilege of giving what we think to be the true explanation of them.

**Mr. HAMILTON.**

We shall make the same reservation. By the indisputable construction of these resolutions, we shall prove that this state was once on the verge of destruction, for want of an energetic government. To this point we shall confine ourselves.

**Mr. TREDWELL.**

It appears to me useless to read these papers. If I understand the matter, they are produced to prove a point which is not contested. It is on all hands acknowledged that the federal government is not adequate to the purpose of the Union.

The papers were then read by the secretary, in the following order: —

1st. An extract from Governor Clinton's speech to the legislature, September 7, 1780.

2d. Extract from the answer of the Senate, September 9, 1780.

3d. Resolve of the Assembly, October 10, 1780.

4th. Resolve of both houses, October 10, 1780, respecting the Hartford Convention.

5th. A letter from the legislature of New York to Congress, dated Albany, February 5, 1781, describing the distresses of the state.

6th. A message from the governor to the legislature, March 9, 1781, announcing the establishment of the Confederation.

7th. Resolve of the legislature, dated March 29, 1781, relative to the Hartford Convention.

8th. Resolve of the legislature, November 21, 1781, recommending a five per cent. impost.

9th. A resolution of 20th July, 1782, lamenting the want of powers in Congress, and pointing out the defect of the Confederation.

After these papers were read,

### **Gov. CLINTON**

rose, and observed, that there could be no doubt that the representations made in them were true, and that they clearly expressed the sentiments of the people at those periods. Our severe distresses, he said, naturally led us into an opinion that the Confederation was too weak. It appears to me, the design of producing these papers is something more than to show the sentiments of the state during the war; that it is to prove that there now exists an opposition to an energetic government. I declare, solemnly, that I am a friend to a strong and efficient government. But, sir, we may err in this extreme: we may erect a system that will destroy the liberties of the people. Sir, at the time some of these resolves were passed, there was a dangerous attempt to subvert our liberties, by creating a supreme dictator. There are many gentlemen present who know how strongly I opposed it. My opposition was at the very time we were surrounded with difficulties and danger. The people, when wearied with their distresses, will, in the moment of frenzy, be guilty of the most imprudent and desperate measures. Because a strong government was wanted during the late war, does it follow that we should now be obliged to accept of a dangerous one? I ever lamented the feebleness of the Confederation, for this reason, among others, that the experience of its weakness would one day drive the people into an adoption of a constitution dangerous to our liberties. I know the people are too apt to vibrate from one extreme to another. The effects of this disposition are what I wish to guard against. If the gentleman can show me that the proposed Constitution is a safe one, I will drop all opposition. The public resolves, which have been read to you, are only expressive of the desire that once prevailed to remove present difficulties. A general impost was clearly intended, but it was intended as a temporary measure. I appeal to every gentleman present, if I have not been uniformly in favor of granting an impost to Congress. I confess, the manner in which that body proposed to exercise the power, I could not agree to. I firmly believed, that, if it were granted in the form recommended, it would prove unproductive, and would also lead to the establishment of dangerous principles. I believed that granting the revenue, without giving the power of

collection, or a control over our state officers, would be the most wise and prudent measure. These are and ever have been my sentiments. I declare that, with respect to the papers which have been read, or any which I have in my possession, I shall be ready to give the committee all the information in my power.

**Mr. DUANE.**

As I am sensible the gentleman last on the floor was in the confidence of the commander-in-chief, I would wish to ask if he did not, at different times, receive communications from his excellency, expressive of this idea — that, if this state did not furnish supplies to the army, it must be disbanded.

**Gov. CLINTON.**

It is true, sir, I have received such communications more than once. I have been sent for to attend councils of war, where the state of the army was laid before me; and it was melancholy indeed. I believe that, at one period, the exertions of this state, in impressing flour from the people, saved the army from dissolution.

**Mr. HAMILTON.**

The honorable gentleman from Ulster has given a turn to the introduction of those papers which was never in our contemplation. He seems to insinuate that they were brought forward with a view of showing an inconsistency in the conduct of some gentleman; perhaps of himself. Sir, the exhibition of them had a very different object. It was to prove that this state once experienced hardships and distresses to an astonishing degree, for want of the assistance of the other states. It was to show the evils we suffered since, as well as before, the establishment of the Confederation, from being compelled to support the burden of the war; that requisitions have been unable to call forth the resources of the country; that requisitions have been the cause of a principal part of our calamities; that the system is defective and rotten, and ought forever to be banished from our government. It was necessary — with deference to the honorable gentleman — to bring forward these important proofs of our argument, without consulting the feelings of any man.

That the human passions should flow from one extreme to another, I allow, is natural. Hence the mad project of creating a *dictator*. But it is equally true that this project was never ripened into a deliberate and extensive design. When I heard of it, it met my instant disapprobation. The honorable gentleman's opposition, too, is known and applauded. But why bring these things into remembrance? Why affect to compare this temporary effusion with the serious sentiments our fellow-citizens entertained of the national weaknesses? The gentleman has made a declaration of his wishes for a strong federal government. I hope this is the wish of all. But why has he not given us his ideas of the nature of this government, which is the object of his wishes? Why does he not describe it? We have proposed a system which we supposed would answer the purposes of strength and safety. The gentleman objects to it, without pointing out the grounds on which his objections are founded, or showing us a better form. These general surmises never lead to the discovery of truth. It is to be desired that the gentleman would explain particularly the errors in

this system, and furnish us with their proper remedies. The committee remember that a grant of an impost to the United States, for twenty-five years, was requested by Congress. Though it was a very small addition of power to the federal government, it was opposed in this state, without any reasons being offered. The dissent of New York and Rhode Island frustrated a most important measure. The gentleman says he was for granting the impost; yet he acknowledges he could not agree to the mode recommended. But it is well known that Congress had declared that they could not receive the accession of the states upon any other plan than that proposed. In such cases, propositions for altering the plan amounted to a positive rejection. At this time, sir, we were told it was dangerous to grant powers to Congress; did this general argument indicate a disposition to grant the impost in any shape? I should myself have been averse to the granting of very extensive powers; but the impost was justly considered as the only means of supporting the Union. We did not then contemplate a fundamental change in government. From my sense of the gentlemen's integrity, I am bound to believe that they are attached to a strong, united government; and yet I find it difficult to draw this conclusion from their conduct or their reasonings.

Sir, with respect to the subject of revenue, which was debated yesterday, it was asserted that, in all matters of taxation, except in the article of imposts, the united and individual states had a concurrent jurisdiction; that the state governments had an independent authority to draw revenues from every source but one. The truth of these positions will appear on a slight investigation. I maintain that the word *supreme* imports no more than this — that the Constitution, and laws made in pursuance thereof, cannot be controlled or defeated by any other law. The acts of the United States, therefore, will be absolutely obligatory as to all the proper objects and powers of the general government. The states, as well as individuals, are bound by these laws; but the laws of Congress are restricted to a certain sphere, and when they depart from this sphere, they are no longer supreme or binding. In the same manner the states have certain independent powers, in which their laws are supreme; for example, in making and executing laws concerning the punishment of certain crimes, such as murder, theft, &c., the states cannot be controlled. With respect to certain other objects, the powers of the two governments are concurrent, and yet supreme. I instanced yesterday a tax on a specific article. Both might lay the tax; both might collect it without clashing or interference. If the individual should be unable to pay both, the first seizure would hold the property. Here the laws are not in the way of each other; they are independent and supreme.

The case is like that of two creditors: each has a distinct demand; the debtor is held equally for the payment of both. Their suits are independent; and if the debtor cannot pay both, he who takes the first step secures his debt. The individual is precisely in the same situation, whether he pays such a sum to one, or to two. No more will be required of him to supply the public wants, than he has ability to afford. That the states have an undoubted right to lay taxes in all cases in which they are not prohibited, is a position founded on the obvious and important principle in confederated governments, that whatever is not expressly given to the federal head is reserved to the members. The truth of this principle must strike every intelligent mind. In the first formation of government, by the association of individuals, every power of the community is delegated, because the government is to extend to every possible object; nothing is reserved but the unalienable rights of mankind: but, when a number of these societies unite for certain purposes, the rule is different, and from the plainest reason — they have already delegated their

sovereignty and their powers to their several governments; and these cannot be recalled, and given to another, without an express act. I submit to the committee whether this reasoning is not conclusive. Unless, therefore, we find that the powers of taxation are exclusively granted, we must conclude that there remains a concurrent authority. Let us, then, inquire if the Constitution gives such exclusive powers to the general government. Sir, there is not a syllable in it that favors this idea; not a word importing an exclusive grant, except in the article of imposts. I am supported in my general position by this very exception. If the states are prohibited from laying duties on imports, the implication is clear. Now, what proportion will the duties on imports bear to the other ordinary resources of the country? We may now say one third; but this will not be the case long. As our manufactures increase, foreign importations must lessen. Here are two thirds, at least, of the resources of our country open to the state governments. Can it be imagined, then, that the states will lose their existence or importance for want of *revenues*? The propriety of Congress possessing an exclusive power over the impost appears from the necessity of their having a considerable portion of our resources, to pledge as a fund for the reduction of the debts of the United States. When you have given a power of taxation to the general government, none of the states individually will be holden for the discharge of the federal obligations: the burden will be on the Union.

The gentleman says that the operation of the taxes will exclude the states on this ground — that the demands of the community are always equal to its resources; that Congress will find a use for all the money the people can pay. This observation, if designed as a general rule, is, in every view, unjust. Does he suppose the general government will want all the money the people can furnish, and also that the state governments will want all the money the people can furnish? What contradiction is this! But if this maxim be true, how does the wealth of the country ever increase? How are the people enabled to accumulate fortunes? Do the burdens regularly augment as its inhabitants grow prosperous and happy? But if, indeed, all the resources are required for the protection of the people, it follows that the protecting power should have access to them. The only difficulty lies in the want of resources. If they are adequate, the operation will be easy; if they are not, taxation must be restrained. Will this be the fate of the state taxes alone? Certainly not. The people will say, No. What will be the conduct of the national rulers? The consideration will not be, that our imposing the tax will destroy the states, for this cannot be effected; but that it will distress the people, whom we represent, and whose protectors we are. It is unjust to suppose they will be altogether destitute of virtue and prudence: it is unfair to presume that the representatives of the people will be disposed to tyrannize in one government more than in another. If we are convinced that the national legislature will pursue a system of measures unfavorable to the interests of the people, we ought to have no general government at all. But if we unite, it will be for the accomplishment of great purposes: these demand great resources and great powers. There are certain extensive and uniform *objects of revenue* which the United States will improve, and to which, if possible, they will confine themselves. Those objects which are more limited, and in respect to which the circumstances of the states differ, will be reserved for their use: a great variety of articles will be in this last class of objects, to which only the state laws will properly apply. To ascertain this division of objects is the proper business of legislation: it would be absurd to fix it in the Constitution, both because it would be too extensive and intricate, and because alteration of circumstances must render a change of the division indispensable. Constitutions should consist only of general provisions: the reason is, that they must necessarily be permanent, and that they cannot calculate for the possible change of things. I

know that the states must have their resources; but I contend that it would be improper to point them out particularly in the Constitution.

Sir, it has been said that a *poll tax* is a tyrannical tax; but the legislature of this state can lay it, whenever they please. Does, then, our Constitution authorize tyranny? I am as much opposed to capitation as any man. Yet who can deny that there may exist certain circumstances which will render this tax necessary? In the course of a war, it may be necessary to lay hold of every resource; and for a certain period, the people may submit to it. But on removal of the danger, or the return of peace, the general sense of the community would abolish it. The United Netherlands were obliged, on an emergency, to give up one twentieth of their property to the government. It has been said that it will be impossible to exercise this power of taxation: if it cannot be exercised, why be alarmed? But the gentlemen say that the difficulty of executing it with moderation will necessarily drive the government into despotic measures. Here, again, they are in the old track of jealousy and conjecture. Whenever the people feel the hand of despotism, they will not regard forms and parchments. But the gentlemen's premises are as false as their conclusion. No one reason can be offered why the exercise of the power should be impracticable. No one difficulty can be pointed out which will not apply to our state governments. Congress will have every means of knowledge that any legislature can have. From general observation, and from the revenue systems of the several states, they will derive information as to the most eligible modes of taxation. If a land tax is the object, cannot Congress procure as perfect a valuation as any other assembly? Can they not have all the necessary officers for assessment and collections? Where is the difficulty? Where is the evil? They never can oppress a particular state by an unequal imposition; because the Constitution has provided a fixed ratio, a uniform rule, by which this must be regulated. The system will be founded upon the most easy and equal principles — to draw as much as possible from direct taxation; to lay the principal burdens on the wealthy, &c. Even ambitious and unprincipled men will form their system so as to draw forth the resources of the country in the most favorable and gentle methods, because such will be ever the most productive. They never can hope for success by adopting those arbitrary modes which have been used in some of the states.

A gentleman yesterday passed many encomiums on the character and operations of the *state governments*. The question has not been, whether their laws have produced happy or unhappy effects. The character of our confederation is the subject of our controversy. But the gentleman concludes too hastily. In many of the states, government has not had a salutary operation. Not only Rhode Island, but several others, have been guilty of indiscretions and misconduct — of acts which have produced misfortunes and dishonor. I grant that the government of New York has operated well, and I ascribe it to the influence of those excellent principles in which the proposed Constitution and our own are so congenial. We are sensible that private credit is much lower in some states than it is in ours. What is the cause of this? Why is it, at the present period, so low, even in this state? Why is the value of our land depreciated? It is said that there is a scarcity of money in the community. I do not believe this scarcity to be so great as is represented. It may not appear; it may be retained by its holders; but nothing more than stability and confidence in the government is requisite to draw it into circulation. It is acknowledged that the general government has not answered its purposes. Why? We attribute it to the defects of the revenue system. But the gentlemen say, the requisitions have not been obeyed, because the states were impoverished. This is a kind of reasoning that astonishes me. The records of this state —

the records of Congress — prove that, during the war, New York had the best reason to complain of the non-compliance of the other states. I appeal to the gentleman. Have the states who have suffered least contributed most? No, sir; the fact is directly the reverse. This consideration is sufficient entirely to refute the gentleman's reasoning. Requisitions will ever be attended with the same effects. This depends on principles of human nature that are as infallible as any mathematical calculations. States will contribute or not, according to their circumstances and interests. They will all be inclined to throw off their burdens of government upon their neighbors. These positions have been so fully illustrated and proved in former stages of this debate, that nothing need be added. Unanswerable experience — stubborn facts — have supported and fixed them.

Sir, to what situation is our Congress now reduced! It is notorious that with the utmost difficulty they maintain their ordinary officers, and support the mere form of a federal government. How do we stand with respect to foreign nations? It is a fact that should strike us with shame, that we are obliged to borrow money in order to pay the interest of our debts. It is a fact that these debts are every day accumulating by compound interest. This, sir, will one day endanger the peace of our country, and expose us to vicissitudes the most alarming. Such is the character of requisitions — such the melancholy, dangerous condition to which they have reduced us! Now, sir, after this full and fair experiment, with what countenance do gentlemen come forward to recommend the ruinous principle, and make it the basis of a new government? Why do they affect to cherish this political demon, and present it once more to our embraces? The gentleman observed, that we cannot, even in a single state, collect the whole of a tax; some counties will necessarily be deficient. In the same manner, says he, some states will be delinquent. If this reasoning were just, I should expect to see the states pay, like the counties, in proportion to their ability, which is not the fact.

I shall proceed now more particularly to the proposition before the committee. This clearly admits that the *unlimited power of taxation*, which I have been contending for, is proper. It declares that, after the states have refused to comply with the requisitions, the general government may enforce its demands. While the gentlemen's proposition and principle admit this, in its fullest latitude, the whole course of the states is against it. The mode they point out would involve many inconveniences against which they would wish to guard. Suppose the gentleman's scheme should be adopted; would not all the resources of the country be equally in the power of Congress? The states can have but one opportunity of refusal. After having passed through the empty ceremony of a requisition, the general government can enforce all its demands, without limitation or resistance. The states will either comply, or they will not. If they comply, they are bound to collect the whole of the tax from the citizens. The people must pay it. What, then, will be the disadvantage of its being levied and collected by Congress, in the first instance? It has been proved, as far as probabilities can go, that the federal government will, in general, take the laws of the several states as its rule, and pursue those measures to which the people are most accustomed. But if the states do not comply, what is the consequence? If the power of a compulsion be a misfortune to the state, they must now suffer it without opposition or complaint. I shall show, too, that they must feel it in an aggravated degree. It may frequently happen that, though the states formally comply with the requisitions, the avails will not be fully realized by Congress: the states may be dilatory in the collection and payment, and may form excuses for not paying the whole. There may also be partial compliances, which will subject the

Union to inconveniences. Congress, therefore, in laying the tax, will calculate for these losses and inconveniences. They will make allowances for the delays and delinquencies of the states, and apportion their burdens accordingly. They will be induced to demand more than their actual wants.

In these circumstances, the requisitions will be made upon calculations in some measure arbitrary. Upon the constitutional plan, the only inquiry will be, How much is actually wanted? and how much can the object bear, or the people pay? On the gentleman's scheme, it will be, What will be the probable deficiencies of the states? for we must increase our demands in proportion, whatever the public wants may be, or whatever may be the abilities of the people. Now, suppose the requisition is totally rejected; it must be levied upon the citizens without reserve. This will be like inflicting a penalty upon the states. It will place them in the light of criminals. Will they suffer this? Will Congress presume so far? If the states solemnly declare they will not comply, does not this imply a determination not to permit the exercise of the coercive power? The gentlemen cannot escape the dilemma into which their own reasoning leads them. If the states comply, the people must be taxed; if they do not comply, the people must equally be taxed. The burden, in either case, will be the same — the difficulty of collecting the same. Sir, if these operations are merely harmless and indifferent, why play the ridiculous farce? If they are inconvenient, why subject us to their evils? It is infinitely more eligible to lay a tax originally, which will have uniform effects throughout the Union, which will operate equally and silently. The United States will then be able to ascertain their resources, and to act with vigor and decision. All hostility between the governments will be prevented. The people will contribute regularly and gradually for the support of government; and all odious, retrospective inquiries will be precluded.

But the ill effects of the gentleman's plan do not terminate here. Our own state will suffer peculiar disadvantages from the measure. One provision in the amendment is, that no direct taxes shall be laid till after the *impost and excise* shall be found insufficient for the public exigencies; and that no excise shall be laid on articles of the growth or manufacture of the United States. Sir, the favorable maritime situation of this state, and our large and valuable tracts of unsettled land, will ever lead us to commerce and agriculture as our proper objects. Unconfined, and tempted by the prospect of easy subsistence and independence, our citizens, as the country populates, will retreat back, and cultivate the western parts of our state. Our population, though extensive, will never be crowded; and consequently we shall remain an importing and agricultural state. Now, what will be the operation of the proposed plan? The general government, restrained by the Constitution from a free application to other resources, will push imposts to an extreme. Will excessive impositions on our commerce be favorable to the policy of this state? Will they not directly oppose our interests? Similar will be the operation of the other clause of the amendment, relative to excise. Our neighbors, not possessed of our advantages for commerce and agriculture, will become manufacturers: their property will, in a great measure, be vested in the commodities of their own productions; but a small proportion will be in trade or in lands. Thus, on the gentleman's scheme, they will be almost free from burdens, while we shall be loaded with them. Does not the partiality of this strike every one? Can gentlemen, who are laboring for the interest of their state, seriously bring forward such propositions? It is the interest of New York that those articles should be taxed, in the production of which the other states exceed us. If we are not a manufacturing people, excises on manufactures will ever be for our advantage. This position is

indisputable. Sir, I agree that it is not good policy to lay excises to any considerable amount, while our manufactures are in their infancy; but are they always to be so? In some of the states, they already begin to make considerable progress. In Connecticut, such encouragement is given as will soon distinguish that state. Even at the present period, there is one article from which a revenue may very properly be drawn: I speak of ardent spirits. New England manufactures more than a hundred gallons to our one; consequently, an excise on spirits at the still-head would nuke those states contribute in a vastly greater proportion than ourselves. In every view, excises on domestic manufactures would benefit New York. But the gentlemen would defeat the advantages of our situation, by drawing upon us all the burdens of government. The nature of our union requires that we should give up our state impost. The amendment would forfeit every other advantage. This part of the Constitution should not be touched. The excises were designed as a recompense to the importing states for relinquishing their imposts. Why, then, should we reject the benefits conferred upon us? Why should we run blindly against our own interest?

Sir, I shall no further enlarge on this argument: my exertions have already exhausted me. I have persevered from an anxious desire to give the committee the most complete conception of this subject. I fear, however, that I have not been so successful as to bestow upon it that full and clear light of which it is susceptible. I shall conclude with a few remarks by way of apology. I am apprehensive, sir, that, in the warmth of my feelings, I may have uttered expressions which were too vehement. If such has been my language, it was from the habit of using strong phrases to express my ideas; and, above all, from the interesting nature of the subject. I have ever condemned those cold, unfeeling hearts, which no object can animate. I condemn those indifferent mortals, who either never form opinions, or never make them known. I confess, sir, that on no subject has my breast been filled with stronger emotions, or more anxious concern. If any thing has escaped me, which may be construed into a personal reflection, I beg the gentlemen, once for all, to be assured that I have no design to wound the feelings of any one who is opposed to me.

While I am making these observations, I cannot but take notice of some expressions which have fallen in the course of the debate. It has been said that ingenious men may say ingenious things, and that those who are interested in raising the few upon the ruins of the many, may give to every cause an appearance of justice. I know not whether these insinuations allude to the characters of any who are present, or to any of the reasonings in this house. I presume that the gentlemen would not ungenerously impute such motives to those who diner from themselves. I declare I know not any set of men who are to derive peculiar advantages from this Constitution. Were any permanent honors or emoluments to be secured to the families of those who have been active in this cause, there might be some grounds for suspicion. But what reasonable man, for the precarious enjoyment of rank and power, would establish a system which would reduce his nearest friends and his posterity to slavery and ruin? If the gentlemen reckon me amongst the obnoxious few, if they imagine that I contemplate with ambitious eye the immediate honors of the government, yet let them consider that I have my friends, my family; my children, to whom ties of nature and of habit have attached me. If, to-day, I am among the favored few, my children, to-morrow, may be among the oppressed; these dear pledges of my patriotism may, at a future day, be suffering the severe distresses to which my ambition has reduced them. The changes in the human condition are uncertain and frequent: many, on whom Fortune has bestowed her favors, may trace their family to a more unprosperous station; and many, who are

now in obscurity, may look back upon the affluence and exalted rank of their ancestors. But I will no longer trespass on your indulgence. I have troubled the committee with these observations, to show that it cannot be the wish of any reasonable man to establish a government unfriendly to the liberties of the people. Gentlemen ought not, then, to presume that the advocates of this Constitution are influenced by ambitious views. The suspicion, sir, is unjust; the charge is uncharitable.

**The Hon. Mr. LANSING.**

This clause, Mr. Chairman, is, by every one, considered as one of the most important in the Constitution. The subject has been treated in a very diffusive manner. Among all the ingenious remarks that have been made, some are little more than repetitions; others are not very applicable or interesting. I shall beg leave to pass a few strictures on the paragraph; and, in my reply, shall confine myself to the arguments which have been advanced. The committee have been informed that it embraces a great variety of objects, and that it gives the general government a power to lay all kinds of *taxes*; that it confers a right of laying excises on all articles of American manufacture, of exacting an impost, in which the state governments cannot interfere, and of laying direct taxes without restriction. These powers reach every possible source of revenue. They will involve a variety of litigations, which can come only under the cognizance of the judiciary of the United States. Hence it must appear that these powers will affect, in an unlimited manner, the property of the citizens; that they will subject them, in a great degree, to the laws of the Union, and give an extensive jurisdiction to the federal courts. The objects of the amendment are, to prevent excises from being laid on the manufactures of the United States, and to provide that direct taxes shall not be imposed till requisitions have been made and proved fruitless.

All the reasoning of the gentlemen goes to prove that government ought to possess all the resources of a country. But so far as it respects government in general, it does not apply to this question. Giving the principle its full force, it does not prove that our federal government ought to have all the resources; because this government is but a part of a system, the whole of which should possess the means of support. It has been advanced repeatedly by the gentleman, that the powers of the United States should, like their objects, be national and general. It appears to him proper, therefore, that the nature of their resources should be correspondent. Sir, it has been declared that we can no longer place confidence in requisitions. A great deal of argument has been spent on this point. The gentlemen constantly consider the old mode of requisitions, and that proposed, in the same view. But not one of us has ever contended for requisitions in the form prescribed in the existing Confederation: hence the reasoning about the in-efficacy of the ancient mode has no application to the one recommended; which rests on different principles, and has a sanction of which the other is totally destitute. In the one instance, it is necessary to execute the requisitions of Congress on the states collectively. There is no way of doing this but by coercing a whole community, which cannot be effected. But the amendment proposes to carry the laws of Congress to the doors of individuals. This circumstance will produce an entire change in the operation of requisitions, and will give them an efficiency which otherwise they could not have. In this view, it will appear that the gentleman's principles respecting the character and effects of requisitions can have no application in this dispute. Much pains has been taken to show that requisitions have not answered the public exigencies. All this has been fully admitted in former stages of the debate. It was said by a gentleman yesterday, that though considerable sums of

money had been paid by the people, it was by way of bounties to the soldiers which was a coercion on individuals. If, then, this coercion had its effect, certainly its operation, upon the proposed plan. will be much more forcible. It has been said that, in sudden emergencies, all the resources of the country might be required; and that the supreme head ought to possess the power of providing for the public wants, in every degree. It is an undoubted fact, that, in all government, it is extremely difficult, on the spur of the occasion, to raise money by taxes. Nor is it necessary. In a commercial country, persons will always be found to advance money to the government, and to wait the regular operation of the revenue laws. It depends on the security of the taxes, and the certainty of being refunded. This amendment does not diminish the security or render the fund precarious. The certainty of repayment is as well established as if the government could levy the taxes originally on individuals.

Sir, have the states ever shown a disposition not to comply with the requisitions? We shall find that, in almost every instance, they have, so far forth as the passing a law of compliance, been carried into execution. To what, then, are the delinquencies to be attributed? They must be to the impoverished state of the country. If the state governments have been unable to compel the people to obey their laws, will Congress be able to coerce them? Will the federal taxes be better paid? But, sir, no reasonable man will be apprehensive of the non-compliance of the states, under the operation of the proposed plan. The right of enforcing the requisitions will furnish the strongest motive for the performance of the federal duty. With this powerful inducement, there is hardly a possibility of failure. It has been asked, Why give the individual states the preference? Why not suffer the general government to apply to the people in the first instance, without the formality of a requisition? This question has been repeatedly asked, and as often answered. It is because the state legislatures are more nearly connected with the people, and more acquainted with their situation and wants. They better know when to enforce or relax their laws; to embrace objects or relinquish them, according to change of circumstances: they have but a few varying interests to comprehend in general provisions. Congress do not possess these advantages; they cannot have so complete an acquaintance with the people; their laws, being necessarily uniform, cannot be calculated for the great diversity of objects which present themselves to government. It is possible that the men delegated may have interests different from those of the people. It is observed that we have had experience of different kinds of taxes, which have been executed by different officers, — for instance, county and state taxes, — and that there has been no clashing or interference. But, sir, in these cases, if any dispute arises, the parties appeal to a common tribunal; but if collectors are appointed by different governments, and authorized by different laws, the federal officer will appeal to a federal court; his adversary will appeal to the state court. Will not this create contests respecting jurisdiction? But the Constitution declares that the laws of the United States shall be supreme. There is no doubt, therefore, that they must prevail in every controversy; and every thing which has a tendency to obstruct the force of the general government must give way.

An honorable gentleman from New York has remarked that the idea of *danger to state governments* can only originate in a distempered fancy: he stated that they were necessary component parts of the system, and informed us how the President and senators were to be elected; his conclusion is, that the liberties of the people cannot be endangered. I shall only observe, that, however fanciful these apprehensions may appear to him, they have made serious impressions upon some of the greatest and best men. Our fears arise from the experience of all

ages and our knowledge of the dispositions of mankind. I believe the gentleman cannot point out an instance of the rights of a people remaining for a long period inviolate. The history of Europe has afforded remarkable examples of the loss of liberty by the usurpations of rulers. In the early periods of the government of the United Netherlands, the magistrates were elected by the people; but now they have become hereditary. The Venetians are, at this day, governed by an aristocracy. The senators, once the representatives of the people, were enabled, by gradual encroachments, at last to declare themselves perpetual. The office has since become hereditary, and the government entirely despotic. The gentleman has adduced one historical example, to prove that the members of a government, in the contests with the head, generally prevail. He observed that, in the struggles between the feudal sovereigns of Europe and their barons, the latter were usually victorious. If this were true, I believe the operations of such a system as the feudal will not warrant the general inference he draws. The feudal barons were obliged to assist the monarch, in his wars, with their persons and those of their vassals. This, in the early periods, was the sovereign's sole dependence. Not possessed of pecuniary revenues, or a standing military force, he was, whenever the barons withdrew their aid, or revolted against his authority, reduced to a very feeble situation. While he possessed not the means of carrying on his wars, independently of his nobles, his power was insignificant, and he was unsuccessful. But, sir, the moment he gained the command of revenues and an army, as soon as he obtained *the sword and the purse*, the current of success was turned; and his superiority over his barons was regularly augmented, and at last established. The barons, in their early wars, possessed other peculiar advantages: their number was small, they were actuated by one principle, and had one common object; it was to reduce still lower the feeble powers of the monarch: they were therefore easily brought to act in concert. Sir, wherever the revenues and the military force are, there will rest the power: the members or the head will prevail, as one or the other possesses these advantages. The gentleman, in his reasoning, has taken the wrong part of the example — that part which bears no resemblance to our system. Had he come down to a later period, he would indeed have seen the resemblance, and his historical facts would have directly militated against his argument. Sir, if you do not give the state governments a power to protect themselves, if you leave them no other check upon Congress than the power of appointing senators, they will certainly be overcome, like the barons of whom the gentleman has spoken. Neither our civil nor militia officers will afford many advantages of opposition against the national government: if they have any powers, it will ever be difficult to concentrate them, or give them a uniform direction. Their influence will hardly be felt, while the greater number of lucrative and honorable places, in the gift of the United States, will establish an influence which will prevail in every part of the continent.

It has been admitted by an honorable gentleman from New York, (Mr. Hamilton,) that the state governments are necessary to secure the liberties of the people. He has urged several forcible reasons why they ought to be preserved under the new system; and he has treated the idea of the general and state governments being hostile to each other as chimerical. I am, however, firmly persuaded that an hostility between them will exist. This was a received opinion in the late Convention at Philadelphia. That honorable gentleman was then fully convinced that it would exist, and argued, with much decision and great plausibility, that the state governments ought to be subverted, at least so far as to leave them only corporate rights, and that, even in that situation, they would endanger the existence of the general government. But the honorable gentleman's reflections have probably induced him to correct that sentiment.

[Mr. Hamilton here interrupted Mr. Lansing, and contradicted, in the most positive terms, the charge of inconsistency included in the preceding observations. This produced a warm personal altercation between those gentlemen, which engrossed the remainder of the day.]

## **MONDAY, *June 30, 1788.* —**

The personal dispute between Mr. Hamilton and Mr. Lansing was again brought forward, and occupied the attention of the committee for a considerable part of this day; on the termination of which, the debate upon Mr. Williams's motion was resumed, and continued by Mr. Williams, Mr. Smith, Mr. Jay, Mr. Jones, &c.

In the course of this debate,

### **Mr. SMITH**

made the following remarks, in answer to Mr. Hamilton; that, though the gentleman's maxim was true, that the means should be adequate to the end, yet it did not, by any means, apply to a complex system like ours, in which all the objects of government were not to be answered by the national head, and which, therefore, ought not to possess all the means. In another view, he said, the rule would not apply. It was not true that the power which was charged with the common defence should have all the revenues. In the government of Great Britain, the power to whom the common defence was committed did not possess the means of providing for it. The king had the whole power of war: but the Parliament only could furnish the money for conducting it. Still the government, taken all together, possessed all the powers and all the means. He thought it ought to be on such a footing here. The general government was one part of the system, the state governments another. Now, it was true, he said, that the system, taking all its parts together, ought to have unlimited powers. It was not the design of the amendment to prevent this: it was only to divide the powers between the parts, in proportion to their several objects.

## **TUESDAY, *July 1, 1788.* —**

### **Mr. SMITH**

observed, that he supposed the *states* would have a *right to lay taxes*, if there was no power in the general government to control them. He acknowledged that the counties in this state had a right to collect taxes; but it was only a legislative, not a constitutional right. It was dependent and controllable. This example, he said, was a true one; and the comparison the gentleman had made was just; but it certainly operated against him. Whether, then, the general government would have a right to control the states in taxation, was a question which depended upon the construction of the Constitution. Men eminent in law had given different opinions on this point. The difference of opinion furnished, to his mind, a reason why the matter should be constitutionally explained. No such important point should be left to doubt and construction. The clause should be so formed as to render the business of legislation as simple and plain as possible. It was not to be expected that the members of the federal legislature would generally be versed in those subtleties which distinguish the profession of the law. They would not be

disposed to make nice distinctions with respect to jurisdiction. He said that, from general reasoning, it must be inferred that, if the objects of the general government were without limitation, there could be no bounds set to their powers; that they had a right to seek those objects by all necessary laws, and by controlling every subordinate power. The means should be adequate to the end: the less should give way to the greater. General principles, therefore, clearly led to the conclusion, that the general government must have the most complete control over every power which could create the least obstacle to its operations.

Mr. Smith then went into an examination of the particular provisions of the Constitution, and compared them together, to prove that his remarks were not conclusions from general principles alone, but warranted by the language of the Constitution. He conceived, therefore, that the national government would have powers, on this plan, not only to lay all species of taxes, but to control and set aside every thing which should impede the collection of them. They would have power to abrogate the laws of the states, and to prevent the operation of their taxes; and all courts, before whom any disputes on these points should come, whether federal or not, would be bound by oath to give judgment according to the laws of the Union. An honorable gentleman from New York, he said, had dwelt with great attention on the idea that the state governments were necessary and useful to the general system, and that this would secure their existence. Granting that they would be very convenient in the system, yet, if the gentleman's position were true, that the two governments would be rivals, we had no need to go any further than the common feelings and passions of human nature, to prove that they must be hostile, and that one or the other must be finally subverted. If they were mutually necessary to each other, how could they be rivals? For, in this case, lessening the power of the states would be only diminishing the advantages of the general government. Another source, from which the gentleman would derive security to the states, was the superior number of the state representatives. Mr. Smith apprehended, however, that this very circumstance would be an argument for abolishing them. The people would be very apt to compare their small importance and powers with the great expense of their support. He then went into an examination of another source of security which the gentleman had pointed out, — that is, the great number of officers dependent on the states, — and compared them with those of the United States, and concluded with observing, that he (Mr. Smith) was one who had opposed the impost: he was also opposed to the Constitution in its present form. He said, he had opposed the impost, because it gave too much power to a single body, organized as the old Congress was; and he objected to this Constitution, because it gave too much power to the general government, however it might be organized. In both, he said, he stood on the same ground, and his conduct had been uniform and consistent.

### **The Hon. Mr. DUANE**

addressed the committee in a long and elaborate speech. He commenced with an explanation of the motives which induced him to bring forward the *public papers*, which have been lately read; declared that he had, in that matter, been actuated by no personal designs, no possible disposition to censure the conduct or wound the feelings of any man; that his sole object was, to furnish the committee with the most convincing evidence as to the merits of the Constitution. He then went into a particular examination of the exhibits, painted the situation of the country at the period in which they were written, and illustrated and enforced their testimony. In the course of this investigation, he introduced and commented upon General Washington's circular letter, and

concluded, that all this evidence afforded complete proof that requisitions had ever had an unhappy and fatal operation, that they would never answer the purposes of government, and that the principle ought to be forever discarded from our system. He then proceeded to enforce, by a variety of considerations, the argument respecting the propriety of the general government's being unrestricted in the exercise of those powers which were requisite for the common defence; spoke of the necessity, that might in future exist, of maintaining large armies and navies;

said that he, even in his old age, hoped yet to see the United States able, as well by sea as by land, to resent any injuries that might be offered them. It might very soon appear how necessary a powerful military might be. Occasions the most pressing were not even now wanting. The British, to this day, in defiance of the treaty of peace, held possession of our northern posts. This was the highest insult to our sovereignty. He hoped that these daring invasions would rouse the indignation of the United States. He had heard it surmised that the general government would probably never oblige the British to quit these posts; but whenever, said he, I find the Union guilty of such pusillanimity, I shall regret that I ever drew my breath in this country.

Mr. Duane then animadverted upon the reasoning of his opponents respecting the causes of the delinquencies of the states, and compared the exertions of the states with their different situations and circumstances, in order to prove that the deficiencies could not have arisen from poverty or distress. He declared that all which had been advanced by opposition in this head was totally unsupported by facts. The gentleman next proceeded to discuss the question of concurrent jurisdiction, and the particular advantages New York would derive from excises on our manufactures; spoke of the difficulties and embarrassments which would result from the proposed amendment, and concluded with a comparison of the new to the old system, and some general encomiums on the excellences of the former.

### **The Hon. Mr. JAY**

rose, and said he would confine himself to a few remarks, as the question had been pretty fully debated. He began with a description of the general characteristics of a government proper for the United States. It had, he said, been justly laid down, that a government which was to accomplish national purposes should command the national resources. Here a question had been raised. Would it be proper that the state governments should limit the powers of the general government, relative to its supplies? Would it be right or politic that the sovereign power of a nation should depend for support on the mere will of the several members of that nation? that the interest of a part should take place of that of the whole, or that the partial views of one of the members should interfere with and defeat the views of all? He said that, after the most mature reflection, he could see no possible impropriety in the general government having access to all the resources of the country. With respect to *direct taxes*, it appeared to him that the proposed amendment would involve great difficulties. Suppose a state should refuse to comply; would not the same motives, the same reasons, which produced the non-compliance, induce such state to resist the imposing and collecting of the tax? Would not a number of states, in similar circumstances, be apt to unite to give their resistance weight? They could not all be forced. These ideas of the impracticability and the danger of the measure, he said, had been already fully illustrated, and they had made a deep impression on his mind. He apprehended that ambitious men might be found, in such emergencies, ready to take advantage of turbulent times, and put

themselves at the head of such an association. After dwelling some time on this point, he proceeded to take notice of the objection relative to the want of that particular information in members of Congress, which, it had been said, would alone render them capable of imposing taxes with prudence and justice. The objection had some weight; but it ought to be considered that direct taxes were of two kinds, general and specific. With respect to the latter, the objection could not apply. The national government would, without doubt, usually embrace those objects which were uniform throughout the states; such as all specific articles of luxury. No particular minute knowledge could be necessary for this. For example, what difficulty or partiality would there be in the operation of a tax of twenty shillings on all coaches? The objection, then, could only apply to the laying of general taxes upon all property. But the difficulty on this score, he said, might be easily remedied. The legislatures of the several states would furnish their delegates with the systems of revenue, and give them the most particular information with regard to the modes of taxation most agreeable to the people. From the comparison of these, Congress would be able to form a general system, as perfect as the nature of things would admit. He appealed to the good sense and candor of the gentlemen, if this would not, in all probability, take place. After some considerations on the subject of concurrent jurisdiction, he said, he was convinced that it was sufficiently secured and established in the Constitution. But as gentlemen were of a different opinion on this point, it would be very easy, he said, to insert in the adoption of the system an explanation of this clause. Mr. Jay concluded by suggesting a difficulty on the subject of excise, which has not been attended to. He asked by what rule we should know an article of American from one of foreign manufacture: how could American nails, American porter, and hundreds of other articles, be distinguished from those of foreign production? He thought the proposed measure would create embarrassments, and the various abuses that would follow might be easily conceived.

### **The Hon. Mr. SMITH,**

after some introductory, cursory remarks, took notice of an honorable gentleman's wishes respecting a *navy*. He thought it would be wild and ridiculous to attempt a project of that kind for a considerable length of time, even if the treasury were full of money. He thought it was our duty to calculate for the present period, and not attempt to provide for the contingencies of two or three centuries to come. In time, events might take place which no human wisdom could foresee, and which might totally defeat and render useless these provisions. He insisted that the present state of the country alone ought to be considered. In three or four hundred years, its population might amount to a hundred millions: at this period, two or three great empires might be established, totally different from our own.

Mr. Smith then made some remarks upon the circular letter of the late commander-in-chief, which Mr. Duane had produced. He asked whence the American army came: how were they raised and maintained, if the complaints in this letter were well founded? how had the country been defended, and our cause supported, through so long a war, if requisitions had been so totally fruitless? He observed that one of the gentlemen had contemplated associations among the states for the purpose of resisting Congress. This was an imaginary evil. The opposers of the Constitution, he said, had been frequently charged with being governed by chimerical apprehensions, and of being too much in extremes. He asked if these suggestions were not perfectly in the same style. We had had no evidence of a disposition to combine for such

purposes: we had no ground to fear they ever would. But if they were, at any time, inclined to form a league against the Union, in order to resist an oppressive tax, would they not do it, when the tax was imposed without a requisition? Would not the same danger exist, though requisitions were unknown? He thought no power ought to be given which could not be exercised. The gentleman had himself spoken of the difficulties attending general, direct taxes, and had presumed that the general government would take the state systems, and form from them the best general plan they could. But this would but partially remedy the evil. How much better would it be to give the systems of the different states their full force, by leaving to them the execution of the tax, and the power of levying it on the people!

### **The Hon. Chancellor LIVINGSTON.**

When this subject came under discussion on Friday, Mr. Chairman, I did myself the honor to express my sentiments to the committee. I considered the amendment as it would affect the general government, and was favored with the support of my honorable colleague, who went more largely and ably into the argument, and added weight to the ideas I had suggested.

I shall now confine myself to a few cursory and general observations on the reasonings of our opponents. I do not think it my duty to attempt to reconcile the gentlemen with each other. They advance opposite principles, and they argue differently. As they do not appear to have any fixed maxims in their politics, it is not to be wondered at that they talk at random, and run into inconsistencies. The gentleman from Duchess went into a defence of the state governments: he painted their good qualities in very warm colors; described their stability, their wisdom, their justice, their affection for the people. This was undoubtedly proper; for it was necessary to his argument. On the contrary, another gentleman took up the matter in a different point of view. He said the government of New York, which had been acknowledged one of the best, was quite imperfect. But this was all right, for it answered his purpose. A gentleman from New York had remarked a great resemblance between the government of this state and the new Constitution. To condemn the former, therefore, was giving a death-blow at the proposed system. But, sir, though we may pardon the gentlemen for differing from each other, yet it is difficult to excuse their differing from themselves. As these inconsistencies are too delicate to dwell on, I shall mention but a few. Their amendment declares that Congress shall lay direct taxes, and the whole drift of their argument is against it. In their reasoning, direct taxes are odious and useless things; in their amendment, they are necessary and proper. Thus their arguments and their motion are at variance. But this is not the only contradiction. The gentlemen say that Congress will be avaricious, and will want every farthing of the people's property. One from Washington tells you that taxation will shut out the light of heaven, and will pick your pockets. With these melancholy ideas no wonder he mourns for the fair damsel of American liberty, harassed with oppressive laws, shut up in a dismal dungeon, robbed of the light of heaven, and, by a beautiful anti-climax, robbed of the money in her pocket. Yet, says the gentleman, though Congress will do all this, they cannot do it. You are told that the collection of the tax is impracticable. Is, then, this great mischief to arise from an impracticable thing? It is the reasoning among all reasoners, that from nothing nothing comes; and yet this nothing is to destroy the state governments, and swallow up the state revenue: the tax which cannot realize a farthing is to rob the citizens of all their property. This is fine reasoning. To what shall I compare it? Shall I liken it to children in the market-place, or shall I liken it to children making bubbles with a pipe? Shall I not rather

compare it to two boys upon a balanced board? One goes up, the other down; and so they go up and down, down and up, till the sport is over, and the board is left exactly on the balance in which they found it. But let us see if we cannot, from all this rubbish, pick out something which may look like reasoning. I confess I am embarrassed by their mode of arguing. They tell us that the *state governments* will be destroyed, because they will have no powers left them. This is new. Is the power over property nothing? Is the power over life and death no power? Let me ask what powers this Constitution would take from the states. Have the state governments the power of war and peace, of raising troops, and making treaties? The power of regulating commerce we possess; but the gentlemen admit that we improperly possess it. What, then, is taken away? Have not the states the right of *raising money*, and *regulating the militia*? And yet these objects could never have employed your legislatures four or five months in the year. What, then, have they been about? — making laws to regulate the height of fences and the repairing of roads? If this be true, take the power out of their hands. They have been unworthy servants; they have not deserved your confidence. Admit that the power of raising money should be taken from them; does it follow that the people will lose all confidence in their representatives? There are but two objects for which money must be raised — the support of the general government and those of the states; and they have an equal right to levy and collect their taxes. But if, as the amendment proposes, they should be obliged to grant all that Congress should call for, — if they are to be compelled to comply with the requisitions without limitation, — they would be, on the gentleman's principles, in a pitiable situation indeed! The mode alone would be in their discretion. Is this the mighty matter about which we differ? Contend about modes! I am sorry to say, sir, that a rigid adherence to modes, in this state, has been the cause of great injustice to individuals, and has hurt the confidence of the people. It has led this state, on one occasion, to raise the expectations of public creditors, and to sink them again, by an unwarrantable breach of faith. Sir, if the power of regulating the militia, of raising money, of making and executing all the civil and criminal laws, — laws which affect the life, liberty, and property of individuals, — can insure or deserve the confidence and respect of the people, I think the gentleman's argument falls to the ground.

Much has been said, sir, about the sword and the purse. These words convey very confused ideas on the gentleman's application of them. The honorable member from New York has fully explained their meaning, as applied to the British government. His reasoning was so conclusive that it seems to have carried conviction to every mind. The gentleman from Duchess, to elude it, has made use of a singular shift. Says he, the general government and state governments form one government. Let us see how this matter stands. The states of Pennsylvania and New York form two distinct governments; but New York, Pennsylvania, and the general government, together form one government. The United States and New York make another government; the United States and Connecticut another, and so on. To the gentleman's optics these things may be clear; but to me they are utter darkness. We have thirteen distinct governments, and yet they are not thirteen governments, but one government. It requires the ingenuity of St. Athanasius to understand this political mystery. Were the gentleman a minister of the gospel, I might have *faith*; but I confess my reason is much too weak for it. Sir, we are attempting to build one government out of thirteen; preserving, however, the states, as parts of the system, for local purposes, and to give it support and beauty. The truth is, the states, and the United States, have distinct objects. They are both supreme. As to national objects, the latter is supreme; as to internal and domestic objects, the former. I can easily conceive of two joint tenures, and of joint

jurisdictions without control. If I wanted an example, I might instance the mine, Mr. Chairman, in which you and others have a joint property and concurrent jurisdiction. But why should the states hold the purse? How are they to use it? They have not to pay the civil list, to maintain the army or navy. What will they do with it? What is the sword, which the gentlemen talk of? How is Congress to defend us without a sword? You will also keep that. How shall it be handled? Shall we all take hold of it? I never knew, till now, the design of a curious image I have seen at the head of one of our newspapers. I am now convinced that the idea was prophetic in the printer. It was a figure of thirteen hands, in an awkward position, grasping a perpendicular sword. As the arms which supported it were on every side, I could see no way of moving it, but by drawing it through, with the hazard of dangerously cutting the fingers. For my own part, I should be for crying, "hands off!" But this sword of the gentlemen's is a visionary sword — a mere empty pageant; and yet they would never trust it out of the state scabbard, lest it should wound somebody. They wish for checks against what can do no harm. They contend for a phantom. Gentlemen should consider their arguments before they come here. Sir, our reasoning on this ground is conclusive. If it be necessary to trust our defence to the Union, it is necessary that we should trust it with the sword to defend us, and the purse to give the sword effect. I have heard not a shadow of an argument to shake the truth of this. But the gentlemen will talk — it is expected. It is necessary that they should support, in this house, the opinions they have propagated out of doors, but which perhaps they had themselves too hastily formed.

Sir, one word with respect to excise. When I addressed the committee on Friday last, I observed, that the amendment would operate with great inconvenience; that, at a future period, this would be a manufacturing country; and then there would be many proper objects of excise. But the gentleman, in answer to this, says we ought not to look forward to a future period. What, then, must be this government of a day? It is the third time we have been making a government, and God grant it may be the last.

**WEDNESDAY, *July 2, 1788.* —**

**Mr. G. LIVINGSTON.**

Sir, I perfectly agree, with every gentleman that has spoken on this clause, that it is most important; and I likewise agree with those of the honorable members who think that, if this section is not amended, there will not the shadow of liberty be left to the states, as states. The honorable member from New York, (Mr. Hamilton,) on Saturday, went largely into the jurisdiction of the section as it stands; asserted that the government was truly republican — good and safe; that it would never be the interest of the general government to dissolve the states; that there was a concurrent jurisdiction, independent as to every thing but imports that the states had a supreme, uncontrolled, and uncontrollable power, in common with the general government, to every branch of revenue, except as to imposts, post-office, and the restraint with respect to exports; that, with respect to any productive source of revenue left, whichever (the general government or particular state) applied first would obtain it. As to the safety in the general government, considered as a complete republican government, several honorable members, as well as my worthy colleague, have fully considered, and in my humble opinion clearly shown, that it cannot be fully depended on as safe, on the score of representation. Therefore I conceive the state governments are necessary as the barrier between the people's liberties and any invasion

which may be attempted on them by the general government. The honorable gentleman from New York has given us a new kind of power, or rather endeavored to show that power can be equally exercised in a way I believe never before thought of; that is, two bodies, which have, or at least may have, separate and indeed contrary interests, to have at the same time uncontrollable power to derive support from, and have complete direction of, the same branch of revenue.

It seems, sir, to be agreed that state governments are necessary. The state governments will undoubtedly endeavor to support themselves. It also seems to be agreed that the general government will want all the money they can raise: it is in my mind as true (if they possibly can) that they will raise all they want. Now, sir, what will be the consequence, the probable consequence, in this taxing, collecting squabble? I think, sir, we may conclude, with great certainty, that the people will, between them, be pretty well taxed. An honorable member from New York, (chancellor,) on Friday last, endeavored to prove, and yesterday again tauntingly mentioned it, that, because taxes are annually collected in our counties, for state and county purposes, by the same collector, authorized by the same legislature, appointed by the same assessors, and to support the same government, — that, therefore, the same sources of revenue may safely be applied to, without any danger of clashing interference, for different purposes and by different powers — nay, by powers between whom, it seems to be agreed, there will be a struggle for supremacy; and one of the gentlemen (Mr. Hamilton) declares his apprehensions to be that, in the issue, the state governments will get the victory, and totally supplant the general government. Others, I believe with great probability of truth, think the states will cut but a scurvy figure in the unequal contest. This, sir, however, seems certain, that a contention there must be between them. Is this wise, Mr. Chairman, — now, when we are deliberating on a form of government which we suppose will affect our posterity to many ages, — to adopt a system in which we see, clearly see, the seeds of feud, contest, jealousy, and confusion? Further, sir, it is agreed that the support of the general government is of the utmost importance on the great scale; it is contended by some, as before mentioned, that, if both powers — the supreme, coexisting, coequal powers — should tax the same objects, the state taxes would be best paid. What, sir, would be the consequence? Why, the others would be badly paid, or not paid at all. What, then, is to become of your government? In this case, it must be annihilated indeed. Will this do? This bantling, sir, ought to be better provided for. For my part, I like it too well — if a little amended — to agree to a provision which is manifestly not sufficient for its support; for, if the gentleman's arguments have weight in them, (and that I would not wish to contest,) this government must fail; the states will be too many for it. My opinion is, sir, that a line be drawn. Certain and sufficient resources ought to be left solely to the states, as states, which the amendment does. And as the general government has some particular ones altogether at its command, so also ought there to be a right of requisition for what the specific funds may be deficient in. Sir, this requisition will have, in my opinion, directly a contrary effect to what some gentlemen suppose. It will serve to impress both the general government, as well as the particular state governments, with this important idea — that they conjointly are the guardians of the rights of the whole American family, different parts of the administration of the concerns of which being intrusted to them respectively. In the one case, Congress, as the head, will take care of the general concerns of the whole: in the other, the particular legislatures, as the stewards of the people, will attend to the more minute affairs. Thus, sir, I wish to see the whole transacted in amity and peace, and no other contest than what may arise in the strife which may best answer the general end proposed, — to wit, peace, happiness, and safety.

Further, sir. It has been frequently remarked, from one side of the house, that most of the amendments proposed go on the supposition that corruption may possibly creep into the general government, and seem to discard the idea, as totally improbable. Of what kind of beings, sir, is the general government to be composed? If of men, I think it probable, at least, they may be corrupt. Indeed, if it were not for the depravity of human nature, we should stand in no need of human government at all.

Sir, I should not have added, but I am led to do it, — thus publicly to hold up my testimony to the world against the illiberal treatment we met with yesterday, and that from a quarter I little expected. Had I not been present, I should hardly have believed it possible that the honorable member from New York, who harangued the committee yesterday with such a torrent of illiberality, was the same man who, at the opening of the debates of this Convention, could wish that we should investigate with candor.

Will men, sir, by being called children, be convinced there is no reason in their arguments, or that there is strength in those of their opponents? I confess, sir, in the case before us, they will see strength in the gentleman's argument, (if what was said might be called an argument;) it was strong; and (to use one of the member's own similes) it consisted wholly of *brass*, without any mixture of clay; and by a luxuriance of fancy which that member is famous for, and I suppose for the sake of variety, he has taken it from the feet and toes, where, on another occasion, he had emphatically placed it, and now has displayed it wholly in front.

The honorable member, sir, wrought himself up into such a strain of ridicule, that, after exhausting his admirable talents in this sublime and gentlemanlike science on his opponents, he finds another subject to display them on, in the emblem of liberty, the pillar and cap, which the friend and assertor of the rights of his fellow-citizens, John Holt, late printer of the New York Journal, in perilous times dared to use, as expressive of his own whiggish sentiments; who must be hauled from his grave for the purpose — but whose memory, maugre all the invectives which disdain may wish to throw upon it, will be dear to this country as long as the friends of liberty will dare to show their heads in it. Indeed, sir, this is not the first time that this emblem of liberty has been endeavored to be held up in a ridiculous point of light. And let me tell you, Mr. Chairman, it has the same effect on me now it had the first time. It roused every spark of whiggish resentment about my heart. In or about the year 1776, this cap of liberty was the subject of the tory wit of Vardel, or some of his associates about King's College, (as was supposed.) The member, who now exactly follows their track, (if they were the authors of it,) at that time found it not to his purpose openly to avow the sentiment.

But, sir, from the light in which he appears to hold the wavering conduct of *up, up, up* — and *down, down, down* — and *round, round, round*, — we are led to suppose, that his real sentiments are not subject to vary, but have been uniform throughout. I will leave the gentleman himself to reflect, what are the consequences which will naturally follow from these premises. If he does not like them, I cannot help it; he must be more careful, in future, in laying down propositions from which such consequences will follow.

I repeat, sir, that the member, in the first place, endeavors to ridicule the gentlemen opposed to him in sentiment. That was not enough; he must next attack the memory of the distinguished

emblem of that good old whig, Mr. Holt. But, sir, as he laughed at a worthy member for making what he termed an anti-climax, he appears to be determined to make his own complete; and, for want of a third part more to his purpose, he finishes by an indirect though fashionable attempt to ridicule the sacred gospel itself, and the faith necessary for a sinner to partake of the benefits contained in it.

Before I sit down, sir, I must lament the occasion of the remarks I have last made. When gentlemen will, for the sake of displaying their own parts, or perhaps for worse purposes, depart from the line of propriety, then they are fair game. I cannot suppose, however, that it is disagreeable to the member himself, as he appears to delight to dabble in dirty water.

### **Mr. WILLIAMS.**

Mr. Chairman, although I think the speech of an honorable gentleman from New York totally undeserving of notice, with regard to argument, yet, as he has taken upon himself to misstate some of my sentiments, and attribute improper motives to me, I shall make a very short reply. He observed, that I said the state government was imperfect, because it answered my purpose. With equal justice I might retort that the honorable gentleman has been frequently talking of the defects of the articles of the Confederation, because it answered his purpose. But, sir, I said no more of the state Constitution than I can say with propriety of every thing else — that nothing is perfect. Even the honorable gentleman's wit and fancy cannot lay claim to perfection, or he would not have introduced the vulgar idea of children's tottering with boards. The gentleman observed, that I alleged that the Congress would rob the people of the light of heaven, and pick their pockets. This egregious misstatement I cannot account for. I have heard that a great philosopher endeavored to prove that ridicule was the test of truth; but, with the honorable gentleman, misrepresentation is the test of ridicule.

I think, sir, that no prudent people will trust power with their rulers, that cannot be exercised without injuring them. This I suppose to be the case with poll taxes. But the honorable gentleman hath not attempted to overthrow either the arguments of the honorable gentlemen who have spoken in favor of the amendment I had the honor to propose, or my own. He hath indeed attacked us with wit and fancy. If, however, we supposed him a formidable adversary, upon these considerations, and attempted to combat him with the same weapons, would it not be as ridiculous as it was for Don Quixote to fight with a windmill, upon the mad supposition that it was a giant? The gentleman had also observed, that every member of the committee was convinced, by the arguments of an honorable gentleman from New York, of the propriety of this paragraph, except the honorable gentleman from Duchess. Now, sir, how the honorable gentleman came to discover this, I cannot say: this I can say, for myself, that I am not convinced. The gentleman must, indeed, possess some wonderful faculties, if he can penetrate into the operations of the mind; he must, sir, possess the second sight in a surprising degree. Sir, I should, however, be very uncandid, if I attributed the gentleman's satirical remarks to a malevolent disposition: I do not, sir. I impute them to his politeness, which is the art of pleasing. Now, sir, every person must acknowledge that the honorable gentleman gave a great deal of pleasure yesterday, if laughter is a sign of pleasure; consequently, he was very polite. Sir, I shall not enter seriously into the subject until I hear serious answers to what I have offered to the committee. Sir, to conclude, the honorable gentleman, in my eye, from New York, may substitute his

fanciful notions in the room of arguments; he may, sir, by his ridiculous — I mean ridiculing — powers, excite laughter and occasion smiles; but, trust me, sir, they will, instead of having the desired effect — instead of frightening — be considered with contempt.

### **The Hon. Mr. SMITH.**

Mr. Chairman, the honorable gentleman who spoke yesterday animadverted, in a very ludicrous manner, upon my arguments, and endeavored to place them in a ridiculous point of view. Perhaps it was necessary that the Convention should be diverted with something fanciful, and that they should be relieved from the tediousness of a dull debate by a few flashes of merriment. I suppose it was for this purpose that the gentleman was induced to make so handsome a display of his comic talents, to the no small entertainment of the ladies and gentlemen without the bar. It is well known that, in theatrical exhibitions, the farce succeeds the tragedy. Now, as another honorable gentleman (Mr. Duane) had, but the day before, called to our minds, in a most dismal picture, the tragic scenes of war, devastation, and bloodshed, it was entirely proper that our feelings should be relieved from the shocking impression by a light and musical play. I think the gentleman has acquitted himself admirably. However, his attack seems to have thrown him off his guard, and to have exposed him to his own weapons. The gentleman might well have turned his strictures upon his own contradictions; for, at one time, he argues that a federal republic is impracticable; at another, he argues that the proposed government is a federal republic. At one time, he says the old Confederation has no power at all, at another, he says it has nearly as many as the one proposed. He seems to be an enemy to creeds; and yet, with respect to concurrent jurisdiction, he presents us with his creed, which we are bound to believe. Let us hear it. "I believe that the general government is supreme, and that the state governments are supreme; and yet they are not two supremes, but one supreme; and this cannot be doubted." He says there is a concurrent jurisdiction in your mine, Mr. Chairman, and yet you do not concur; for the gentleman himself claims the soil, and there seems to be a difference between you. But, as the honorable gentleman considers his harangue as containing some reasoning, I shall take notice of a few remarks.

The gentleman has said that the committee seemed to be convinced by the arguments of an honorable member from New York. I suppose it was only a fancy of the moment that struck him, of which he can probably give no better account than the rest of us. I can only say for myself, that, the more I hear and reflect, the more convinced I am of the necessity of amendment. Whether the committee have received conviction can easily be settled by a vote.

The gentleman from Washington has said that even the state of New York was not a perfect form. In the course of my argument, I observed that the state legislatures were competent to good government, and that it was not proper to exchange governments at so great a risk. Where is the mighty contradiction? I said that the state governments were proper depositories of power, and were the proper guardians of the people. I did not say that any government was perfect, nor did I ascribe any extraordinary qualities to the states. The gentleman endeavors to fix another contradiction upon me. He charges me with saying that direct taxes are dangerous and yet impracticable. This is an egregious misrepresentation. My declaration was, that general direct taxes would be extremely difficult in the apportionment and collection, and that this difficulty would push the general government into despotic measures. The gentleman also ridicules our

idea of the states losing their powers. He says this Constitution adds little or no power to the Union, and consequently takes little or nothing from the states. If this be true, what are the advocates of the system contending about? It is the reasoning among all reasoners, that nothing to something adds nothing. If the new plan does not contain any new powers, why advocate it? If it does, whence are they taken? The honorable member cannot understand our argument about the sword and the purse, and asks, Why should the states hold them? I say, the state governments ought to hold the purse, to keep people's hands out of it. With respect to the sword, I say you must handle it, through your general government; but the states must have some agency, or the people will not be willing to put their hands to it. It is observed that we must talk a great deal, and that it is necessary to support here what we have said out of doors. Sir, I conceive that we ought to talk of this subject every where. Several gentlemen have observed that it is necessary these powers should be vested in Congress, that they may have funds to pledge for the payment of debts. This argument has not the least weight in my mind. The government ought not to have it in their power to borrow with too great facility. The funds which we agree to lodge with Congress will be sufficient for as much as they ought to borrow.

I submit to the candor of the committee, whether any evidence of the strength of a cause is afforded, when gentlemen, instead of reasoning fairly, assert roundly, and use all the powers of ridicule and rhetoric to abuse their adversaries. Any argument may be placed in a ridiculous light, by taking only detached parts. I wish, Mr. Chairman, that ridicule may be avoided. It can only irritate the passions, and has no tendency to convince the judgment.

## **The CHANCELLOR**

said, he was very unfortunate in provoking so many able antagonists. They had given a turn to his arguments and expressions which he did not expect. He was, however, happy that he could say, with Sir John Falstaff, that if he had no wit himself, he had been the occasion of wit in others; and therefore he supposed that the ladies, this day, had been as well entertained as yesterday. He went on to explain what the gentleman had imputed to him as contradictions. He had charged him with saying that a federal government could not exist, and yet that he had contended for one. This was false; he had maintained that a single league of states could not long exist, and had proved it by examples. This was fair reasoning, and he had not said any thing to contradict it. He then went through a review of his arguments, to prove that he had been misrepresented, and that he had been consistent throughout. But, said the chancellor, what most deeply wounds me is, that my worthy kinsman across the table, regardless of our common ancestry, and the tender ties of blood, should join his dagger with the rest, and compel me to exclaim, in the dying words of Caesar, "And thou, too, Brutus!" The gentleman alleges, first, that I have treated the holy gospel with disdain. This is a serious charge. I deny it. If I have used a phrase disagreeable to him, I certainly have expressed nothing disrespectful of the Scriptures. If I have used a few words, there are gentlemen who have quoted, not only verses, but chapters. He tells you I have insulted the good Mr. Holt: I declare, I did not know the newspaper I referred to was his. He then tells you that my sentiments are illiberal, and that I insinuate that the worthy printer did not act on sound principles of whiggism. If this were true, my insinuations would indeed be both illiberal and false. Sir, if gentlemen will come forward with absurd arguments, imagine erroneous premises, and draw false conclusions, shall they not be exposed? and if their contradictions render them ridiculous, is it my fault? Are not the absurdities of public speakers

ridiculed in all countries? Why not expose false reasoning? Why not pluck from Sophistry the delusive veil by which she imposes on the people? If I am guilty of absurdities, let them be detected and displayed. If the fool's cap fits me, clap it on: I will wear it, and all shall laugh. Sir, the very day after I made my first speech to this committee, I was attacked with great severity, and with unusual weapons. A dreadful and terrible beast, with great iron claws and ghastly look, was made to grin horribly in my face. I appeal to this committee, sir, whether gentlemen have not said plainly, that the powers of Congress would be dangerous, and yet impracticable. If they will speak such nonsense, they must be exposed. Their other arguments are equally ridiculous; they reason in confusion. They form a government, to consist of thirteen governments; one controls thirteen, and thirteen control one. With regard to the sword and the purse, I could have no conception of Congress keeping a sword, and the states using it; of Congress using a purse, and the states keeping it; of Congress having power, and the states exercising it. I could not reconcile these things to my reason. Sir, when any argument, on such a subject as this, strikes me as being absurd and ridiculous, I cannot conceal my emotions; I think it my duty to expose it boldly; and I shall continue to do this, without any apprehensions from those virulent attacks which have been aimed at me from every quarter.

### **Mr. TREDWELL.**

Sir, little accustomed to speak in public, and always inclined, in such an assembly as this, to be a hearer rather than a speaker, on a less important occasion than the present I should have contented myself with a silent vote; but when I consider the nature of this dispute, that it is a contest, not between little states and great states, (as we have been told,) between little folks and great folks, between patriotism and ambition, between freedom and power; not so much between the navigating and non-navigating states, as between navigating and non-navigating individuals, (for not one of the amendments we contend for has the least reference to the clashing interests of states;) when I consider, likewise, that a people jealous of their liberties, and strongly attached to freedom, have reposed so entire a confidence in this assembly, that upon our determination depends their future enjoyment of those invaluable rights and privileges, which they have so lately and so gallantly defended at every risk and expense, both of life and property, — it appears to me so interesting and important, that I cannot be totally silent on the occasion, lest lispng babes should be taught to curse my name, as a betrayer of their freedom and happiness.

The gentleman who first opened this debate did (with an emphasis which I believe convinced every one present of the propriety of the advice) urge the necessity of proceeding, in our deliberations on this important subject, coolly and dispassionately. With how much candor this advice was given, appears from the subsequent parts of a long speech, and from several subsequent speeches almost totally addressed to our fears. The people of New Jersey and Connecticut are so exceedingly exasperated against us, that, totally regardless of their own preservation, they will take the two rivers of Connecticut and Delaware by their extremities, and, by dragging them over our country, will, by a sweeping deluge, wash us all into the Hudson, leaving neither house nor inhabitant behind them. But if this event should not happen, doubtless the Vermontese, with the British and Tories our natural enemies, would, by bringing down upon us the great Lake Ontario, sweep hills and mountains, houses and inhabitants, in one deluge, into the Atlantic. These, indeed, would be terrible calamities; but terrible as they are, they are not to be compared with the horrors and desolation of tyranny. The arbitrary courts of Philip in the

Netherlands, in which life and property were daily confiscated without a jury, occasioned as much misery and a more rapid depopulation of the province, before the people took up arms in their own defence, than all the armies of that haughty monarch were able to effect afterwards; and it is doubtful, in my mind, whether governments, by abusing their powers, have not occasioned as much misery and distress, and nearly as great devastations of the human species, as all the wars which have happened since Milton's battle of the angels to the present day. The end or design of government is, or ought to be, the safety, peace, and welfare of the governed. Unwise, therefore, and absurd in the highest degree, would be the conduct of that people, who, in forming a government, should give to their rulers power to destroy them and their property, and thereby defeat the very purpose of their institutions; or, in other words, should give unlimited power to their rulers, and not retain in their own hands the means of their own preservation. The first governments in the world were parental, the powers of which were restrained by the laws of nature; and doubtless the early succeeding governments were formed on the same plan, which, we may suppose, answered tolerably well in the first ages of the world, while the moral sense was strong, and the laws of nature well understood, there being then no lawyers to explain them away. But in after times, when kings became great, and courts crowded, it was discovered that governments should have a right to tyrannize, and a power to oppress; and at the present day, when the *juris periti* are become so skilful in their profession, and quibbling is reduced to a science, it is become extremely difficult to form a constitution which will secure liberty and happiness to the people, or laws under which property is safe. Hence, in modern times, the design of the people, in forming an original constitution of government, is not so much to give powers to their rulers, as to guard against the abuse of them; but, in a federal one, it is different.

Sir, I introduce these observations to combat certain principles which have been daily and confidently advanced by the favorers of the present Constitution, and which appear to me totally indefensible. The first and grand leading, or rather misleading, principle in this debate, and on which the advocates for this system of unrestricted powers must chiefly depend for its support, is that, in forming a constitution, whatever powers are not expressly granted or given the government, are reserved to the people, or that rulers cannot exercise any powers but those expressly given to them by the Constitution. Let me ask the gentlemen who advanced this principle, whether the commission of a Roman dictator, which was in these few words — to take care that the state received no harm — does not come up fully to their ideas of an energetic government; or whether an invitation from the people to one or more to come and rule over them, would not clothe the rulers with sufficient powers. If so, the principle they advance is a false one. Besides, the absurdity of this principle will evidently appear, when we consider the great variety of objects to which the powers of the government must necessarily extend, and that an express enumeration of them all would probably fill as many volumes as Pool's Synopsis of the Critics. But we may reason with sufficient certainty on the subject, from the sense of all the public bodies in the United States, who had occasion to form new constitutions. They have uniformly acted upon a direct and contrary principle, not only in forming the state constitutions and the old Confederation, but also in forming this very Constitution, for we do not find in every state constitution express resolutions made in favor of the people; and it is clear that the late Convention at Philadelphia, whatever might have been the sentiments of some of its members, did not adopt the principle, for they have made certain reservations and restrictions, which, upon that principle, would have been totally useless and unnecessary; and can it be supposed that that wise body, whose only apology for the great ambiguity of many parts of that performance, and

the total omission of some things which many esteem essential to the security of liberty, was a great desire of brevity, should so far sacrifice that great and important object, as to insert a number of provisions which they esteemed totally useless? Why is it said that the privilege of the writ of *habeas corpus* shall not be suspended, unless, in cases of rebellion or invasion, the public safety may require it? What clause in the Constitution, except this very clause itself, gives the general government a power to deprive us of that great privilege, so sacredly secured to us by our state constitutions? Why is it provided that no bill of attainder shall be passed, or that no title of nobility shall be granted? Are there any clauses in the Constitution extending the powers of the general government to these objects? Some gentlemen say that these, though not necessary, were inserted for greater caution. I could have wished, sir, that a greater caution had been used to secure to us the freedom of election, a sufficient and responsible representation, the freedom of the press, and the trial by jury both in civil and criminal cases.

These, sir, are the rocks on which the Constitution should have rested; no other foundation can any man lay, which will secure the sacred temple of freedom against the power of the great, the undermining arts of ambition, and the blasts of profane scoffers — for such there will be in every age — who will tell us that all religion is in vain; that is, that our political creeds, which have been handed down to us by our forefathers as sacredly as our Bibles, and for which more of them have suffered martyrdom than for the creed of the apostles, are all nonsense; who will tell us that paper constitutions are mere paper, and that parchment is but parchment, that jealousy of our rulers is a sin, &c. I could have wished also that sufficient caution had been used to secure to us our religious liberties, and to have prevented the general government from tyrannizing over our consciences by a religious establishment — a tyranny of all others most dreadful, and which will assuredly be exercised whenever it shall be thought necessary for the promotion and support of their political measures. It is ardently to be wished, sir, that these and other invaluable rights of freemen had been as cautiously secured as some of the paltry local interests of some of the individual states. But it appears to me, that, in forming this Constitution, we have run into the same error which the lawyers and Pharisees of old were charged with; that is, while we have secured the tithes of mint, anise, and cumin, we have neglected the weightier matters of the law, judgment, mercy, and faith. Have we not neglected to secure to ourselves the weighty matters of judgment or justice, by empowering the general government to establish one supreme, and as many inferior, courts as they please, whose proceedings they have a right to fix and regulate as they shall think fit, so that we are ignorant whether they shall be according to the common, civil, the Jewish, or Turkish law? What better provisions have we made for mercy, when a man for ignorantly passing a counterfeit continental note, or bill of credit, is liable to be dragged to a distant county, two or three hundred miles from home, deprived of the support and assistance of friends, to be tried by a strange jury, ignorant of his character, ignorant of the character of the witnesses, unable to contradict any false testimony brought against him by their own knowledge of facts, and with whom the prisoner being unacquainted, he must be deprived totally of the benefit of his challenge? and besides all that, he may be exposed to lose his life, merely for want of property to carry his witnesses to such a distance; and after all this solemn farce and mockery of a trial by jury, if they should acquit him, it will require more ingenuity than I am master of, to show that he does not hold his life at the will and pleasure of the Supreme Court, to which an appeal lies, and consequently depend on the tender mercies, perhaps, of the wicked, (for judges may be wicked;) and what those tender mercies are, I need not tell you. You may read them in the history of the Star Chamber Court in England, and in the courts of Philip, and in your Bible.

This brings me to the third and last weighty matter mentioned in the text — to wit, faith. The word *faith* may, with great propriety, be applied to the articles of our political creed, which, it is absolutely necessary, should be kept pure and uncorrupted, if we mean to preserve the liberties of our country and the inestimable blessings of a free government. And, sir, I cannot but be seriously alarmed on this head, as has frequently been the case during the present discussion, — gentlemen of the first rank and abilities openly opposing some of the most essential principles of freedom, and endeavoring, by the most ingenious sophistry, and the still more powerful weapons of ridicule, to shake or corrupt our faith therein. Have we not been told that, if government is but properly organized, and the powers were suitably distributed among the several members, it is unnecessary to provide any other security against the abuse of its power? that power thus distributed needs no restriction? Is this a whig principle? Does not every constitution on the continent contradict this position? Why are we told that all restrictions of power are found to be inconvenient? that we ought to put unlimited confidence in our rulers. that it is not our duty to be jealous of men in power. Have we not had an idea thrown out of establishing an aristocracy in our own country, — a government than which none is more dreadful and oppressive?

What the design of the preacher on this occasion is, I will not attempt to determine; far be it from me to judge men's hearts: but thus much I can say, from the best authority, they are deceitful above all things, and desperately wicked. But whatever be the design of the preachers, the tendency of their doctrines is clear; they tend to corrupt our political faith, to take us off our guard, and lull to sleep that jealousy which, we are told by all writers, — and it is proved by all experience, — is essentially necessary for the preservation of freedom. But notwithstanding the strongest assertions that there are no wolves in our country, if we see their footsteps in every public path, we should be very credulous and unwise to trust our flocks abroad, and to believe that those who advised us to do it were very anxious for their preservation.

In this Constitution, sir, we have departed widely from the principles and political faith of '76, when the spirit of liberty ran high, and danger put a curb on ambition. Here we find no security for the rights of individuals, no security for the existence of our state governments; here is no bill of rights, no proper restriction of power; our lives, our property, and our consciences, are left wholly at the mercy of the legislature, and the powers of the judiciary may be extended to any degree short of almighty. Sir, in this Constitution we have not only neglected, — we have done worse, — we have openly violated, our faith, — that is, our public faith.

The seventh article, which is in these words, "The ratifications of the Conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same," is so flagrant a violation of the public faith of these states, so solemnly pledged to each other in the Confederation, as makes me tremble to reflect upon; for, however lightly some may think of *paper* and *parchment* constitutions, they are recorded, sir, in that high court of appeals, the Judge of which will do right, and I am confident that no such violation of public faith ever did, or ever will, go unpunished.

The plan of the *federal city*, sir, departs from every principle of freedom, as far as the distance of the two polar stars from each other; for, subjecting the inhabitants of that district to the exclusive legislation of Congress, in whose appointment they have no share or vote, is laying a foundation on which may be erected as complete a tyranny as can be found in the Eastern world. Nor do I

see how this evil can possibly be prevented, without razing the foundation of this happy place, where men are to live, without labor, upon the fruit of the labors of others; this political hive, where all the drones in the society are to be collected to feed on the honey of the land. How dangerous this city may be, and what its operation on the general liberties of this country, time alone must discover; but I pray God, it may not prove to this western world what the city of Rome, enjoying a similar constitution, did to the eastern.

There is another clause in this Constitution, which, though there is no prospect of getting it amended, I think ought not to be passed over in silence, lest such a silence should be construed into a tacit approbation of it. I mean the clause which restricts the general government from putting a stop, for a number of years, to a commerce which is a stain to the commerce of any civilized nation, and has already blackened half the plains of America with a race of wretches made so by our cruel policy and avarice, and which appears to me to be already repugnant to every principle of humanity, morality, religion, and good policy. There are other objections to this Constitution, which are weighty and unanswerable; but they have been so clearly stated, and so fully debated, in the course of this discussion, that it would be an unjustifiable intrusion on the patience of the house to repeat them. I shall therefore content myself with a few observations on the general plan and tendency. We are told that this is a federal government. I think, sir, there is as much propriety in the name, as in that which its advocates assume, and no more; it is, in my idea, as complete a consolidation as the government of this state, in which legislative powers, to a certain extent, are exercised by the several towns and corporations. The sole difference between a state government under this Constitution, and a corporation under a state government, is, that a state being more extensive than a town, its powers are likewise proportionably extended, but neither of them enjoys the least share of sovereignty; for, let me ask, what is a state government? What sovereignty, what power is left to it, when the control of every source of revenue, and the total command of the militia, are given to the general government? That power which can command both the property and the persons of the community, is the sovereign, and the sole sovereign. The idea of two distinct sovereigns in the same country, separately *possessed* of sovereign and supreme power, in the same matters at the same time, is as supreme an absurdity, as that two distinct separate circles can be bounded exactly by the same circumference. This, sir, is demonstration; and from it I draw one corollary, which, I think, clearly follows, although it is in favor of the Constitution, to wit — that at least that clause in which Congress guaranties to the several states a republican *form* of government, speaks honestly; that is, that no more is intended by it than is expressed; and I think it is clear that, whilst the mere form is secured, the substance — to wit, the whole power and sovereignty of our state governments, and with them the liberties of the country — is swallowed up by the general government; for it is well worth observing, that, while our state governments are held up to us as the great and sufficient security of our rights and privileges, it is carefully provided that they shall be disarmed of all power, and made totally dependent on the bounty of Congress for their support, and consequently for their existence, — so that we have scarce a single right secured under either.

Is this, sir, a government for freemen? Are we thus to be duped out of our liberties? I hope, sir, our affairs have not yet arrived to that long-wished-for pitch of confusion. that we are under the necessity of accepting such a system of government as this.

I cannot, sir, express my feelings on a late occasion, when I consider with what unspeakable indignation the spirit of a Montgomery, a Herkimer, a Paris, &c., must have fired at the insults offered to their memories on this floor, and that not by a stranger, but by a brother, when their names, which will ever be dear to freemen, were profanely called upon as an inducement for us to surrender up those rights and privileges, in the defence of which they so gallantly fought, and so gloriously died. We are called upon at this time (I think it is an early day) to make an unconditional surrender of those rights which ought to be dearer to us than our lives.

But I hope, sir, that the memory of these patriot heroes will teach us a duty on this occasion. If we follow their example, we are sure not to err. We ought, sir, to consider — and it is a most solemn consideration — that we may now give away, by a vote, what it may cost the dying groans of thousands to recover; that we may now surrender, with a little ink, what it may cost seas of blood to regain; the dagger of Ambition is now pointed at the fair bosom of Liberty, and, to deepen and complete the tragedy, we, her sons, are called upon to give the fatal thrust. Shall we not recoil at such a deed, and all cry out with one voice, "Hands off!" What distraction has seized us? Is she not our mother, and if the frenzy of any should persist in the parricidal attempt, shall we not instantly interpose, and receive the fatal point into our own bosom? A moment's hesitation would ever prove us to be bastards, not sons. The liberties of the country are a deposit, a trust, in the hands of individuals; they are an entailed estate, which the possessors have no right to dispose of; they belong to our children, and to them we are bound to transmit them as a representative body. The trust becomes tenfold more sacred in our hands, especially as it was committed to us with the fullest confidence in our sentiments, integrity, and firmness. If we should betray that trust on this occasion, I fear (think there is reason to fear) that it will teach a lesson dangerous to liberty — to wit, that no confidence is to be placed in men.

But why, sir, must we be guilty of this breach of trust? Why surrender up the dear-bought liberties of our country? Because we are told, in very positive terms, that nothing short of this will satisfy, or can be accepted by, our future rulers? Is it possible that we can be at a loss for an answer to such declarations as these? Can we not, ought we not to speak like freemen on this occasion, (this perhaps may be the last time when we shall dare to do it,) and declare, in as positive terms, that we cannot, we will not, give up our liberties; that, if we cannot be admitted into the Union as freemen, we will not come in as slaves? This I fully believe to be the language of my constituents; this is the language of my conscience; and, though I may not dare longer to make it the language of my tongue, yet I trust it will ever be the language of my heart. If we act with coolness, firmness, and decision, on this occasion, I have the fullest confidence that the God who has so lately delivered us out of the paw of the lion and the bear, will also deliver us from this Goliath, this uncircumcised Philistine. This government is founded in sin, and reared up in iniquity; the foundations are laid in a most sinful breach of public trust, and the top-stone is a most iniquitous breach of public faith; and I fear, if it goes into operation, we shall be justly punished with the total extinction of our civil liberties. We are invited, in this instance, to become partakers in other men's sins; if we do, we must likewise be content to take our share in the punishment.

We are told, sir, that a government is like a mad horse, which, notwithstanding all the curb you can put upon him, will sometimes run away with his rider. The idea is undoubtedly a just one. Would he not, therefore, justly be deemed a mad man, and deserve to have his neck broken, who

should trust himself on this horse without any bridle at all? We are threatened, sir, if we do not come into the Union, with the resentment of our neighboring states. I do not apprehend we have much to fear from this quarter, for our neighbors must have the good sense to discover that not one of our objections is founded on motives of particular state interest. They must see likewise, from the debates, that every selfish idea that has been thrown out has come from those who very improperly call themselves the *federal* side of the house. A union with our sister states I as ardently desire as any man, and that upon the most generous principles; but a union under such a system as this, I think, is not a desirable thing. The design of a union is safety, but a union upon the proposed plan is certain destruction to liberty. In one sense, indeed, it may bring us to a state of safety, for it may reduce us to such a condition that we may be very sure that nothing worse can happen, to us, and consequently we shall have nothing to fear.

This, sir, is a dreadful kind of safety; but I confess it is the only kind of safety I can see in this union. There are no advantages that can possibly arise from a union which can compensate for the loss of freedom, nor can any evils be apprehended from a disunion which are as much to be dreaded as tyranny.

The committee then proceeded through sections 8, 9, and 10, of this article, and the whole of the next, with little or no debate. As the secretary read the paragraphs, amendments were moved, in the order and form hereafter recited.

1. To the paragraph respecting the *borrowing of money*, Mr. LANSING proposed the following amendment: —
2. "*Provided*, That no money be borrowed on the credit of the United States, without the assent of two thirds of the members of both houses present."
3. To the clause respecting the establishment of *post-offices, &c.*, Mr. JONES moved the following amendment: —
4. "*Resolved*, as the opinion of the committee, that the power of Congress to establish post-offices and post-roads is not to be construed to extend to the laying out, making, altering, or repairing highways, in any state, without the consent of the legislature of such state."
5. To the clause respecting the raising and supporting *armies*, Mr. LANSING proposed the following: —
6. "*Provided*, That no standing army, or regular troops, shall be raised, or kept up, in time of peace, without the consent of two thirds of the members of both houses present."
7. Respecting the organization and arming the *militia, &c.*, —
8. "*Provided*, That the militia of any state shall not be marched out of such state without the consent of the executive thereof, nor be continued in service out of the state, without the consent of the legislature thereof, for a longer term than six weeks; and *provided*, that the power to organize, arm, and discipline the militia, shall not be construed to extend further than to prescribe the mode of arming and disciplining the same."

### **Moved by Mr. SMITH.**

9. Respecting the power to make all *laws necessary* for the carrying the Constitution into execution, —

10. "*Provided*, That no power shall be exercised by Congress, but such as is expressly given by this Constitution; and all others, not expressly given, shall be reserved to the respective states, to be by them exercised." Moved by Mr. LANSING.
11. To the clause respecting the power of *regulating commerce*, —
12. "*Resolved*, as the opinion of this committee, that nothing in the said Constitution contained shall be construed to authorize Congress to grant monopolies, or erect any company with exclusive advantages of commerce."

**Moved by Mr. M. SMITH.**

13. Relative to the right of *declaring war*, —
14. "*Resolved*, as the opinion of this committee, that the Congress ought not to have the power or right to declare war, without the concurrence of two thirds of the members of each house."

**Moved by Mr. TREDWELL.**

15. Sec. 9. Respecting the privilege of *habeas corpus*, —
16. "*Provided*, That, whenever the privilege of *habeas corpus* shall be suspended, such suspension shall in no case exceed the term of six months, or until the next meeting of the Congress."

**Moved by Mr. LANSING.**

17. Respecting *ex post facto* laws, —
18. "*Provided*, That the meaning of *ex post facto* laws shall not be construed to prevent calling public defaulters to account, but shall extend only to crimes."

**Moved by Mr. TREDWELL.**

19. Respecting the *ratio* in which *taxes* shall be laid, —
20. "*Resolved*, as the opinion of this committee, that no capitation tax ought ever to be laid."

**Moved by Mr. TREDWELL,**

21. Clause relative to the publication of the *receipts* and *expenditures*, —
22. "*Provided*, That. the words *from time to time* shall be so construed, as that the receipts and expenditures of public money shall be published at least once in every year, and be transmitted to the executives of the several states, to be laid before the legislatures thereof."

**Moved by Mr. TREDWELL.**

Clause relating to the granting *titles of nobility*, — "*Resolved*, as the opinion of this committee, that the Congress shall at no time consent that any person, holding any office of

profit or trust in or under the United States, shall accept of any title of nobility from any king, prince, or foreign state."

**Moved by Mr. M. SMITH.**

23. FRIDAY, *July 4, 1788.* — Committee proceeded to article 2. Sec. 1. Clause respecting the *office of President,* —

24. "*Resolved,* as the opinion of this committee, that the President of the United States should hold his office during the term of seven years, and that he should not be eligible a second time."

**Moved by Mr. SMITH,**

25. Sec. 2. Clause 1, respecting the *powers of the President,* —

26. "*Resolved,* as the opinion of this committee, that the President of the United States should never command the army, militia, or navy of the United States, in person, without the consent of the Congress; and that he should not have the power to grant pardons for treason, without the consent of the Congress; but that, in cases where persons are convicted of treason, he should have authority to grant reprieves, until their cases can be laid before the Congress."

**Moved by Mr. G. LIVINGSTON.**

**SATURDAY, *July 5, 1788.* —**

Sec. 2. Clause 2. Amendment

**moved by Mr. M. SMITH: —**

27. "*Resolved,* as the opinion of this committee, that the Congress should appoint, in such manner as they may think proper, a council to advise the President in the appointment of officers; that the said council should continue in office for four years; that they should keep a record of their proceedings, and sign the same, and always be responsible for their advice, and impeachable for misconduct in office; that the counsellors should have a reasonable allowance for their services, fixed by a standing law; and that no man should be elected a counsellor who shall not have attained to the age of thirty-five years, and who is not either a natural-born citizen, or has not become a citizen before the 4th day of July, 1776."

Clause 3.

**Motion by Mr. M. SMITH: —**

28. "*Provided,* That all commissions, writs, and processes, shall run in the name of the people of the United States, and be tested in the name of the President of the United

States, or the person holding his place for the time being, or the first judge of the court out of which the same shall issue."

29. The committee then took up the 3d article. Mr. JONES proposed the following amendments, which he explained in a speech of some length, and was followed by Mr. SMITH; but no debate ensued: —
30. "*Resolved*, as the opinion of this committee, that nothing in the Constitution now under consideration contained shall be construed so as to authorize the Congress to constitute, ordain, or establish, any tribunals, or inferior courts, with any other than appellate jurisdiction, except such as may be necessary for trial of causes of admiralty and maritime jurisdiction, and for the trial of piracies and felonies committed on the high seas; and in all other cases to which the judicial power of the United States extends, and in which the Supreme Court of the United States has no original jurisdiction, the cause shall be heard, tried, and determined in some of the state courts, with the right of appeal to the Supreme Court of the United States, or other proper tribunal, to be established for the purpose by the Congress, with such exceptions, and under such regulations, as the Congress shall make."
31. As the secretary went on with this article, Mr. JONES submitted the following amendments: —
32. Resolve 1. "*Resolved*, as the opinion of this committee, that all appeals from any courts in this state, proceeding according to the course of the common law, are to be by writ of error, and not otherwise."
33. Res. 2. "*Resolved*, as the opinion of this committee, that no judge of the Supreme Court of the United States shall, during his continuance in office, hold any other office under the United States, or any of them."
34. Res. 3. "*Resolved*, as the opinion of this committee, that the judicial power of the United States, as to controversies between citizens of the same state, claiming lands under grants of different states, extends only to controversies relating to such lands as shall be claimed by two or more persons, under grants of different states."
35. Res. 4. "*Resolved*, as the opinion of this committee, that nothing in the Constitution now under consideration contained, is to be construed to authorize any suit to be brought against any state, in any manner what ever."
36. Res. 5. "*Resolved*, as the opinion of this committee, that the judicial power of the United States, in cases in which a state shall be a party, is not to be construed to extend to criminal prosecutions."
37. Res. 6. "*Resolved*, as the opinion of this committee, that the judicial power of the United States, as to controversies between citizens of different states, is not to be construed to extend to any controversy relating to any real estate not claimed under grants of different states."
38. Res. 7. "*Resolved*, as the opinion of this committee, that the judicial power of the United States, as to controversies between citizens of the same state, claiming lands under grants of different states, extends only to controversies relating to such lands as shall be claimed by two or more persons, under grants of different states."
39. Res. 8. "*Resolved*, as the opinion of this committee, that the person aggrieved by any judgment, sentence, or decree of the Supreme Court of the United States, with such exceptions, and under such regulations, as the Congress shall make concerning the same, ought, upon application, to have a commission, to be issued by the President of the

United States, to such learned men as he shall nominate, and by and with the advice and consent of the Senate, appoint, not less than seven, authorizing such commissioners, or any seven or more of them, to correct the errors in such judgment, or to review such sentence and decree, as the case may be, and to do justice to the parties in the premises."

40. Res. 9. "*Resolved*, as the opinion of this committee, that the jurisdiction of the Supreme Court of the United States, or of any other court to be instituted by the Congress, ought not, in any case, to be increased, enlarged, or extended, by any fiction, collusion, or mere suggestion."

## MONDAY, *July 7, 1788.* —

The secretary continued reading the 4th and 5th articles without interruption. To the 2d clause of article 6th, Mr. LANSING proposed the following amendments: —

41. "*Resolved*, as the opinion of this committee, that no treaty ought to operate so as to alter the constitution of any state; nor ought any commercial treaty to operate so as to abrogate any law of the United States."
42. To the 3d clause of article 6th, Mr. M. SMITH moved the following addition: —
43. "*Resolved*, as the opinion of this committee, that all the officers of the United States ought to be bound, by oath or affirmation, not to infringe the constitutions or rights of the respective states."
44. After the Constitution had been gone through, Mr. M. SMITH moved for the following amendment to clause 17, of sec. 8, art. 1: —
45. "*Resolved*, as the opinion of this committee, that the right of the Congress to exercise exclusive legislation over such district, not exceeding ten miles square, as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, shall not be so exercised as to exempt the inhabitants of such district from paying the same taxes, duties, imposts, and excises, as shall be imposed on the other inhabitants of the state where such district may be, nor shall it be so exercised as to prevent the laws of the state, and all process under those laws, from extending to such district, in all cases of crimes committed without the district, or in cases of contracts made between persons residing within such district and persons residing without it. Nor shall it be so exercised, as to authorize any inhabitant of the said district to bring any suit in any court, which may be established by the Congress within the same, against any citizen or person not an inhabitant of the said district. And it is understood that the stipulations in this Constitution, respecting all essential rights, shall extend as well to this district as to the United States in general. *Resolved*, further, as the opinion of this committee, that the right of exclusive legislation, with respect to such places as may be purchased for the erection of forts, magazines, arsenals, and dock-yards, and other needful buildings, shall not be construed to authorize the Congress to make any law to prevent the laws of the states in which they may lie, from extending to such places in all civil and criminal matters, except as to such persons as shall be in the service of the United States, nor to them with respect to crimes committed without such places."

**Mr. LANSING**

then read, and presented to the committee, a *bill of rights* to be prefixed to the Constitution.

## **TUESDAY, July 8, 1788. —**

Convention met, and adjourned without doing business.

## **WEDNESDAY, July 9, 1788. —**

Convention met, and adjourned.

## **THURSDAY, July 10, 1788, —**

### **Mr. LANSING**

submitted a plan of amendments, on a new arrangement, and with material alterations. They are divided into three — 1st, explanatory; 2d, conditional; 3d, recommendatory.

## **FRIDAY, July 11, 1788. —**

### **Mr. JAY moved**

the following resolutions: —

"*Resolved*, as the opinion of this committee, that the Constitution under consideration ought to be *ratified* by this Convention.

"*Resolved*, further, as the opinion of this committee, that such parts of the said Constitution as may be thought doubtful ought to be explained, and that whatever amendment may be deemed useful, or expedient, ought to be recommended."

Mr. JAY was supported by Mr. Chancellor Livingston and Mr. Chief Justice Morris, and opposed by Mr. Melancton Smith. The debates on this motion continued till Tuesday, the 15th of July; when

### **Mr. SMITH moved,**

as an amendment, to add to the first resolution proposed by Mr. JAY, so that the same, when amended, should read as follows: —

"*Resolved*, as the opinion of this committee, that the Constitution under consideration ought to be ratified by this Convention: *upon condition, nevertheless*, That until a convention shall be called and convened for proposing amendments to the said Constitution, the militia of this state will not be continued in service out of this state for a longer term than six weeks, without the consent of the legislature thereof: That the Congress will not make or alter any regulation in this state

respecting the times, places, and manner of holding elections for senators or representatives, unless the legislature of this state should neglect or refuse to make laws or regulations for the purpose, or from any circumstance be incapable of making the same; and that, in those cases, such power will only be exercised until the legislature of this state shall make provision in the premises: That no excise will be imposed on any article of the growth, production, or manufacture of the United States, or any of them, within this state, ardent spirits excepted: And that Congress shall not lay direct taxes within this state, but when the moneys arising from the impost and excise shall be insufficient for the public exigencies; nor then, until Congress shall first have made a requisition upon this state, to assess, levy, and pay the amount of such requisition, made agreeably to the census fixed in the said Constitution, in such way and manner as the legislature of this state judge best; but in such case, if the state shall neglect or refuse to pay its proportion pursuant to such requisition, then the Congress may assess and levy this state's proportion, together with interest at the rate of six per centum, per annum, from the time at which the same was required to be paid."

**WEDNESDAY, July 16, 1788. —**

**The Honorable Judge HOBART**

brought forward a motion for *adjournment*. On this motion large debates took place, in which Mr. Hobart, Mr. Duane, Mr. Lansing, Mr. Jay, the Chancellor, Mr. Hamilton, and Mr. Bay, were engaged. The motion was rejected.

**Mr. DUANE**

then brought forward a plan of *ratification*, with certain explanations, and with a list of amendments to be recommended. This was rejected.

**Mr. SMITH'S**

proposition was then resumed, and debated till

**SATURDAY, July 19, 1788;**

**when Mr. LANSING moved**

to postpone the several propositions before the house, in order to take into consideration a draft of a conditional ratification, with a *bill of rights* prefixed, and amendments subjoined. Debates arose on the motion, and it was carried The committee then proceeded to consider separately the amendments proposed in this plan of ratification.

**WEDNESDAY, July 23, 1788. —**

Mr. JONES moved, that the words *on condition*, in the form of the ratification, should be obliterated, and that the words *in full confidence* should be substituted — which was carried.

<i>For the Affirmative.</i>		
Mr. Jay,	Mr. J. Smith,	Mr. P. Livingston,
Mr. R. Morris,	Mr. Jones,	Mr. Hatfield,
Mr. Hobart,	Mr. Schenck,	Mr. Van Cortland,
Mr. Hamilton,	Mr. Lawrence,	Mr. Crane,
Mr. Robt. R. Livingston,	Mr. Carman,	Mr. Sarls,
Mr. Roosevelt,	Mr. Lefferts,	Mr. Platt,
Mr. Duane,	Mr. Vandervoort,	Mr. M. Smith,
Mr. Harrison,	Mr. Bancker,	Mr. Gilbert Livingston
Mr. Low,	Mr. Ryerss,	Mr. DeWitt,
Mr. Scudder,	Mr. L. Morris,	Mr. Williams.
Mr. Havens,		
<i>For the Negative.</i>		
Mr. R. Yates,	Mr. Wynkoop,	Mr. Winn,
Mr. Lansing,	Mr. Haring,	Mr. Veeder,
Mr. I. Thompson,	Mr. Woodhull,	Mr. Staring,
Mr. Ten Eyck,	Mr. Wisner,	Mr. Parker,
Mr. Tredwell,	Mr. Wood,	Mr. Baker,
Mr. PRESIDENT,	Mr. Swartwout,	Mr. Hopkins,
Mr. Cantine,	Mr. Akins,	Mr. Van Ness,
Mr. Schoonmaker,	Mr. Harper,	Mr. Bay,
Mr. Clark.	Mr. C. Yates,	Mr. Adgate.
Mr. J. Clinton,	Mr. Frey,	

The committee continued the consideration of the amendments till Thursday; when

**Mr. LANSING moved**

to adopt a resolution, that there should be reserved to the state of New York a right to withdraw herself *from the Union* after a certain number of years, unless the amendments proposed should previously be submitted to a general convention.

This motion was negatived.

The committee proceeded in the consideration of the amendments till

## FRIDAY, July 25, 1788;

when, the whole being gone through and amended, the question was put, whether the committee did agree to the same, which was carried in the affirmative.

The committee then rose, and reported.

The report of the committee being considered, the President put the question, whether the Convention did agree to the said report, which was carried in the affirmative.

The Convention then resolved, unanimously, that a *circular letter* be prepared to be laid before the different legislatures of the United States, recommending a general Convention.

## SATURDAY, July 26, 1788. —

The Convention having met, the bill of rights, and form of the ratification of the Constitution, with the amendments, were read, when the *question* being put, whether the same should pass, as agreed to and ratified by the Convention, it was carried in the affirmative, as follows: —

<i>For the Affirmative.</i>		
Mr. Jay,	Mr. J. Smith,	Mr. P. Livingston,
Mr. Hobert,	Mr. Jones,	Mr. Hatfield,
Mr. Hamilton,	Mr. Schenck,	Mr. Van Cortland,
Mr. Robt. R. Livingston	Mr. Lawrence,	Mr. Crane,
Mr. Roosevelt,	Mr. Carman,	Mr. Sarls,
Mr. Duane,	Mr. Lefferts,	Mr. Woodhull,
Mr. Harrison,	Mr. Vandervoort,	Mr. Platt,
Mr. Low,	Mr. Bancker,	Mr. M. Smith,
Mr. Scudder,	Mr. Ryerss,	Mr. G. Livingston,
Mr. Havens,	Mr. L. Morris,	Mr. DeWitt.
<i>For the Negative.</i>		
Mr. R. Yates,	Mr. Wynkoop,	Mr. Veeder,
Mr. Lansing,	Mr. Haring,	Mr. Staring,
Mr. Outhoudt,	Mr. Wisner,	Mr. Parker,
Mr. J. Thompson,	Mr. Wood,	Mr. Williams,
Mr. Tredwell,	Mr. Swartwout,	Mr. Baker,
Mr. Cantine,	Mr. Akins,	Mr. Hopkins,
Mr. Schoonmaker,	Mr. Harper,	Mr. Van Ness,
Mr. Clark,	Mr. Frey,	Mr. Bay,

Mr. J. Clinton,	Mr. Winn,	Mr. Adgate.
-----------------	-----------	-------------

Convention adjourned without day.

## THE CIRCULAR LETTER,

*from the Convention of the State of New York to the governors of the several states in the Union.*

POUGHKEEPSIE, July 28, 1788

SIR:

We, the members of the Convention of this state, have deliberately and maturely considered the Constitution proposed for the United States. Several articles in it appear so exceptionable to a majority of us, that nothing but the fullest confidence of obtaining a revision of them by a general convention, and an invincible reluctance to separating from our sister states, could have prevailed upon a sufficient number to ratify it, without stipulating for previous amendments. We all unite in opinion, that such a revision will be necessary to recommend it to the approbation and support of a numerous body of our constituents.

We observe that amendments have been proposed, and are anxiously desired, by several of the states, as well as by this; and we think it of great importance that effectual measures be immediately taken for calling a convention, to meet at a period not far remote; for we are convinced that the apprehensions and discontents, which those articles occasion, cannot be removed or allayed, unless an act to provide for it be among the first that shall be passed by the new Congress.

As it is essential that an application for the purpose should be made to them by two thirds of the states, we earnestly exhort and request the legislature of your state to take the earliest opportunity of making it. We are persuaded that a similar one will be made by our legislature, at their next session; and we ardently wish and desire that the other states may concur in adopting and promoting the measure.

It cannot be necessary to observe, that no government, however constructed, can operate well, unless it possesses the confidence and goodwill of the body of the people; and as we desire nothing more than that the amendments proposed by this or other states be submitted to the consideration and decision of a general convention, we flatter ourselves that motives of mutual affection and conciliation will conspire with the obvious dictates of sound policy to induce even such of the states as may be content with every article in the Constitution to gratify the reasonable desires of that numerous class of American citizens who are anxious to obtain amendments of some of them.

Our amendments will manifest that none of them originated in local views, as they are such as, if acceded to, must equally affect every state in the Union. Our attachment to our sister states, and the confidence we repose in them, cannot be more forcibly demonstrated than by acceding to a

government which many of us think very imperfect, and devolving the power of determining whether that government shall be rendered perpetual in its present form, or altered agreeably to our wishes, and a minority of the states with whom we unite.

We request the favor of your excellency to lay this letter before the legislature of your state; and we are persuaded that your regard for our national harmony and good government will induce you to promote a measure which we are unanimous in thinking very conducive to those interesting objects.

We have the honor to be, with the highest respect, your excellency's most obedient servants.

By the unanimous order of the Convention,

GEORGE CLINTON,

*President.*

---

1. Now Tennessee.

2. By the British Parliamentary Reform Act, 9th June, 1833, 56 rotten boroughs have been disfranchised; 30 others cut down to a single member; 19 *new* boroughs of one member each, and 62 *new* county members, *added*. Total number of members, 655.

3. Alluding to the adoption of the Constitution by New Hampshire.

---

THE  
DEBATES  
IN  
THE CONVENTION  
OF THE  
COMMONWEALTH OF VIRGINIA,  
ON THE  
ADOPTION OF THE FEDERAL  
CONSTITUTION.

---

**In Convention, Richmond, M<sub>ONDAY</sub>, *June 2*,  
1788.**

{1} This being the day recommended by the legislature for the meeting of the Convention, to take into consideration the proposed plan of federal government, a majority of the gentlemen delegated thereto assembled at the public buildings in Richmond; whereupon they proceeded to the choice of a secretary, when John Beckley was appointed to that office.

The Hon. EDMUND PENDLETON was nominated, and unanimously elected president; who, being seated in the chair, thanked the Convention for the honor conferred on him, and strongly recommended to the members to use the utmost moderation and temper in their deliberations on the great and important subject now before them.

On the recommendation of Mr. Paul Carrington, the Rev. Abner Waugh was unanimously elected chaplain, to attend, every morning, to read prayers, immediately after the bell shall be rung for calling the Convention.

The Convention then appointed William Drinkard, Sen., and William Drinkard, Jun., door-keepers.

On motion, —

*Ordered*, That a committee of privileges and elections be appointed; and a committee was appointed, of —

Mr. Benjamin Harrison, Mr. George Mason, Gov. Randolph, Mr. George Nicholas, Mr. John Marshal, Mr. Paul Carrington, Mr. Tyler, Mr. Alexander White, Mr. Blair, Mr. Bland, Mr. Grayson, Mr. Fisher, Mr. Matthews, Mr. John Jones, Mr. Wythe, Mr. William Cabell, Mr. James Taylor, [of Caroline,] Mr. Gabriel Jones, Mr. Corbin, Mr. Innis, Mr. Monroe, Mr. Henry Lee, Mr. Bullitt.

{2}

*Ordered,* That the committee of privileges and elections do examine and report the returns for electing delegates to serve in this Convention; and that, in cases where no returns are made, it be an instruction to the said committee to receive such evidence as the sitting member shall produce of his election, and report the same to the Convention.

On motion, —

*Ordered,* That Mr. Edmund Pendleton, Jun. be appointed clerk to the committee of privileges and elections.

Mr. P. CARRINGTON presented a petition of Thomas Stith, of the county of Brunswick, complaining of the undue election and return of Binnas Jones, one of the delegates returned to serve in this Convention, for the said county of Brunswick; which was ordered to be referred to the committee of privileges and elections.

On motion of Mr. CORBIN, —

*Ordered,* That Mr. Augustine Davis be appointed printer to the Convention, and that he cause to be printed, forthwith, two hundred copies of the plan of federal government; also two hundred copies of the resolutions of the General Assembly, of the 25th of October last, to be distributed among the members of this Convention.

On motion of Mr. GEORGE MASON, —

*Ordered,* That the Convention be adjourned until to-morrow morning, eleven o'clock, then to meet at the New Academy, on Shockoe Hill, in this city.

---

## **T**UESDAY, *June 3, 1788.*

The Convention met at the New Academy, on Shockoe Hill, pursuant to adjournment.

Mr. LEE presented a petition of Richard Morris, of the county of Louisa, complaining of an undue election and return of William White, as one of the delegates to serve in this Convention, for the said county of Louisa; which was ordered to be referred to the committee of privileges and elections.

On motion of Mr. HARRISON, —

*Ordered,* That Mr. William Pierce be appointed serjeant-at-arms to the Convention.

On motion of Mr. JOHN JONES, —

*Ordered,* That Daniel Hicks be appointed door-keeper to the Convention.

Mr. HARRISON moved that all the papers relative to the Constitution should be read.

Mr. TYLER observed, that, before any papers were read, certain rules and regulations should be established to govern the Convention in their deliberations; which, being necessary {3} on all occasions, are more particularly so on this great and important one.

Gov. RANDOLPH said, that he was fully convinced of the necessity of establishing rules; but as this was on a subject which might involve the Convention in a debate which would take up considerable time, he recommended that the rules of the House of Delegates, as far as they were applicable, should be observed.

Mr. TYLER replied, that he had considered what the honorable gentleman had said, and the objection to the mode recommended by him.

Upon which the Convention came to the following resolution: —

*Resolved*, That the rules and orders for conducting business in the House of Delegates, so far as the same may be applicable to the Convention, be observed therein.

On motion, —

The resolution of Congress of the 28th of September last, together with the report of the federal Convention lately held in Philadelphia; the resolutions of the General Assembly of the 25th of October last, and the act of the General Assembly entitled, "An act concerning the Convention to be held in June next," were read; —

Whereupon Mr. MASON addressed the president as follows: Mr. President, I hope and trust, sir, that this Convention, appointed by the people, on this great and important occasion, for securing, as far as possible, to the latest generation, the happiness and liberty of the people, will freely and fully investigate this important subject. For this purpose I humbly conceive the fullest and clearest investigation indispensably necessary, and that we ought not to be bound by any general rules whatsoever. The curse denounced by the divine vengeance will be small, compared to what will justly fall upon us, if from any sinister views we obstruct the fullest inquiry. This subject, therefore, ought to obtain the freest discussion, clause by clause, before any general previous question be put; nor ought it to be precluded by any other question.

Mr. TYLER moved that the Convention should resolve itself into a committee of the whole Convention, to-morrow, to take into consideration the proposed plan of government, in order to have a fairer opportunity of examining its merits.

Mr. MASON, after recapitulating his former reasons for having urged a full discussion, clause by clause, concluded by agreeing, with Mr. Tyler, that a committee of the whole Convention was the most proper mode of proceeding.

{4} Mr. MADISON concurred with the honorable gentleman in going into a full and free investigation of the subject before them, and said he had no objection to the plan proposed.

Mr. MASON then moved the following resolution, which was agreed to by the Convention unanimously: —

*Resolved*, That no question, general or particular, shall be propounded in this Convention, upon the proposed Constitution of government for the United States, or upon any clause or article thereof, until the said Constitution shall have been discussed, clause by clause, through all its parts.

Mr. TYLER said, he should renew his motion for the Convention to resolve itself into a committee of the whole Convention, the next day, to take under consideration the proposed plan of government.

Mr. LEE strongly urged the necessity and propriety of immediately entering into the discussion.

Mr. MASON. Mr. President, no man in this Convention is more averse to take up the time of the Convention than I am; but I am equally against hurrying them precipitately into any measure. I humbly conceive, sir, that the members ought to have time to consider the subject. Precious as time is, we ought not to run into the discussion before we have the proper means.

Mr. HARRISON urged, as a reason for deferring the discussion till to-morrow, that many of the members had not yet arrived, and that it would be improper to enter into the business until they should arrive.

Mr. LEE answered the two objections against entering immediately into the business. He begged gentlemen to consider that they were limited in point of time; that, if they did not complete their business on the 22d day of the month, they should be compelled to adjourn, as the legislature was to meet the 23d. He also begged gentlemen to consider the consequences of such an adjournment; that the Constitution, he believed, was very fully understood by every gentleman present, having been the subject of public and private consideration of most persons on the continent, and of the peculiar mediation of those who were deputed to the Convention.

The Convention then came to the following resolution: —

*Resolved*, That this Convention will, to-morrow, resolve itself into a committee of the whole Convention, to take into consideration the proposed Constitution of government for the United States.

{5} And then the Convention adjourned until to-morrow, eleven o'clock.

---

**W**<sub>EDNESDAY</sub>, *June 4, 1788.*

**Mr. HARRISON**

reported, from the committee of privileges and elections, that the committee had, according to order, examined the returns for electing delegates to serve in this Convention, and had come to a resolution thereupon, which he read in his place, and afterwards delivered in at the clerk's table, where the same was again twice read, and agreed to by the house, as followeth: —

*Resolved, That it is the opinion of this committee, That the returns for electing delegates to serve in this Convention for the counties of Albemarle, Amelia, Amherst, Bedford, Botetourt, Burnswick, Buckingham, Caroline, Charlotte, Charles City, Chesterfield, Culpepper, Cumberland, Dinwiddie, Elizabeth City, Fauquier, Fairfax, Fayette, Fluvanna, Frederick, Gloucester, Goochland, Greenbrier, Greensville, Halifax, Hampshire, Hardy, Harrison, Hanover, Henrico, Henry, James City, Jefferson, Isle of Wight, King George, King and Queen, King William, Lancaster, Lincoln, Loudon, Louisa, Lunenburg, Madison, Mecklenburgh, Mercer, Middlesex, Monongalia, Montgomery, Nansemond, New Kent, Nelson, Norfolk, Northampton, Northumberland, Ohio, Orange, Pittsylvania, Princess Anne, Prince George, Prince William, Prince Edward, Powhatan, Randolph, Richmond, Rockbridge, Rockingham, Russell, Shenandoah, Southampton, Spottsylvania, Stafford, Surry, Sussex, Warwick, Washington, York, and of a delegate for the borough of Norfolk and city of Williamsburg, are satisfactory.*

Mr. HARRISON reported, from the committee of privileges and elections, —

That the committee had inquired into the elections of delegates for the counties of Accomack and Franklin, and had agreed to a report, and come to several resolutions thereupon, which he read in his place, and afterwards delivered in at the clerk's table, where the same were again twice read, and agreed to by the house, as followeth: —

It appears to your committee, that no returns have been made of the election of delegates to serve in this Convention for counties of Accomack and Franklin; that, as to the election of delegates for the said county of Accomack, it appears from the information of Nathaniel Darby and Littleton Eyre, Esquires, that they were at the election of delegates for the said county of Accomack, in March last, and that George Parker and Edmund Custis, Esquires, (the sitting members,) were proclaimed by the sheriff, at the close of the poll, as duly elected delegates to represent the said county in this Convention.

That, as to the election of delegates for the said county of Franklin, it appears to your committee, from the information of Robert Williams, Esquire, that he was at the election of delegates for the said county of Franklin, in March last, and that John Early and Thomas Arthurs, Esquires, (the sitting members,) were proclaimed by the sheriff, at the close of the poll, as duly elected delegates to represent the said county of Accomack in this Convention.

{6} *Resolved, That it is the opinion of this committee, that John Early and Thomas Arthurs, Esquires, were elected delegates to represent the said county of Franklin in this Convention.*

*Resolved, That it is the opinion of this committee, that Edmund Custis and George Parker, Esquires, were elected delegates to represent the said county of Accomack in this Convention.*

*Ordered, That Mr. Madison and Mr. Lawson be added to the committee of privileges and elections.*

## **Mr. ARCHIBALD STUART**

presented a petition of Samuel Anderson, of the county of Cumberland, setting forth, —

That Thomas H. Drew, Esquire, one of the delegates returned for the said county to serve in this Convention, was not, at the time of his election, a freeholder in this commonwealth; and praying that the election of the said Thomas H. Drew may be set aside, and another election directed to supply his place; which was read, and ordered to be referred to the committee of privileges and elections.

The Convention, according to the order of the day, resolved itself into a committee of the whole Convention, to take into consideration the proposed plan of government, Mr. Wythe in the chair.

**Mr. HENRY moved, —**

That the act of Assembly appointing deputies to meet at Annapolis to consult with those from some other states, on the situation of the commerce of the United States — the act of Assembly appointing deputies to meet at Philadelphia, to revise the Articles of Confederation — and other public papers relative thereto — should be read.

## **Mr. PENDLETON**

then spoke to the following effect: Mr. Chairman, we are not to consider whether the federal Convention exceeded their powers. It strikes my mind that this ought not to influence our deliberations. This Constitution was transmitted to Congress by that the Convention; by the Congress transmitted to our legislature; by them recommended to the people; the people have sent us hither to determine whether this government be a proper one or not. I did not expect these papers would have been brought forth. Although those gentlemen were only directed to consider the defects of the old system, and not devise a new one, if they found it so thoroughly defective as not to admit a revising, and submitted a new system to our consideration, which the people have deputed us to investigate, I cannot find any degree of propriety in reading those papers.

## **Mr. HENRY then withdrew his motion.**

The clerk proceeded to read the preamble, and the two first sections of the first article.

{7} PREAMBLE.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States.

*House of Representatives.*

Art. 1. Sect. 1. — All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Sect. 2. — The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

## **Mr. NICHOLAS.**

Mr. Chairman, the time being now come when this state is to decide on this important question, of rejecting or receiving this plan of government, it gave me great pleasure, yesterday, when the Convention determined to proceed with the fullest deliberation on the subject; as every gentleman will, in the course of the discussion, have an opportunity to urge every objection that may arise in his mind against this system. I beg gentlemen to offer all their objections here, and that none may be insisted on elsewhere; and I hope nothing urged without these walls will influence the mind of any one. If this part of the plan now under consideration be materially defective, I will readily {8} agree it ought to be wholly rejected, because representation is the corner-stone on which the whole depends; but if, on investigation, it should be found to be otherwise, the highest gratitude should be shown to those gentlemen who framed it: although some small defects may appear in it, yet its merits, I hope, will amply cover those defects.

I shall take it into consideration, 1st, as it affects the qualifications of the electors; 2dly, as it affects the qualifications of the elected; 3dly, as to their number; 4thly, the time of their continuance in office; 5thly, their powers; and 6thly, whether this power be sufficient to enable them to discharge their duty without diminishing the security of the people — or, in other words, their responsibility.

I will consider it first, then, as to the qualifications of the electors. The best writers on government agree that, in a republic, those laws which fix the right of suffrage are fundamental. If, therefore, by the proposed plan, it is left uncertain in whom the right of suffrage is to rest, or if it has placed that right in improper hands, I shall admit that it is a radical defect; but in this plan there is a fixed rule for determining the qualifications of electors, and that rule the most judicious that could possibly have been devised, because it refers to a criterion which cannot be changed. A qualification that gives a right to elect representatives for the state legislatures, gives also, by this Constitution, a right to choose representatives for the general government. As the qualifications of electors are different in the different states, no particular qualifications, uniform through the states, would have been politic, as it would have caused a great inequality in the electors, resulting from the situation and circumstances of the respective states. Uniformity of qualifications would greatly affect the yeomanry in the states, as it would either exclude from this inherent right some who are entitled to it by the laws of some states at present, or be extended so universally as to defeat the admirable end of the institution of representation.

Secondly, as it respects the qualifications of the elected. It has ever been considered a great security to liberty, that very few should be excluded from the right of being chosen to the legislature. This Constitution has amply attended to this idea. We find no qualifications required except those of age and residence, which create a certainty of their judgment being matured, and of being attached to their state. It has been objected, that they ought to be possessed of landed {9} estates; but, sir, when we reflect that most of the electors are landed men, we must suppose they will fix on those who are in a similar situation with themselves. We find there is a decided majority attached to the landed interest; consequently, the landed interest must prevail in the

choice. Should the state be divided into districts, in no one can the mercantile interest by any means have an equal weight in the elections; therefore, the former will be more fully represented in the Congress; and men of eminent abilities are not excluded for the want of landed property. There is another objection which has been echoed from one end of the continent to the other — that Congress may alter the time, place, and manner of holding elections; that they may direct the place of elections to be where it will be impossible for those who have a right to vote, to attend; for instance, that they may order the freeholders of Albemarle to vote in the county of Princess Anne, or *vice versa*; or regulate elections, otherwise, in such a manner as totally to defeat their purpose, and lay them entirely under the influence of Congress. I flatter myself, that, from an attentive consideration of this power, it will clearly appear that it was essentially necessary to give it to Congress, as, without it, there could have been no security for the general government against the state legislatures. What, Mr. Chairman, is the danger apprehended in this case? If I understand it right, it must be, that Congress might cause the elections to be held in the most inconvenient places, and at so inconvenient a time, and in such a manner, as to give them the most undue influence over the choice, nay, even to prevent the elections from being held at all, — in order to perpetuate themselves. But what would be the consequence of this measure? It would be this, sir, — that Congress would cease to exist; it would destroy the Congress itself; it would absolutely be an act of suicide; and therefore it can never be expected. This alteration, so much apprehended, must be made by law; that is, with the concurrence of both branches of the legislature. Will the House of Representatives, the members of which are chosen only for two years, and who depend on the people for their reëlection, agree to such an alteration? It is unreasonable to suppose it.

But let us admit, for a moment, that they will: what would be the consequence of passing such a law? It would be, sir, that, after the expiration of the two years, at the next { 10 } election they would either choose such men as would alter the law, or they would resist the government. An enlightened people will never suffer what was established for their security to be perverted to an act of tyranny. It may be said, perhaps, that resistance would then become vain; Congress are vested with the power of raising an army; to which I say, that if ever Congress shall have an army sufficient for their purpose, and disposed to execute their unlawful commands, before they would act under this disguise, they would pull off the mask, and declare themselves absolute. I ask, Mr. Chairman, is it a novelty in our government? Has not our state legislature the power of fixing the time, places, and manner of holding elections? The possible abuse here complained of never can happen as long as the people of the United States are virtuous. As long as they continue to have sentiments of freedom and independence, should the Congress be wicked enough to harbor so absurd an idea as this objection supposes, the people will defeat their attempt by choosing other representatives, who will alter the law. If the state legislature, by accident, design, or any other cause, would not appoint a place for holding elections, then there might be no election till the time was past for which they were to have been chosen; and as this would eventually put an end to the Union, it ought to be guarded against; and it could only be guarded against by giving this discretionary power, to the Congress, of altering the time, place, and manner of holding the elections. It is absurd to think that Congress will exert this power, or change the time, place, and manner established by the states, if the states will regulate them properly, or so as not to defeat the purposes of the Union. It is urged that the state legislature ought to be fully and exclusively possessed of this power. Were this the case, it might certainly defeat the government. As the powers vested by this plan in Congress are taken from the state

legislatures, they would be prompted to throw every obstacle in the way of the general government. It was then necessary that Congress should have this power.

Another strong argument for the necessity of this power is, that, if it was left solely to the states, there might have been as many times of choosing as there are states. States having solely the power of altering or establishing the time of election, it might happen that there should be no Congress. Not {11} only by omitting to fix a time, but also by the elections in the states being at thirteen different times, such intervals might elapse between the first and last election, as to prevent there being a sufficient number to form a house; and this might happen at a time when the most urgent business rendered their session necessary; and by this power, this great part of the representation will be always kept full, which will be a security for a due attention to the interest of the community; and also the power of Congress to make the times of elections uniform in all the states, will destroy the continuance of any cabal, as the whole body of representatives will go out of office at once.

I come now, sir, to consider that part of the Constitution which fixes the number of representatives. It is first necessary for us to establish what the number of representatives is to be. At present it only consists of sixty-five; but let us consider that it is only to continue at that number till the actual enumeration shall be made, which is to be within three years after the first meeting of Congress; and that the number of representatives will be ascertained, and the proportion of taxes fixed, within every subsequent term of ten years. Till this enumeration be made, Congress will have no power to lay direct taxes: as there is no provision for this purpose, Congress cannot impose it; as direct taxation and representation are to be regulated by the enumeration there directed, therefore they have no power of laying direct taxes till the enumeration be actually made. I conceive no apportionment can be made before this enumeration, there being no certain data to go on. When the enumeration shall be made, what will be the consequence? I conceive there will be always one for every thirty thousand. Many reasons concur to lead me to this conclusion. By the Constitution, the allotment now made will only continue till the enumeration be made; and as a new enumeration will take place every ten years, I take it for granted that the number of representatives will be increased, according to the progressive increase of population, at every respective enumeration; and one for every thirty thousand will amount to one hundred representatives, if we compute the number of inhabitants to be only three millions in the United States, which is a very moderate calculation. The first intention was only to have one for every forty thousand, which was afterwards estimated to be too few, and, according to this proportion, the present temporary {12} number is fixed; but as it now stands, we readily see that the proportion of representatives is sufficiently numerous to answer every purpose of federal legislation, and even soon to gratify those who wish for the greatest number. I take it that the number of representatives will be proportioned to the highest number we are entitled to; and that it never will be less than one for every thirty thousand. I formed this conclusion from the situation of those who will be our representatives. They are all chosen for two years; at the end of which term they are to depend on the people for their reëlection. This dependence will lead them to a due and faithful discharge of their duty to their constituents: the augmentation of their number will conciliate the affections of the people at large; for the more the representatives increase in number, the greater the influence of the people in the government, and the greater the chance of reëlection to the representatives.

But it has been said, that the Senate will not agree to any augmentation of the number of representatives. The Constitution will entitle the House of Representatives to demand it. Would the Senate venture to stand out against them? I think they would not, sir. Were they ready to recede from the evident sense of the Constitution, and grasp at power not thereby given them, they would be compelled to desist. But, that I may not be charged with urging suppositions, let us see what ground this stands upon, and whether there be any real danger to be apprehended. The first objection that I shall consider is, that, by paucity of numbers, they will be more liable to depart from their duty, and more subject to influence. I apprehend that the fewer the number of representatives, the freer the choice, and the greater the number of electors, the less liable to the unworthy acts of the candidates will they be; and thus their suffrage, being free, will probably fall on men of the most merit. The practice of that country, which is situated more like America than any other country in the world, will justify this supposition. The British House of Commons consists, I believe, of five hundred and fifty-eight members; yet the greater number of these are supposed to be under the undue influence of the crown. A single fact from the British history illustrates these observations, — viz., that there is scarcely an instance, for a century past, of the crown's exercising its undoubted prerogative of rejecting a bill sent up to it by the two houses of Parliament: it is no answer to say, that the king's influence is sufficient to prevent any obnoxious bills passing the two houses; there are many instances, in that period, not only of bills passing the two houses, but even receiving the royal assent, contrary to the private wish and inclination of the prince.

## **Jurisdiction**

It is objected, however, as a defect in the Constitution, that it does not prohibit the House of Representatives from giving their powers, particularly that respecting the support &c., of armies, out of their hands for a longer term than two years. Here, I think, the enemies to the plan reason unfairly; they first suppose that Congress, from a love of power natural to all, will, in general, abuse that with which they are invested; and then they would make us apprehend that the House of Representatives, notwithstanding their love of power, (and it must be supposed as great in a branch of Congress as in the whole,) will give out of their hands the only check which can insure to them the continuance of the participation of the powers lodged in Congress in general. In England, there is no restraint of this kind on the Parliament; and yet there is no instance of a money bill being passed for a longer term than one year; the proposed plan, therefore, when it declares that no appropriation for the support of an army shall be made for a longer term than two years, introduces a check unknown to the English constitution, and one which will be found very powerful when we reflect that, if the House of Representatives could be prevailed on to make an appropriation for an army for two years, at the end of that time there will be a new choice of representatives. Thus I insist that security does not depend on the number of representatives: the experience of that country also shows that many of their counties and cities contain a greater number of souls than will be entitled to a representation in America; and yet the representatives chosen in those places have been the most strenuous advocates of liberty, and have exerted themselves in the defence of it, even in opposition to those chosen by much smaller numbers. Many of the senatorial districts in Virginia also contain a greater number of souls; and yet I suppose no gentleman within these walls will pay the senators chosen by them so poor a compliment as to attribute less wisdom and virtue to them than to the delegates chosen from single counties; and as there is greater probability that the electors in a large district will be more

independent, so I think the representatives chosen in such districts will be more so too; for those who have sold themselves to their representatives will have no right to complain, if they, in their turn, barter away their rights and liberties; but those who have not themselves been bought, will never consent to be sold. Another objection made to the small number of representatives, is, that, admitting they were sufficient to secure their integrity, yet they cannot be acquainted with the local situation and circumstances of their constituents. When we attend to the object of their jurisdiction, we find this objection insupportable. Congress will superintend the great national interests of the Union. Local concerns are left to the state legislatures. When the members compare and communicate to one another their knowledge of their respective districts and states, their collective intelligence will sufficiently enable them to perform the objects of their cognizance. They cannot extend their influence or agency to any objects but those of a general nature; the representatives will, therefore, be sufficiently acquainted with the interests of their states, although chosen by large districts. As long as the people remain virtuous and uncorrupted, so long, we may fairly conclude, will their representatives, even at their present number, guard their interests, and discharge their duty with fidelity and zeal: when they become otherwise, no government can possibly secure their freedom.

I now consider the time of their continuance in office. A short continuance in office, and a return of the officers to the mass of the people, there to depend solely on their former good conduct for their reëlection, is of the highest security to public liberty. Let the power of the persons elected be what it may, they are only the trustees, and not the masters, of the people; yet the time ought not to be so short that they could not discharge their duty with ability. Considering this, a term of two years is short enough in this case. Many will have a considerable distance to travel from the places of their abode to the seat of the general government. They must take time to consider the situation of the Union, make themselves acquainted with the circumstances of our finances, and the relative situation of, and our connections with, foreign nations, and a variety of other objects of importance. Would it not be the height of impolicy that they should go out of their office just as they began to know something of the nature of their duty? Were this the case, the interest of their constituents could never be sufficiently attended to. Our representatives for the state legislature are chosen for one year, and it has never been thought too long a term. If one year be not too long to elect a state representative, give me leave to say, that two years ought not to be considered as too long for the election of the members of the general legislature. The objects of the former are narrow, and limited to state and local affairs; the objects of the latter are coëxtensive with the continent. In England, at the time they were most jealous of the prerogative of the king, triennial elections were their most ardent wish; they would have thought themselves perfectly happy in this acquisition; nor did they think of a shorter term of elections. Let gentlemen recollect that it is to septennial elections we owe our liberties. The elections were for seven years in most of the states before the late revolution.

I now consider their weight and power, and whether these will be sufficient to give them, as the representatives of the people, their due weight in the government. By the Constitution, they are one entire branch of the legislature, without whose consent no law can be passed; — all money bills are to originate in their house; — they are to have the sole power of impeachment; — their consent is necessary to all acts or resolutions for the appropriation of the public money; to all acts for laying and collecting duties, imposts, and excises; for borrowing money on the credit of the United States; for creating all officers, and fixing their salaries; for coining money; for

raising and supporting armies; for raising and maintaining a navy; and for establishing rules for the government of the land and naval forces: these are the powers which will be fixed in the House of Representatives.

Hence, it appears, our representatives have more comparative power in the scale of government than the commons of England; and yet, in that country, the commons, possessing less powers, opposed with success much greater powers than our representatives have to encounter. In that country, the king is one entire branch of the legislature, and an hereditary monarch; can prorogue or dissolve, call or dismiss, the two houses at his pleasure. Besides his judicial influence, he is head of the church, fountain of honor, generalissimo of the forces by sea or land, may raise what fleets and armies he pleases, is rendered personally sacred by the constitutional maxim that he can do no wrong; and, besides several other great powers, has a grand revenue settled on him, sufficient to answer the ordinary ends of government; it being established as a custom, at the accession of every new king, to settle such a revenue on him for life; and can increase the House of Lords at any time, and thereby extend his legislative influence. Notwithstanding the enormity of these powers, it has been found that the House of Commons, with powers greatly inferior to those of our representatives, is a match for both the king and the nobles. This superiority resulted from their having the power of withholding or granting supplies. What will put this in a still clearer point of view, is, that the House of Commons were not originally possessed of these powers. The history of the English Parliament will show that the great degree of power which they now possess was acquired from beginnings so small, that nothing but the innate weight of the power of the people, when lodged with their representatives, could have effected it. In the reign of Edward I., in the year 1295, the House of Commons were first called by legal authority; they were then confined to giving their assent barely to supplies to the crown. In the reign of Edward II., they first annexed petitions to the bills by which they granted subsidies. Under Edward III., they declared they would not in future acknowledge any law to which they had not consented: in the same reign, they impeached and brought to punishment some of the ministers of the crown. Under Henry IV., they refused supplies until an answer had been given to their petitions; and have increased their powers, in succeeding reigns, to such a degree, that they entirely control the operation of government, even in those cases where the king's prerogative gave him, nominally, the sole direction.

Let us here consider the causes to which this uncommon weight and influence may be assigned. The government being divided into branches, executive and legislative, in all contests between them the people have divided into the favorers of one or the other. From their dread of the executive, and affection to their representatives, they have always sided with the legislature. This has rendered the legislature successful. The House of Commons have succeeded also by withholding supplies; they can, by this power, put a stop to the operations of government, which they have been able to direct as they pleased. This power has enabled them to triumph over all obstacles; it is so important that it will in the end swallow up all others. Any branch of government that depends on the will of another for supplies of money, must be in a state of subordinate dependence, let it have what other powers it may. Our representatives, in this case, will be perfectly independent, being vested with this power fully. Another source of superiority is the power of impeachment. In England, very few ministers have dared to bring on themselves an accusation by the representatives of the people, by pursuing means contrary to their rights and liberties. Few ministers will ever run the risk of being impeached, when they know the king

cannot protect them by a pardon. This power must have much greater force in America, where the President himself is personally amenable for his mal-administration; the power of impeachment must be a sufficient check on the President's power of pardoning before conviction. I think we may fairly conclude, that, if the House of Commons, in England, have been able to oppose, with success, a powerful hereditary nobility, and an hereditary monarch, with all the appendages of royalty, and immense powers and revenues, our federal House of Representatives will be able to oppose, with success, all attempts by a President, only chosen for four years, by the people, with a small revenue, and limited powers, sufficient only for his own support; and a Senate chosen only for six years, (one third of whom vacate their seats every two years,) accountable to the state legislatures, and having no separate interest from them or the people.

I now come to consider their responsibility to the people at large. The probability of their consulting most scrupulously the interests of their constituents must be self-evident; this probability will result from their biennial elections, whether they wish to be reëlected or not. If they wish to be reëlected, they will know that on their good conduct alone their reëlection will depend: if they wish not to be reelected, they will not enter into a fixed combination against the people, because they return to the mass of the people, where they will participate in the disadvantages of bad laws. By the publication of the yeas and nays, the votes of the individual members will be known; they will act, therefore, as if under the eyes of their constituents. The state legislatures, also, will be a powerful check on them: every new power given to Congress is taken from the state legislatures; they will be, therefore, very watchful over them; for, should they exercise any power not vested in them, it will be a usurpation of the rights of the different state legislatures, who would sound the alarm to the people. Upon such an appeal from the states to the people, nothing but the propriety of their conduct would insure the Congress any chance of success. Should a struggle actually ensue, it would terminate to the disadvantage of the general government, as Congress would be the object of the fears, and the state legislatures the object of the affections, of the people. One hundred and sixty members, chosen in this state legislature, must, on any dispute between Congress and the state legislature, have more influence than ten members of Congress. One representative to Congress will be chosen by eight or ten counties; his influence and chance of reëlection will be very small when opposed by twenty men of the best interests in the district: when we add to this the influence of the whole body of the state officers, I think I may venture to affirm that every measure of Congress would be successfully opposed by the states. The experience of this state legislature hath fully satisfied me that this reasoning is just. The members of our Senate have never ventured to oppose any measure of the House of Delegates; and if they had, their chance of being reëlected, when opposed by the delegates of the different counties, would be small. But what demonstrates that there is sufficient responsibility in the representatives to the people, and what must satisfy the committee, is this — that it will be their own interest to attend to that of the people at large. They can pass no law but what will equally affect their own persons, their families, and property. This will be an additional influence to prevail with them to attend to their duty, and more effectually watch and check the executive. Their consequence as members will be another inducement. If they will individually signalize themselves in support of their constituents, and in curbing the usurpations of the executive, it will best recommend them to the people, secure their reëlection, and enhance their consequence. They therefore will become watchful guardians of the interests of the people.

The Constitution has wisely interposed another check, to wit: — that no person holding an office of trust or profit under the United States shall be a member of either house during his continuance in office. No powers ought to be vested in the hands of any who are not representatives of the people, and amenable to them. A review of the history of those countries with which I am acquainted, will show, that, for want of representation and responsibility, power has been exercised with an intention to advance the interest of a few, and not to remove the grievances of the many. At the time the Romans expelled their kings, the executive authority was given to consuls, and the people did not gain by the change; for the plebeian interest declined, while that of the patricians rapidly advanced, till the oppressions of the latter caused the former to retire to the Sacred Mount; and even this struggle terminated only in the creation of the tribunes of the people. Another struggle produced only the advantage of their admission to the consular dignity, and permission to intermarry into patrician families; so that every success on the side of the people only produced a change in their tyrants. Under Louis XI., in France, a war took place between the king and his barons, professedly for the public good only; and, they being successful, a treaty was made for the securing that public good; but it contained stipulations only in favor of a few lords, — not a word in favor of the people. But in England, where the people had delegated all their power to a few representatives, all contests have terminated in favor of the people. One contest produced Magna Charta, containing stipulations for the good of the whole. This Great Charter was renewed, enlarged, and confirmed, by several succeeding kings: the *Habeas Corpus* under Charles II., and Declaration of Rights under William and Mary, — the latter limiting the prerogative of the crown, the former establishing the personal liberty of the subject, — were also in favor of the whole body of the people. Every revolution terminated differently in Rome and in England; in the first they only caused a change in their masters, in the second they ended in a confirmation of their liberties. The powerful influence of the people in gaining an extension of their liberties will appear more forcibly, and our confidence in our House of Representatives must be increased, when we come to consider the manner in which the House of Commons in England are elected. They consist of five hundred and fifty-eight members, two hundred of whom are chosen by about seven thousand freeholders in the counties, out of eight millions of people: the rest are chosen by towns, several of which, though small, elect five members; and even there are instances of two representatives being chosen by one elector. The most baneful elections procure seats; one half of the candidates purchase them: yet the people in England have ever prevailed when they persisted in any particular purpose. If, then, they have prevailed there when opposed by two other powerful branches of the legislature, and when elected so unduly, what may we not expect from our House of Representatives, fairly chosen by the people? If the people there prevail with septennial elections, what may we not expect from our representatives, chosen only for two years, and who only have to encounter the feeble power of the President, and a Senate whose interest will lead them to do their duty? The opposers of this plan of government dread the exercise of the most necessary, the most indispensable powers, and exercised by their own representatives. Magna Charta, and Declaration of Rights, only say that such powers shall not be exercised but with consent of Parliament; and experience has proved that the making their consent necessary has sufficiently secured a proper exercise of those powers. The best writers also agree that such powers may always be lodged with representatives. We have all the security which a people sensible and jealous of their liberties can wish for. Experience has evinced that mankind can trust those who have similar rights with themselves. Power lodged in the hands of representatives, chosen as ours must be, cannot be abused. The truth of this cannot but strike every gentleman in the committee: and still the people can, when

they please, change the government, being possessed of the supreme power. Mr. Nicholas then quoted a passage from the celebrated Dr. Price,<sup>[1]</sup> who was so strenuous a friend to America, proving that, as long as representation and responsibility existed in any country, liberty could not be endangered; and concluded by saying he conceived the Constitution founded on the strictest principles of true policy and liberty, and that he was willing to trust his own happiness, and that of his posterity, to the operation of that system.

## **Mr. HENRY.**

Mr. Chairman, the public mind, as well as my own, is extremely uneasy at the proposed change of government. Give me leave to form one of the number of those who wish to be thoroughly acquainted with the reasons of this perilous and uneasy situation, and why we are brought hither to decide on this great national question. I consider myself as the servant of the people of this commonwealth, as a sentinel over their rights, liberty, and happiness. I represent their feelings when I say that they are exceedingly uneasy at being brought from that state of full security, which they enjoyed, to the present delusive appearance of things. A year ago, the minds of our citizens were at perfect repose. Before the meeting of the late federal Convention at Philadelphia, a general peace and a universal tranquillity prevailed in this country; but, since that period, they are exceedingly uneasy and disquieted. When I wished for an appointment to this Convention, my mind was extremely agitated for the situation of public affairs. I conceived the republic to be in extreme danger. If our situation be thus uneasy, whence has arisen this fearful jeopardy? It arises from this fatal system; it arises from a proposal to change our government — a proposal that goes to the utter annihilation of the most solemn engagements of the states — a proposal of establishing nine states into a confederacy, to the eventual exclusion of four states. It goes to the annihilation of those solemn treaties we have formed with foreign nations.

The present circumstances of France — the good offices rendered us by that kingdom — require our most faithful and most punctual adherence to our treaty with her. We are in alliance with the Spaniards, the Dutch, the Prussians; those treaties bound us as thirteen states confederated together. Yet here is a proposal to sever that confederacy. Is it possible that we shall abandon all our treaties and national engagements? — and for what? I expected to hear the reasons for an event so unexpected to my mind and many others. Was our civil polity, or public justice, endangered or sapped? Was the real existence of the country threatened, or was this preceded by a mournful progression of events? This proposal of altering our federal government is of a most alarming nature! Make the best of this new government — say it is composed by any thing but inspiration — you ought to be extremely cautious, watchful, jealous of your liberty; for, instead of securing your rights, you may lose them forever. If a wrong step be now made, the republic may be lost forever. If this new government will not come up to the expectation of the people, and they shall be disappointed, their liberty will be lost, and tyranny must and will arise. I repeat it again, and I beg gentlemen to consider, that a wrong step, made now, will plunge us into misery, and our republic will be lost. It will be necessary for this Convention to have a faithful historical detail of the facts that preceded the session of the federal Convention, and the reasons that actuated its members in proposing an entire alteration of government, and to demonstrate the dangers that awaited us. If they were of such awful magnitude as to warrant a proposal so extremely perilous as this, I must assert, that this Convention has an absolute right to a thorough discovery of every circumstance relative to this great event. And here I would make this inquiry

of those worthy characters who composed a part of the late federal Convention. I am sure they were fully impressed with the necessity of forming a great consolidated government, instead of a confederation. That this is a consolidated government is demonstrably clear; and the danger of such a government is, to my mind, very striking. I have the highest veneration for those gentlemen; but, sir, give me leave to demand, What right had they to say, *We, the people*? My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask, Who authorized them to speak the language of, *We, the people*, instead of, *We, the states*? States are the characteristics and the soul of a confederation. If the states be not the agents of this compact, it must be one great, consolidated, national government, of the people of all the states. I have the highest respect for those gentlemen who formed the Convention, and, were some of them not here, I would express some testimonial of esteem for them. America had, on a former occasion, put the utmost confidence in them — a confidence which was well placed; and I am sure, sir, I would give up any thing to them; I would cheerfully confide in them as my representatives. But, sir, on this great occasion, I would demand the cause of their conduct. Even from that illustrious man who saved us by his valor, I would have a reason for his conduct: that liberty which he has given us by his valor, tells me to ask this reason; and sure I am, were he here, he would give us that reason. But there are other gentlemen here, who can give us this information. The people gave them no power to use their name. That they exceeded their power is perfectly clear. It is not mere curiosity that actuates me: I wish to hear the real, actual, existing danger, which should lead us to take those steps, so dangerous in my conception. Disorders have arisen in other parts of America; but here, sir, no dangers, no insurrection or tumult have happened; every thing has been calm and tranquil. But, notwithstanding this, we are wandering on the great ocean of human affairs. I see no landmark to guide us. We are running we know not whither. Difference of opinion has gone to a degree of inflammatory resentment in different parts of the country, which has been occasioned by this perilous innovation. The federal Convention ought to have amended the old system; for this purpose they were solely delegated; the object of their mission extended to no other consideration. You must, therefore, forgive the solicitation of one unworthy member to know what danger could have arisen under the present Confederation, and what are the causes of this proposal to change our government.

## **Gov. RANDOLPH.**

Mr. Chairman, had the most enlightened statesman whom America has yet seen, foretold, but a year ago, the crisis which has now called us together, he would have been confronted by the universal testimony of history; for never was it yet known, that, in so short a space, by the peaceable working of events, without a war, or even the menace of the smallest force, a nation has been brought to agitate a question, an error in the issue of which may blast their happiness. It is, therefore, to be feared, lest to this trying exigency the best wisdom should be unequal; and here (if it were allowable to lament any ordinance of nature) might it be deplored that, in proportion to the magnitude of a subject, is the mind intemperate. Religion, the dearest of all interests, has too often sought proselytes by fire rather than by reason; and politics, the next in rank, is too often nourished by passion, at the expense of the understanding. Pardon me, however, for expecting one exception to the tendency of mankind from the dignity of this Convention — a mutual toleration, and a persuasion that no man has a right to impose his opinions on others. Pardon me, too, sir, if I am particularly sanguine in my expectations from the chair: it well knows what is order, how to command obedience, and that political opinions may

be as honest on one side as on the other. Before I press into the body of the argument, I must take the liberty of mentioning the part I have already borne in this great question; but let me not here be misunderstood. I come not to apologize to any individual within these walls, to the Convention as a body, or even to my fellow-citizens at large. Having obeyed the impulse of duty, having satisfied my conscience, and, I trust, my God, I shall appeal to no other tribunal: nor do I come a candidate for popularity; my manner of life has never yet betrayed such a desire. The highest honors and emoluments of this commonwealth are a poor compensation for the surrender of personal independence. The history of England from the revolution, and that of Virginia for more than twenty years past, show the vanity of a hope that general favor should ever follow the man who, without partiality or prejudice, praises or disapproves the opinions of friends or of foes: nay, I might enlarge the field, and declare, from the great volume of human nature itself, that to be moderate in politics forbids an ascent to the summit of political fame. But I come hither, regardless of allurements, to continue as I have begun; to repeat my earnest endeavors for a firm, energetic government; to enforce my objections to the Constitution, and to concur in any practical scheme of amendments; but I never will assent to any scheme that will operate a dissolution of the Union, or any measure which may lead to it.

This conduct may possibly be upbraided as injurious to my own views; if it be so, it is, at least, the natural offspring of my judgment. I refused to sign, and if the same were to return, again would I refuse. Wholly to adopt, or wholly to reject, as proposed by the Convention, seemed too hard an alternative to the citizens of America, whose servants we were, and whose pretensions amply to discuss the means of their happiness were undeniable. Even if adopted under the terror of impending anarchy, the government must have been without the safest bulwark — the hearts of the people; and, if rejected because the chance for amendments was cut off, the Union would have been irredeemably lost. This seems to have been verified by the event in Massachusetts; but our Assembly have removed these inconveniences, by propounding the Constitution to our full and free inquiry. When I withheld my subscription, I had not even the glimpse of the genius of America, relative to the principles of the new Constitution. Who, arguing from the preceding history of Virginia, could have divined that she was prepared for the important change? In former times, indeed, she transcended every colony in professions and practices of loyalty; but she opened a perilous war, under a democracy almost as pure as representation would admit; she supported it under a constitution which subjects all rule, authority, and power, to the legislature; every attempt to alter it had been baffled: the increase of Congressional power had always excited an alarm. I therefore would not bind myself to uphold the new Constitution, before I had tried it by the true touchstone; especially, too, when I foresaw that even the members of the general Convention might be instructed by the comments of those who were without doors. But I had, moreover, objections to the Constitution, the most material of which, too lengthy in detail, I have as yet barely stated to the public, but shall explain when we arrive at the proper points. Amendments were consequently my wish; these were the grounds of my repugnance to subscribe, and were perfectly reconcilable with my unalterable resolution to be regulated by the spirit of America, if, after our best efforts for amendments, they could not be removed. I freely indulge those who may think this declaration too candid, in believing that I hereby depart from the concealment belonging to the character of a statesman. Their censure would be more reasonable, were it not for an unquestionable fact, that the spirit of America depends upon a combination of circumstances which no individual can control, and arises not from the prospect

of advantages which may be gained by the arts of negotiation, but from deeper and more honest causes.

As with me the only question has ever been between previous and subsequent amendments, so will I express my apprehensions, that the postponement of this Convention to so late a day has extinguished the probability of the former without inevitable ruin to the Union, and the Union is the anchor of our political salvation; and I will assent to the lopping of this limb, (meaning his arm,) before I assent to the dissolution of the Union. I shall now follow the honorable gentleman (Mr. Henry) in his inquiry. Before the meeting of the federal Convention, says the honorable gentleman, we rested in peace; a miracle it was, that we were so: miraculous must it appear to those who consider the distresses of the war, and the no less afflicting calamities which we suffered in the succeeding peace. Be so good as to recollect how we fared under the Confederation. I am ready to pour forth sentiments of the fullest gratitude to those gentlemen who framed that system. I believe they had the most enlightened heads in this western hemisphere. Notwithstanding their intelligence, and earnest solicitude for the good of their country, this system proved totally inadequate to the purpose for which it was devised. But, sir, this was no disgrace to them. The subject of confederations was then new, and the necessity of speedily forming some government for the states, to defend them against the pressing dangers, prevented, perhaps, those able statesmen from making that system as perfect as more leisure and deliberation might have enabled them to do. I cannot otherwise conceive how they could have formed a system that provided no means of enforcing the powers which were nominally given it. Was it not a political farce to pretend to vest powers, without accompanying them with the means of putting them in execution? This want of energy was not a greater solecism than the blending together, and vesting in one body, all the branches of government. The utter inefficacy of this system was discovered, the moment the danger was over, by the introduction of peace; the accumulated public misfortunes that resulted from its inefficacy rendered an alteration necessary: this necessity was obvious to all America: attempts have accordingly been made for this purpose.

I have been a witness to this business from its earliest beginning. I was honored with a seat in the small Convention held at Annapolis. The members of that Convention thought, unanimously, that the control of commerce should be given to Congress, and recommended to their states to extend the improvement to the whole system. The members of the general Convention were particularly deputed to meliorate the Confederation. On a thorough contemplation of the subject, they found it impossible to amend that system. What was to be done? The dangers of America, which will be shown at another time by particular enumeration, suggested the expedient of forming a new plan. The Confederation has done a great deal for us, we all allow; but it was the danger of a powerful enemy, and the spirit of America, sir, and not any energy in that system, that carried us through that perilous war: for what were its best arms? The greatest exertions were made when the danger was most imminent. This system was not signed till March, 1781; Maryland having not acceded to it before; yet the military achievements and other exertions of America, previous to that period, were as brilliant, effectual, and successful, as they could have been under the most energetic government. This clearly shows that our perilous situation was the cement of our union. How different the scene when this peril vanished, and peace was restored! The demands of Congress were treated with neglect. One state complained that another had not paid its quotas as well as itself; public credit gone — for I believe, were it not for the private credit of individuals, we should have been ruined long before that time; commerce languishing;

produce falling in value, and justice trampled under foot. We became contemptible in the eyes of foreign nations; they discarded us as little wanton bees, who had played for liberty, but had no sufficient solidity or wisdom to secure it on a permanent basis, and were therefore unworthy of their regard. It was found that Congress could not even enforce the observance of treaties. That treaty under which we enjoy our present tranquillity was disregarded. Making no difference between the justice of paying debts due to people here, and that of paying those due to people on the other side of the Atlantic, I wished to see the treaty complied with, by the payment of the British debts, but have not been able to know why it has been neglected. What was the reply to the demands and requisitions of Congress? — You are too contemptible; we will despise and disregard you.

I shall endeavor to satisfy the gentleman's political curiosity. Did not our compliance with any demand of Congress depend on our own free will? If we refused, I know of no coercive force to compel a compliance. After meeting in Convention, the deputies from the states communicated their information to one another. On a review of our critical situation, and of the impossibility of introducing any degree of improvement into the old system, what ought they to have done? Would it not have been treason to return without proposing some scheme to relieve their distressed country? The honorable gentleman asks why we should adopt a system that shall annihilate and destroy our treaties with France and other nations. I think the misfortune is, that these treaties are violated already, under the honorable gentleman's favorite system. I conceive that our engagements with foreign nations are not at all affected by this system; for the 6th article expressly provides that "all debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation." Does this system, then, cancel debts due to or from the continent? Is it not a well-known maxim that no change of situation can alter an obligation once rightly entered into? He also objects because nine states are sufficient to put the government in motion. What number of states ought we to have said? Ought we to have required the concurrence of all the thirteen? Rhode Island — in rebellion against integrity — Rhode Island plundered all the world by her paper money; and, notorious for her uniform opposition to every federal duty, would then have it in her power to defeat the Union; and may we not judge with absolute certainty, from her past conduct, that she would do so? Therefore, to have required the ratification of all the thirteen states would have been tantamount to returning without having done any thing. What other number would have been proper? Twelve? The same spirit that has actuated me in the whole progress of the business, would have prevented me from leaving it in the power of any one state to dissolve the Union; for would it not be lamentable that nothing could be done, for the defection of one state? A majority of the whole would have been too few. Nine states therefore seem to be a most proper number.

The gentleman then proceeds, and inquires why we assumed the language of "We, the people." I ask, Why not? The government is for the people; and the misfortune was, that the people had no agency in the government before. The Congress had power to make peace and war under the old Confederation. Granting passports, by the law of nations, is annexed to this power; yet Congress was reduced to the humiliating condition of being obliged to send deputies to Virginia to solicit a passport. Notwithstanding the exclusive power of war given to Congress, the second article of the Confederation was interpreted to forbid that body to grant a passport for tobacco, which, during the war, and in pursuance of engagements made at Little York, was to have been sent into

New York. What harm is there in consulting the people on the construction of a government by which they are to be bound? Is it unfair? Is it unjust? If the government is to be binding on the people, are not the people the proper persons to examine its merits or defects? I take this to be one of the least and most trivial objections that will be made to the Constitution; it carries the answer with itself. In the whole of this business, I have acted in the strictest obedience to the dictates of my conscience, in discharging what I conceive to be my duty to my country. I refused my signature, and if the same reasons operated on my mind, I would still refuse; but as I think that those eight states which have adopted the Constitution will not recede, I am a friend to the Union.

## **Mr. GEORGE MASON.**

Mr. Chairman, whether the Constitution be good or bad, the present clause clearly discovers that it is a national government, and no longer a Confederation. I mean that clause which gives the first hint of the general government laying direct taxes. The assumption of this power of laying direct taxes does, of itself, entirely change the confederation of the states into one consolidated government. This power, being at discretion, unconfined, and without any kind of control, must carry every thing before it. The very idea of converting what was formerly a confederation to a consolidated government, is totally subversive of every principle which has hitherto governed us. This power is calculated to annihilate totally the state governments. Will the people of this great community submit to be individually taxed by two different and distinct powers? Will they suffer themselves to be doubly harassed? These two concurrent powers cannot exist long together; the one will destroy the other: the general government being paramount to, and in every respect more powerful than the state governments, the latter must give way to the former. Is it to be supposed that one national government will suit so extensive a country, embracing so many climates, and containing inhabitants so very different in manners, habits, and customs? It is ascertained, by history, that there never was a government over a very extensive country without destroying the liberties of the people: history also, supported by the opinions of the best writers, shows us that monarchy may suit a large territory, and despotic governments ever so extensive a country, but that popular governments can only exist in small territories. Is there a single example, on the face of the earth, to support a contrary opinion? Where is there one exception to this general rule? Was there ever an instance of a general national government extending over so extensive a country, abounding in such a variety of climates, &c., where the people retained their liberty? I solemnly declare that no man is a greater friend to a firm union of the American states than I am; but, sir, if this great end can be obtained without hazarding the rights of the people, why should we recur to such dangerous principles? Requisitions have been often refused, sometimes from an impossibility of complying with them; often from that great variety of circumstances which retards the collection of moneys; and perhaps sometimes from a wilful design of procrastinating. But why shall we give up to the national government this power, so dangerous in its nature, and for which its members will not have sufficient information? Is it not well known that what would be a proper tax in one state would be grievous in another? The gentleman who hath favored us with a eulogium in favor of this system, must, after all the encomiums he has been pleased to bestow upon it, acknowledge that our federal representatives must be unacquainted with the situation of their constituents. Sixty-five members cannot possibly know the situation and circumstances of all the inhabitants of this immense continent. When a certain sum comes to be taxed, and the mode of levying to be fixed, they will lay the tax

on that article which will be most productive and easiest in the collection, without consulting the real circumstances or convenience of a country, with which, in fact, they cannot be sufficiently acquainted.

The mode of levying taxes is of the utmost consequence; and yet here it is to be determined by those who have neither knowledge of our situation, nor a common interest with us, nor a fellow-feeling for us. The subject of taxation differs in three fourths, nay, I might say with truth, in four fifths of the states. If we trust the national government with an effectual way of raising the necessary sums, it is sufficient: every thing we do further is trusting the happiness and rights of the people. Why, then, should we give up this dangerous power of individual taxation? Why leave the manner of laying taxes to those who, in the nature of things, cannot be acquainted with the situation of those on whom they are to impose them, when it can be done by those who are well acquainted with it? If, instead of giving this oppressive power, we give them such an effectual alternative as will answer the purpose, without encountering the evil and danger that might arise from it, then I would cheerfully acquiesce; and would it not be far more eligible? I candidly acknowledge the inefficacy of the Confederation; but requisitions have been made which were impossible to be complied with — requisitions for more gold and silver than were in the United States. If we give the general government the power of demanding their quotas of the states, with an alternative of laying direct taxes in case of non-compliance, then the mischief would be avoided; and the certainty of this conditional power would, in all human probability, prevent the application, and the sums necessary for the Union would be then laid by the states, by those who know how it can best be raised, by those who have a fellow-feeling for us. Give me leave to say, that the sum raised one way with convenience and ease, would be very oppressive another way. Why, then, not leave this power to be exercised by those who know the mode most convenient for the inhabitants, and not by those who must necessarily apportion it in such manner as shall be oppressive? With respect to the representation so much applauded, I cannot think it such a full and free one as it is represented; but I must candidly acknowledge that this defect results from the very nature of the government. It would be impossible to have a full and adequate representation in the general government; it would be too expensive and too unwieldy. We are, then, under the necessity of having this a very inadequate representation. Is this general representation to be compared with the real, actual, substantial representation of the state legislatures? It cannot bear a comparison. To make representation real and actual, the number of representatives ought to be adequate; they ought to mix with the people, think as they think, feel as they feel, — ought to be perfectly amenable to them, and thoroughly acquainted with their interest and condition. Now, these great ingredients are either not at all, or in a small degree, to be found in our federal representatives; so that we have no real, actual, substantial representation: but I acknowledge it results from the nature of the government. The necessity of this inconvenience may appear a sufficient reason not to argue against it; but, sir, it clearly shows that we ought to give power with a sparing hand to a government thus imperfectly constructed. To a government which, in the nature of things, cannot but be defective, no powers ought to be given but such as are absolutely necessary. There is one thing in it which I conceive to be extremely dangerous. Gentlemen may talk of public virtue and confidence; we shall be told that the House of Representatives will consist of the most virtuous men on the continent, and that in their hands we may trust our dearest rights. This, like all other assemblies, will be composed of some bad and some good men; and, considering the natural lust of power so inherent in man, I fear the thirst of power will prevail to oppress the people. What I conceive to be so dangerous, is the

provision with respect to the number of representatives: it does not expressly provide that we shall have one for every thirty thousand, but that the number shall not exceed that proportion. The utmost that we can expect (and perhaps that is too much) is, that the present number shall be continued to us; — "the number of representatives shall not exceed one for every thirty thousand." Now, will not this be complied with, although the present number should never be increased — nay, although it should be decreased? Suppose Congress should say that we should have one for every forty thousand; will not the Constitution be complied with? — for one for every forty thousand does not exceed one for every thirty thousand. There is a want of proportion that ought to be strictly guarded against. The worthy gentleman tells us that we have no reason to fear; but I always fear for the rights of the people. I do not pretend to inspiration; but I think it is apparent as the day, that the members will attend to local, partial interests, to prevent an augmentation of their number. I know not how they will be chosen, but, whatever be the mode of choosing, our present number will be ten; and suppose our state is laid off in ten districts, — those gentlemen who shall be sent from those districts will lessen their own power and influence in their respective districts if they increase their number; for the greater the number of men among whom any given quantum of power is divided, the less the power of each individual. Thus they will have a local interest to prevent the increase of, and perhaps they will lessen their own number. This is evident on the face of the Constitution: so loose an expression ought to be guarded against, for Congress will be clearly within the requisition of the Constitution, although the number of representatives should always continue what it is now, and the population of the country should increase to an immense number. Nay, they may reduce the number from sixty-five to one from each state, without violating the Constitution; and thus the number, which is now too small, would then be infinitely too much so. But my principal objection is, that the Confederation is converted to one general consolidated government, which, from my best judgment of it, (and which perhaps will be shown, in the course of this discussion, to be really well founded,) is one of the worst curses that can possibly befall a nation. Does any man suppose that one general national government can exist in so extensive a country as this? I hope that a government may be framed which may suit us, by drawing a line between the general and state governments, and prevent that dangerous clashing of interest and power, which must, as it now stands, terminate in the destruction of one or the other. When we come to the judiciary, we shall be more convinced that this government will terminate in the annihilation of the state governments: the question then will be, whether a consolidated government can preserve the freedom and secure the rights of the people.

If such amendments be introduced as shall exclude danger, I shall most gladly put my hand to it. When such amendments as shall, from the best information, secure the great essential rights of the people, shall be agreed to by gentlemen, I shall most heartily make the greatest concessions, and concur in any reasonable measure to obtain the desirable end of conciliation and unanimity. An indispensable amendment in this case is, that Congress shall not exercise the power of raising direct taxes till the states shall have refused to comply with the requisitions of Congress. On this condition it may be granted; but I see no reason to grant it unconditionally, as the states can raise the taxes with more ease, and lay them on the inhabitants with more propriety, than it is possible for the general government to do. If Congress hath this power without control, the taxes will be laid by those who have no fellow-feeling or acquaintance with the people. This is my objection to the article now under consideration. It is a very great and important one. I therefore beg gentlemen to consider it. Should this power be restrained, I shall withdraw my objections to this

part of the Constitution; but as it stands, it is an objection so strong in my mind, that its amendment is with me a *sine qua non* of its adoption. I wish for such amendments, and such only, as are necessary to secure the dearest rights of the people.

## Mr. MADISON.

Mr. Chairman, it would give me great pleasure to concur with my honorable colleague in any conciliatory plan. The clause to which the worthy member alludes is only explanatory of the proportion which representation and taxation shall respectively bear to one another. The power of laying direct taxes will be more properly discussed, when we come to that part of the Constitution which vests that powers in Congress. At present, I must endeavor to reconcile our proceedings to the resolution we have taken, by postponing the examination of this power till we come properly to it. With respect to converting the confederation to a complete consolidation, I think no such consequence will follow from the Constitution, and that, with more attention, we shall see that he is mistaken; and with respect to the number of representatives, I reconcile it to my mind, when I consider that it may be increased to the proportion fixed, and that, as it may be so increased, *it shall*, because it is the interest of those who alone can prevent it, who are our representatives, and who depend on their good behavior for their reëlection. Let me observe, also, that, as far as the number of representatives may seem to be adequate to discharge their duty, they will have sufficient information from the laws of particular states, from the state legislatures, from their own experience, and from a great number of individuals; and as to our security against them, I conceive, sir, that the general limitation of their powers, and the general watchfulness of the states, will be a sufficient guard. As it is now late, I shall defer any further investigation till a more convenient time.

The committee then rose, and on motion

*Resolved*, That this Convention will, to-morrow, again resolve itself into a committee of the whole Convention, to take into further consideration the proposed Constitution of government.

And then the Convention adjourned until to-morrow morning, eleven o'clock.

---

1. Observations on Civil Liberty.

---

## THURSDAY, *June 5*, 1788.

## Mr. HARRISON

reported, from the committee of privileges and elections, that the committee had, according to order, had under their consideration the petition of Samuel Anderson, to them referred, and had

come to a resolution thereupon, which he read in his place, and afterwards delivered in at the clerk's table, where the same was again twice read, and agreed to by the house, as followeth: —

*Resolved*, That it is the opinion of this committee, That the petition of the said Samuel Anderson, praying that the election of Mr. Thomas H. Drew, a member returned to serve in this Convention for the county of Cumberland, may be set aside, and a new election had to supply his place, be rejected.

Mr. HARRISON reported, from the committee of privileges and elections, that the committee had, according to order, examined the returns of the election of delegates to serve in this Convention for the county of Westmoreland, and had come to a resolution thereupon, which he read in his place, and afterwards delivered in at the clerk's table, where the same was again twice read, and agreed to by the house, as followeth: —

*Resolved*, That it is the opinion of this committee, That the return of the election of delegates to serve in this Convention, for the said county of Westmoreland, is satisfactory.

The Convention, according to the order of the day, resolved itself into a committee of the whole Convention, to take into further consideration the proposed plan of government. Mr. Wythe in the chair.

The first and second sections still under consideration.

## **Mr. PENDLETON.**

Mr. Chairman, my worthy friend (Mr. Henry) has expressed great uneasiness in his mind, and informed us that a great many of our citizens are also extremely uneasy, at the proposal of changing our government; but that, a year ago, before this fatal system was thought of, the public mind was at perfect repose. It is necessary to inquire whether the public mind was at ease on the subject, and if it be since disturbed, what was the cause. What was the situation of this country before the meeting of the federal Convention? Our general government was totally inadequate to the purpose of its institution; our commerce decayed; our finances deranged; public and private credit destroyed: these and many other national evils rendered necessary the meeting of that Convention. If the public mind was then at ease, it did not result from a conviction of being in a happy and easy situation: it must have been an inactive, unaccountable stupor. The federal Convention devised the paper on your table as a remedy to remove our political diseases. What has created the public uneasiness since? Not public reports, which are not to be depended upon; but mistaken apprehensions of danger, drawn from observations on government which do not apply to us. When we come to inquire into the origin of most governments of the world, we shall find that they are generally dictated by a conqueror, at the point of the sword, or are the offspring of confusion, when a great popular leader, taking advantage of circumstances, if not producing them, restores order at the expense of liberty, and becomes the tyrant over the people. It may well be supposed that, in forming a government of this sort, it will not be favorable to liberty: the conqueror will take care of his own emoluments, and have little concern for the interest of the people. In either case, the interest and ambition of a despot, and not the good of the people, have given the tone to the government. A government thus formed must necessarily create a continual war between the governors and governed.

Writers consider the two parties (the people and tyrants) as in a state of perpetual warfare, and sound the alarm to the people. But what is our case? We are perfectly free from sedition and war: we are not yet in confusion: we are left to consider our real happiness and security: we want to secure these objects: we know they cannot be attained without government. Is there a single man, in this committee, of a contrary opinion? What was it that brought us from a state of nature to society, but to secure happiness? And can society be formed without government? Personify government: apply to it as a friend to assist you, and it will grant your request. This is the only government founded in real compact. There is no quarrel between government and liberty; the former is the shield and protector of the latter. The war is between government and licentiousness, faction, turbulence, and other violations of the rules of society, to preserve liberty. Where is the cause of alarm? We, the people, possessing all power, form a government, such as we think will secure happiness: and suppose, in adopting this plan, we should be mistaken in the end; where is the cause of alarm on that quarter? In the same plan we point out an easy and quiet method of reforming what may be found amiss. No, but, say gentlemen, we have put the introduction of that method in the hands of our servants, who will interrupt it from motives of self-interest. What then? We will resist, did my friend say? conveying an idea of force. Who shall dare to resist the people? No, we will assemble in Convention; wholly recall our delegated powers, or reform them so as to prevent such abuse; and punish those servants who have perverted powers, designed for our happiness, to their own emolument. We ought to be extremely cautious not to be drawn into dispute with regular government, by faction and turbulence, its natural enemies. Here, then, sir, there is no cause of alarm on this side; but on the other side, rejecting of government, and dissolving of the Union, produce confusion and despotism.

But an objection is made to the form: the expression, We, the people, is thought improper. Permit me to ask the gentleman who made this objection, who but the people can delegate powers? Who but the people have a right to form government? The expression is a common one, and a favorite one with me. The representatives of the people, by their authority, is a mode wholly inessential. If the objection be, that the Union ought to be not of the people, but of the state governments, then I think the choice of the former very happy and proper. What have the state governments to do with it? Were they to determine, the people would not, in that case, be the judges upon what terms it was adopted.

But the power of the Convention is doubted. What is the power? To propose, not to determine. This power of proposing was very broad; it extended to remove all defects in government: the members of that Convention, who were to consider all the defects in our general government, were not confined to any particular plan. Were they deceived? This is the proper question here. Suppose the paper on your table dropped from one of the planets; the people found it, and sent us here to consider whether it was proper for their adoption; must we not obey them? Then the question must be between this government and the Confederation. The latter is no government at all. It has been said that it has carried us, through a dangerous war, to a happy issue. Not that Confederation, but common danger, and the spirit of America, were bonds of our union: union and unanimity, and not that insignificant paper, carried us through that dangerous war. "United, we stand — divided, we fall!" echoed and reëchoed through America — from Congress to the drunken carpenter — was effectual, and procured the end of our wishes, though now forgotten

by gentlemen, if such there be, who incline to let go this stronghold, to catch at feathers; for such all substituted projects may prove.

This spirit had nearly reached the end of its power when relieved by peace. It was the spirit of America, and not the Confederation, that carried us through the war: thus I prove it. The moment of peace showed the imbecility of the federal government: Congress was empowered to make war and peace; a peace they made, giving us the great object, independence, and yielding us a territory that exceeded my most sanguine expectations. Unfortunately, a single disagreeable clause, not the object of the war, has retarded the performance of the treaty on our part. Congress could only recommend its performance, not enforce it; our last Assembly (to their honor be it said) put this on its proper grounds — on honorable grounds; it was as much as they ought to have done. This single instance shows the imbecility of the Confederation; the debts contracted by the war were unpaid; demands were made on Congress; all that Congress was able to do was to make an estimate of the debt, and proportion it among the several states; they sent on the requisitions, from time to time, to the states, for their respective quotas. These were either complied with partially, or not at all. Repeated demands on Congress distressed {39} that honorable body; but they were unable to fulfil those engagements, as they so earnestly wished. What was the idea of other nations respecting America? What was the idea entertained of us by those nations to whom we were so much indebted? The inefficacy of the general government warranted an idea that we had no government at all. Improvements were proposed, and agreed to by twelve states; but were interrupted, because the little state of Rhode Island refused to accede to them. This was a further proof of the imbecility of that government. Need I multiply instances to show that it is wholly ineffectual for the purposes of its institution? Its whole progress since the peace proves it.

Shall we then, sir, continue under such a government, or shall we introduce that kind of government which shall produce the real happiness and security of the people? When gentlemen say that we ought not to introduce this new government, but strengthen the hands of Congress, they ought to be explicit. In what manner shall this be done? If the union of the states be necessary, government must be equally so; for without the latter, the former cannot be effected. Government must then have its complete powers, or be ineffectual; a legislature to fix rules, impose sanctions, and point out the punishment of the transgressors of these rules; an executive to watch over officers, and bring them to punishment; a judiciary, to guard the innocent, and fix the guilty, by a fair trial. Without an executive, offenders would not be brought to punishment; without a judiciary, any man might be taken up, convicted, and punished; without a trial. Hence the necessity of having these three branches. Would any gentleman in this committee agree to vest these three powers in one body — Congress? No. Hence the necessity of a new organization and distribution of those powers. If there be any feature in this government which is not republican, it would be exceptionable. From all the public servants responsibility is secured, by their being representatives, mediate or immediate, for short terms, and their powers defined. It is, on the whole complexion of it, a government of laws, not of men.

## **NOTE**

But it is represented to be a consolidated government, annihilating that of the states — a consolidated government, which so extensive a territory as the United States cannot {40} admit

of, without terminating in despotism. If this be such a government, I will confess, with my worthy friend, that it is inadmissible over such a territory as this country. Let us consider whether it be such a government or not. I should understand a consolidated government to be that which should have the sole and exclusive power, legislative, executive, and judicial, without any limitation. Is this such a government? Or can it be changed to such a one? It only extends to the general purposes of the Union. It does not intermeddle with the local, particular affairs of the states. Can Congress legislate for the state of Virginia? Can they make a law altering the form of transferring property, or the rule of descents, in Virginia? In one word, can they make a single law for the individual, exclusive purpose of any one state? It is the interest of the federal to preserve the state governments; upon the latter the existence of the former depends: the Senate derives its existence immediately from the state legislatures; and the representatives and President are elected under their direction and control; they also preserve order among the citizens of their respective states, and without order and peace no society can possibly exist. Unless, therefore, there be state legislatures to continue the existence of Congress, and preserve order and peace among the inhabitants, this general government, which gentlemen suppose will annihilate the state governments, must itself be destroyed. When, therefore, the federal government is, in so many respects, so absolutely dependent on the state governments, I wonder how any gentleman, reflecting on the subject, could have conceived an idea of a possibility of the former destroying the latter. But the power of laying direct taxes is objected to. Government must be supported; this cannot be done without a revenue: if a sufficient revenue be not otherwise raised, recurrence must be had to direct taxation; gentlemen admit this, but insist on the propriety of first applying to the state legislatures.

Let us consider the consequence that would result from this. In the first place, time would be lost by it. Congress would make requisitions in December; our legislature do not meet till October; here would be a considerable loss of time, admitting the requisitions to be fully complied with. But suppose the requisitions to be refused; would it not be dangerous to send a collector, to collect the Congressional {41} taxes, after the state legislature had absolutely refused to comply with the demands of Congress? Would not resistance to collectors be the probable consequence? Would not this resistance terminate in confusion, and a dissolution of the Union? The concurrent power of two different bodies laying direct taxes, is objected to. These taxes are for two different purposes, and cannot interfere with one another. I can see no danger resulting from this; and we must suppose that a very small sum more than the impost would be sufficient. But the representation is supposed too small. I confess, I think with the gentleman who opened the debate (Mr. Nicholas) on this subject; and I think he gave a very satisfactory answer to this objection, when he observed that, though the number might be insufficient to convey information of necessary local interests to a state legislature, yet it was sufficient for the federal legislature, who are to act only on general subjects, in which this state is concerned in common with other states. The apportionment of representation and taxation by the same scale is just; it removes the objection, that, while Virginia paid one sixth part of the expenses of the Union, she had no more weight in public counsels than Delaware, which paid but a very small portion. By this just apportionment she is put on a footing with the small states, in point of representation and influence in councils. I cannot imagine a more judicious principle than is here fixed by the Constitution — the number shall not exceed one for every thirty thousand. But it is objected that the number may be less. If Virginia sends in that proportion, I ask, Where is the power in Congress to reject them? States might incline to send too many; they are therefore restrained: but

can it be doubted that they will send the number they are entitled to? We may be therefore sure, from this principle unequivocally fixed in the Constitution, that the number of our representatives will be in proportion to the increase or decrease of our population. I can truly say that I am of no party, nor actuated by any influence, but the true interest and real happiness of those whom I represent; and my age and situation, I trust, will sufficiently demonstrate the truth of this assertion. I cannot conclude without adding, that I am perfectly satisfied with this part of the system.

## Mr. LEE, (of Westmoreland.)

Mr. Chairman, I feel {42} every power of my mind moved by the language of the honorable gentleman yesterday. The *éclat* and brilliancy which have distinguished that gentleman, the honors with which he has been dignified, and the brilliant talents which he has so often displayed, have attracted my respect and attention. On so important an occasion, and before so respectable a body, I expected a new display of his powers of oratory; but, instead of proceeding to investigate the merits of the new plan of government, the worthy character informed us of horrors which he felt, of apprehensions to his mind, which made him tremblingly fearful of the fate of the commonwealth. Mr. Chairman, was it proper to appeal to the fears of this house? The question before us belongs to the judgment of this house. I trust he is come to judge, and not to alarm. I trust that he, and every other gentleman in this house, comes with a firm resolution coolly and calmly to examine, and fairly and impartially to determine. He was pleased to pass a eulogium on that character who is the pride of peace and support of war; and declared that even from him he would require the reason of proposing such a system. I cannot see the propriety of mentioning that illustrious character on this occasion; we must be all fully impressed with a conviction of his extreme rectitude of conduct. But, sir, this system is to be examined by its own merit. He then adverted to the style of government, and asked what authority they had to use the expression, "We, the people," and not We, the states. This expression was introduced into that paper with great propriety. This system is submitted to the people for their consideration, because on them it is to operate, if adopted. It is not binding on the people until it becomes their act. It is now submitted to the people of Virginia. If we do not adopt it, it will be always null and void as to us. Suppose it was found proper for our adoption, and becoming the government of the people of Virginia; by what style should it be done? Ought we not to make use of the name of the people? No other style would be proper. He then spoke of the characters of the gentlemen who framed it. This was inapplicable, strange, and unexpected: it was a more proper inquiry whether such evils existed as rendered necessary a change of government.

This necessity is evidenced by the concurrent testimony of almost all America. The legislative acts of different {43} states avow it. It is acknowledged by the acts of this state; under such an act we are here now assembled. If reference to the acts of the assemblies will not sufficiently convince him of this necessity, let him go to our seaports; let him see our commerce languishing — not an American bottom to be seen; let him ask the price of land, and of produce, in different parts of the country: to what cause shall we ascribe the very low prices of these? To what cause are we to attribute the decrease of population and industry, and the impossibility of employing our tradesmen and mechanics? To what cause will the gentleman impute these and a thousand other misfortunes our people labor under? These, sir, are owing to the imbecility of the Confederation; to that defective system which never can make us happy at home nor respectable

abroad. The gentleman sat down as he began, leaving us to ruminate on the horrors which he opened with. Although I could trust to the argument of the gentleman who spoke yesterday in favor of the plan, permit me to make one observation on the weight of our representatives in the government. If the House of Commons, in England, possessing less power, are now able to withstand the power of the crown, — if that House of Commons, which has been undermined by corruption in every age, and contaminated by bribery even in this enlightened age, with far less powers than our representatives possess, is still able to contend with the executive of that country, — what danger have we to fear that our representatives cannot successfully oppose the encroachments of the other branches of the government? Let it be remembered that, in the year 1782, the East India Bill was brought into the House of Commons. Although the members of that house are only elected in part by the landed interest, yet, in spite of ministerial influence, that bill was carried in that house by a majority of one hundred and thirty, and the king was obliged to dissolve the Parliament to prevent its effect. If, then, the House of Commons was so powerful, no danger can be apprehended that our House of Representatives is not amply able to protect our liberties. I trust that this representation is sufficient to secure our happiness, and that we may fairly congratulate ourselves on the superiority of our government to that I just referred to.

## **Mr. HENRY.**

Mr. Chairman, I am much obliged to the {44} very worthy gentleman for his encomium. I wish I was possessed with talents, or possessed of any thing that might enable me to elucidate this great subject. I am not free from suspicion: I am apt to entertain doubts. I rose yesterday to ask a question which arose in my own mind. When I asked that question, I thought the meaning of my interrogation was obvious. The fate of this question and of America may depend on this. Have they said, We, the states? Have they made a proposal of a compact between states? If they had, this would be a confederation. It is otherwise most clearly a consolidated government. The question turns, sir, on that poor little thing — the expression, We, the *people*, instead of the *states*, of America. I need not take much pains to show that the principles of this system are extremely pernicious, impolitic, and dangerous. Is this a monarchy, like England — a compact between prince and people, with checks on the former to secure the liberty of the latter? Is this a confederacy, like Holland — an association of a number of independent states, each of which retains its individual sovereignty? It is not a democracy, wherein the people retain all their rights securely. Had these principles been adhered to, we should not have been brought to this alarming transition, from a confederacy to a consolidated government. We have no detail of these great considerations, which, in my opinion, ought to have abounded before we should recur to a government of this kind. Here is a revolution as radical as that which separated us from Great Britain. It is radical in this transition; our rights and privileges are endangered, and the sovereignty of the states will be relinquished: and cannot we plainly see that this is actually the case? The rights of conscience, trial by jury, liberty of the press, all your immunities and franchises, all pretensions to human rights and privileges, are rendered insecure, if not lost, by this change, so loudly talked of by some, and inconsiderately by others. Is this tame relinquishment of rights worthy of freemen? Is it worthy of that manly fortitude that ought to characterize republicans? It is said eight states have adopted this plan. I declare that if twelve states and a half had adopted it, I would, with manly firmness, and in spite of an erring world, reject it. You are not to inquire how your trade may be increased, nor how you are to become a

great and powerful {45} people, but how your liberties can be secured; for liberty ought to be the direct end of your government.

Having premised these things, I shall, with the aid of my judgment and information, which, I confess, are not extensive, go into the discussion of this system more minutely. Is it necessary for your liberty that you should abandon those great rights by the adoption of this system? Is the relinquishment of the trial by jury and the liberty of the press necessary for your liberty? Will the abandonment of your most sacred rights tend to the security of your liberty? Liberty, the greatest of all earthly blessing — give us that precious jewel, and you may take every thing else! But I am fearful I have lived long enough to become an old-fashioned fellow. Perhaps an invincible attachment to the dearest rights of man may, in these refined, enlightened days, be deemed old-fashioned; if so, I am contented to be so. I say, the time has been when every pulse of my heart beat for American liberty, and which, I believe, had a counterpart in the breast of every true American; but suspicions have gone forth — suspicions of my integrity — publicly reported that my professions are not real. Twenty-three years ago was I supposed a traitor to my country? I was then said to be the bane of sedition, because I supported the rights of my country. I may be thought suspicious when I say our privileges and rights are in danger. But, sir, a number of the people of this country are weak enough to think these things are too true. I am happy to find that the gentleman on the other side declares they are groundless. But, sir, suspicion is a virtue as long as its object is the preservation of the public good, and as long as it stays within proper bounds: should it fall on me, I am contented: conscious rectitude is a powerful consolation. I trust there are many who think my professions for the public good to be real. Let your suspicion look to both sides. There are many on the other side, who possibly may have been persuaded to the necessity of these measures, which I conceive to be dangerous to your liberty. Guard with jealous attention the public liberty. Suspect every one who approaches that jewel. Unfortunately, nothing will preserve it but downright force. Whenever you give up that force, you are inevitably ruined. I am answered by gentlemen, that, though I might speak of terrors, yet the fact was, that we were surrounded by none of the {46} dangers I apprehended. I conceive this new government to be one of those dangers: it has produced those horrors which distress many of our best citizens. We are come hither to preserve the poor commonwealth of Virginia, if it can be possibly done: something must be done to preserve your liberty and mine. The Confederation, this same despised government, merits, in my opinion, the highest encomium: it carried us through a long and dangerous war; it rendered us victorious in that bloody conflict with a powerful nation; it has secured us a territory greater than any European monarch possesses: and shall a government which has been thus strong and vigorous, be accused of imbecility, and abandoned for want of energy? Consider what you are about to do before you part with the government. Take longer time in reckoning things; revolutions like this have happened in almost every country in Europe; similar examples are to be found in ancient Greece and ancient Rome — instances of the people losing their liberty by their own carelessness and the ambition of a few. We are cautioned by the honorable gentleman, who presides, against faction and turbulence. I acknowledge that licentiousness is dangerous, and that it ought to be provided against: I acknowledge, also, the new form of government may effectually prevent it: yet there is another thing it will as effectually do — it will oppress and ruin the people.

There are sufficient guards placed against sedition and licentiousness; for, when power is given to this government to suppress these, or for any other purpose, the language it assumes is clear,

express, and unequivocal; but when this Constitution speaks of privileges, there is an ambiguity, sir, a fatal ambiguity — an ambiguity which is very astonishing. In the clause under consideration, there is the strangest language that I can conceive. I mean, when it says that there shall not be more representatives than one for every thirty thousand. Now, sir, how easy is it to evade this privilege! "The number shall not exceed one for every thirty thousand." This may be satisfied by one representative from each state. Let our numbers be ever so great, this immense continent may, by this artful expression, be reduced to have but thirteen representatives. I confess this construction is not natural; but the ambiguity of the expression lays a good ground for a quarrel. Why was it not clearly and unequivocally {47} expressed, that they should be entitled to have one for every thirty thousand? This would have obviated all disputes; and was this difficult to be done? What is the inference? When population increases, and a state shall send representatives in this proportion, Congress may remand them, because the right of having one for every thirty thousand is not clearly expressed. This possibility of reducing the number to one for each state approximates to probability by that other expression — "but each state shall at least have one representative." Now, is it not clear that, from the first expression, the number might be reduced so much that some states should have no representatives at all, were it not for the insertion of this last expression? And as this is the only restriction upon them, we may fairly conclude that they may restrain the number to one from each state. Perhaps the same horrors may hang over my mind again. I shall be told I am continually afraid: but, sir, I have strong cause of apprehension. In some parts of the plan before you, the great rights of freemen are endangered; in other parts, absolutely taken away. How does your trial by jury stand? In civil cases gone — not sufficiently secured in criminal — this best privilege is gone. But we are told that we need not fear; because those in power, being our representatives, will not abuse the powers we put in their hands. I am not well versed in history, but I will submit to your recollection, whether liberty has been destroyed most often by the licentiousness of the people, or by the tyranny of rulers. I imagine, sir, you will find the balance on the side of tyranny. Happy will you be if you miss the fate of those nations, who, omitting to resist their oppressors, or negligently suffering their liberty to be wrested from them, have groaned under intolerable despotism! Most of the human race are now in this deplorable condition; and those nations who have gone in search of grandeur, power, and splendor, have also fallen a sacrifice, and been the victims of their own folly. While they acquired those visionary blessings, they lost their freedom. My great objection to this government is, that it does not leave us the means of defending our rights, or of waging war against tyrants. It is urged by some gentlemen, that this new plan will bring us an acquisition of strength — an army, and the militia of the states. This is an idea extremely ridiculous: gentlemen cannot be earnest. This acquisition {48} will trample on our fallen liberty. Let my beloved Americans guard against that fatal lethargy that has pervaded the universe. Have we the means of resisting disciplined armies, when our only defence, the militia, is put into the hands of Congress? The honorable gentleman said that great danger would ensue if the Convention rose without adopting this system. I ask, Where is that danger? I see none. Other gentlemen have told us, within these walls, that the union is gone, or that the union will be gone. Is not this trifling with the judgment of their fellow-citizens? Till they tell us the grounds of their fears, I will consider them as imaginary. I rose to make inquiry where those dangers were; they could make no answer: I believe I never shall have that answer. Is there a disposition in the people of this country to revolt against the dominion of laws? Has there been a single tumult in Virginia? Have not the people of Virginia, when laboring under the severest pressure of accumulated distresses, manifested the most cordial acquiescence in the execution of the laws? What could be more

awful than their unanimous acquiescence under general distresses? Is there any revolution in Virginia? Whither is the spirit of America gone? Whither is the genius of America fled? It was but yesterday, when our enemies marched in triumph through our country. Yet the people of this country could not be appalled by their pompous armaments: they stopped their carer, and victoriously captured them. Where is the peril, now, compared to that? Some minds are agitated by foreign alarms. Happily for us, there is no real danger from Europe; that country is engaged in more arduous business: from that quarter there is no cause of fear: you may sleep in safety forever for them.

Where is the danger? If, sir, there was any, I would recur to the American spirit to defend us; that spirit which has enabled us to surmount the greatest difficulties: to that illustrious spirit I address my most fervent prayer to prevent our adopting a system destructive to liberty. Let not gentlemen be told that it is not safe to reject this government. Wherefore is it not safe? We are told there are dangers, but those dangers are ideal; they cannot be demonstrated. To encourage us to adopt it, they tell us that there is a plain, easy way of getting amendments. When I come to contemplate this part, I suppose that I am mad, or that my {49} countrymen are so. The way to amendment is, in my conception, shut. Let us consider this plain, easy way. "The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by the Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. Provided, that no amendment which may be made prior to the year 1808, shall in any manner affect the 1st and 4th clauses in the 9th section of the 1st article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate."

Hence it appears that three fourths of the states must ultimately agree to any amendments that may be necessary. Let us consider the consequence of this. However uncharitable it may appear, yet I must tell my opinion — that the most unworthy characters may get into power, and prevent the introduction of amendments. Let us suppose — for the case is supposable, possible, and probable — that you happen to deal those powers to unworthy hands; will they relinquish powers already in their possession, or agree to amendments? Two thirds of the Congress, or of the state legislatures, are necessary even to propose amendments. If one third of these be unworthy men, they may prevent the application for amendments; but what is destructive and mischievous, is, that three fourths of the state legislatures, or of the state conventions, must concur in the amendments when proposed! In such numerous bodies, there must necessarily be some designing, bad men. To suppose that so large a number as three fourths of the states will concur, is to suppose that they will possess genius, intelligence, and integrity, approaching to miraculous. It would indeed be miraculous that they should concur in the same amendments, or even in such as would bear some likeness to one another; for four of the smallest states, that do not collectively contain one tenth part of the population of the United States, may obstruct the most salutary and necessary amendments. Nay, in these four states, six tenths of the people may reject {50} these amendments; and suppose that amendments shall be opposed to amendments, which is highly probable, — is it possible that three fourths can ever agree to the same amendments? A bare majority in these four small states may hinder the adoption of amendments; so that we may fairly and justly conclude that one twentieth part of the American people may prevent the

removal of the most grievous inconveniences and oppression, by refusing to accede to amendments. A trifling minority may reject the most salutary amendments. Is this an easy mode of securing the public liberty? It is, sir, a most fearful situation, when the most contemptible minority can prevent the alteration of the most oppressive government; for it may, in many respects, prove to be such. Is this the spirit of republicanism?

What, sir, is the genius of democracy? Let me read that clause of the bill of rights of Virginia which relates to this: 3d clause: — that government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community. Of all the various modes and forms of government, that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration; and that whenever any government shall be found inadequate, or contrary to those purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

This, sir, is the language of democracy — that a majority of the community have a right to alter government when found to be oppressive. But how different is the genius of your new Constitution from this! How different from the sentiments of freemen, that a contemptible minority can prevent the good of the majority! If, then, gentlemen, standing on this ground, are come to that point, that they are willing to bind themselves and their posterity to be oppressed, I am amazed and inexpressibly astonished. If this be the opinion of the majority, I must submit; but to me, sir, it appears perilous and destructive. I cannot help thinking so. Perhaps it may be the result of my age. These may be feelings natural to a man of my years, when the American spirit has left him, and his mental powers, like the members of the body, are decayed. If, sir, amendments {51} are left to the twentieth, or tenth part of the people of America, your liberty is gone forever. We have heard that there is a great deal of bribery practised in the House of Commons, in England, and that many of the members raise themselves to preferments by selling the rights of the whole of the people. But, sir, the tenth part of that body cannot continue oppression on the rest of the people. English liberty is, in this case, on a firmer foundation than American liberty. It will be easily contrived to procure the opposition of one tenth of the people to any alteration, however judicious. The honorable gentleman who presides told us that, to prevent abuses in our government, we will assemble in Convention, recall our delegated powers, and punish our servants for abusing the trust reposed in them. O sir, we should have fine times, indeed, if, to punish tyrants, it were only sufficient to assemble the people! Your arms, wherewith you could defend yourselves, are gone; and you have no longer an aristocratical, no longer a democratical spirit. Did you ever read of any revolution in a nation, brought about by the punishment of those in power, inflicted by those who had no power at all? You read of a riot act in a country which is called one of the freest in the world, where a few neighbors cannot assemble without the risk of being shot by a hired soldiery, the engines of despotism. We may see such an act in America.

A standing army we shall have, also, to execute the execrable commands of tyranny; and how are you to punish them? Will you order them to be punished? Who shall obey these orders? Will your mace-bearer be a match for a disciplined regiment? In what situation are we to be? The clause before you gives a power of direct taxation, unbounded and unlimited, exclusive power of legislation, in all cases whatsoever, for ten miles square, and over all places purchased for the

erection of forts, magazines, arsenals, dockyards, &c. What resistance could be made? The attempt would be madness. You will find all the strength of this country in the hands of your enemies; their garrisons will naturally be the strongest places in the country. Your militia is given up to Congress, also, in another part of this plan: they will therefore act as they think proper: all power will be in their own possession. You cannot force them to receive their punishment: of what service would militia be to you, {52} when, most probably, you will not have a single musket in the state? for, as arms are to be provided by Congress, they may or may not furnish them.

Let me here call your attention to that part which gives the Congress power "to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States — reserving to the states, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." By this, sir, you see that their control over our last and best defence is unlimited. If they neglect or refuse to discipline or arm our militia, they will be useless: the states can do neither — this power being exclusively given to Congress. The power of appointing officers over men not disciplined or armed is ridiculous; so that this pretended little remains of power left to the states may, at the pleasure of Congress, be rendered nugatory. Our situation will be deplorable indeed: nor can we ever expect to get this government amended, since I have already shown that a very small minority may prevent it, and that small minority interested in the continuance of the oppression. Will the oppressor let go the oppressed? Was there ever an instance? Can the annals of mankind exhibit one single example where rulers overcharged with power willingly let go the oppressed, though solicited and requested most earnestly? The application for amendments will therefore be fruitless. Sometimes, the oppressed have got loose by one of those bloody struggles that desolate a country; but a willing relinquishment of power is one of those things which human nature never was, nor ever will be, capable of.

The honorable gentleman's observations, respecting the people's right of being the agents in the formation of this government, are not accurate, in my humble conception. The distinction between a national government and a confederacy is not sufficiently discerned. Had the delegates, who were sent to Philadelphia, a power to propose a consolidated government instead of a confederacy? Were they not deputed by states, and not by the people? The assent of the people, in their collective capacity, is not necessary to the formation of a federal government. The people have no right to enter into leagues, alliances, or confederations; {53} they are not the proper agents for this purpose. States and foreign powers are the only proper agents for this kind of government. Show me an instance where the people have exercised this business. Has it not always gone through the legislatures? I refer you to the treaties with France, Holland, and other nations. How were they made? Were they not made by the states? Are the people, therefore, in their aggregate capacity, the proper persons to form a confederacy? This, therefore, ought to depend on the consent of the legislatures, the people having never sent delegates to make any proposition for changing the government. Yet I must say, at the same time, that it was made on grounds the most pure; and perhaps I might have been brought to consent to it so far as to the change of government. But there is one thing in it which I never would acquiesce in. I mean, the changing it into a consolidated government, which is so abhorrent to my mind. [The honorable gentleman then went on to the figure we make with foreign nations; the contemptible one we make in France and Holland; which, according to the substance of the notes, he attributes to the

present feeble government.] An opinion has gone forth, we find, that we are contemptible people: the time has been when we were thought otherwise. Under the same despised government, we commanded the respect of all Europe: wherefore are we now reckoned otherwise? The American spirit has fled from hence: it has gone to regions where it has never been expected; it has gone to the people of France, in search of a splendid government — a strong, energetic government. Shall we imitate the example of those nations who have gone from a simple to a splendid government? Are those nations more worthy of our imitation? What can make an adequate satisfaction to them for the loss they have suffered in attaining such a government — for the loss of their liberty? If we admit this consolidated government, it will be because we like a great, splendid one. Some way or other we must be a great and mighty empire; we must have an army, and a navy, and a number of things. When the American spirit was in its youth, the language of America was different: liberty, sir, was then the primary object. We are descended from a people whose government was founded on liberty: our glorious forefathers of Great Britain made liberty the foundation {54} of every thing. That country is become a great, mighty, and splendid nation; not because their government is strong and energetic, but, sir, because liberty is its direct end and foundation. We drew the spirit of liberty from our British ancestors: by that spirit we have triumphed over every difficulty. But now, sir, the American spirit, assisted by the ropes and chains of consolidation, is about to convert this country into a powerful and mighty empire. If you make the citizens of this country agree to become the subjects of one great consolidated empire of America, your government will not have sufficient energy to keep them together. Such a government is incompatible with the genius of republicanism. There will be no checks, no real balances, in this government. What can avail your specious, imaginary balances, your rope-dancing, chain-rattling, ridiculous ideal checks and contrivances? But, sir, we are not feared by foreigners; we do not make nations tremble. Would this constitute happiness, or secure liberty? I trust, sir, our political hemisphere will ever direct their operations to the security of those objects.

Consider our situation, sir: go to the poor man, and ask him what he does. He will inform you that he enjoys the fruits of his labor, under his own fig-tree, with his wife and children around him, in peace and security. Go to every other member of society, — you will find the same tranquil ease and content; you will find no alarms or disturbances. Why, then, tell us of danger, to terrify us into an adoption of this new form of government? And yet who knows the dangers that this new system may produce? They are out of the sight of the common people: they cannot foresee latent consequences. I dread the operation of it on the middling and lower classes of people: it is for them I fear the adoption of this system. I fear I tire the patience of the committee; but I beg to be indulged with a few more observations. When I thus profess myself an advocate for the liberty of the people, I shall be told I am a designing man, that I am to be a great man, that I am to be a demagogue; and many similar illiberal insinuations will be thrown out: but, sir, conscious rectitude outweighs those things with me. I see great jeopardy in this new government. I see none from our present one. I hope some gentleman or other will bring forth, in full array, those {55} dangers, if there be any, that we may see and touch them. I have said that I thought this a consolidated government: I will now prove it. Will the great rights of the people be secured by this government? Suppose it should prove oppressive, how can it be altered? Our bill of rights declares, "that a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal."

I have just proved that one tenth, or less, of the people of America — a most despicable minority — may prevent this reform or alteration. Suppose the people of Virginia should wish to alter their government; can a majority of them do it? No; because they are connected with other men, or, in other words, consolidated with other states. When the people of Virginia, at a future day, shall wish to alter their government, though they should be unanimous in this desire, yet they may be prevented therefrom by a despicable minority at the extremity of the United States. The founders of your own Constitution made your government changeable: but the power of changing it is gone from you. Whither is it gone? It is placed in the same hands that hold the rights of twelve other states; and those who hold those rights have right and power to keep them. It is not the particular government of Virginia: one of the leading features of that government is, that a majority can alter it, when necessary for the public good. This government is not a Virginian, but an American government. Is it not, therefore, a consolidated government? The sixth clause of your bill of rights tells you, "that elections of members to serve as representatives of the people in Assembly ought to be free, and that all men having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be *taxed*, or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not in like manner assented for the public good." But what does this Constitution say? The clause under consideration gives an unlimited and unbounded power of taxation. Suppose every delegate from Virginia opposes a law laying a tax; what will it avail? They are opposed by a majority; eleven members can destroy their efforts: {56} those feeble ten cannot prevent the passing the most oppressive tax law; so that, in direct opposition to the spirit and express language of your declaration of rights, you are taxed, not by your own consent, but by people who have no connection with you.

The next clause of the bill of rights tells you, "that all power of suspending law, or the execution of laws, by any authority, without the consent of the representatives of the people, is injurious to their rights, and ought not to be exercised." This tells us that there can be no suspension of government or laws without our own consent; yet this Constitution can counteract and suspend any of our laws that contravene its oppressive operation; for they have the power of direct taxation, which suspends our bill of rights; and it is expressly provided that they can make all laws necessary for carrying their powers into execution; and it is declared paramount to the laws and constitutions of the states. Consider how the only remaining defence we have left is destroyed in this manner. Besides the expenses of maintaining the Senate and other house in as much splendor as they please, there is to be a great and mighty President, with very extensive powers — the powers of a king. He is to be supported in extravagant magnificence; so that the whole of our property may be taken by this American government, by laying what taxes they please, giving themselves what salaries they please, and suspending our laws at their pleasure. I might be thought too inquisitive, but I believe I should take up very little of your time in enumerating the little power that is left to the government of Virginia; for this power is reduced to little or nothing: their garrisons, magazines, arsenals, and forts, which will be situated in the strongest places within the states; their ten miles square, with all the fine ornaments of human life, added to their powers, and taken from the states, will reduce the power of the latter to nothing.

The voice of tradition, I trust, will inform posterity of our struggles for freedom. If our descendants be worthy the name of Americans, they will preserve, and hand down to their latest posterity, the transactions of the present times; and, though I confess my exclamations are not worthy the hearing, they will see that I have done my utmost to preserve their liberty; for I never will give up the power of direct taxation but for a scourge. I am willing to give it conditionally; {57} that is, after non-compliance with requisitions. I will do more, sir, and what I hope will convince the most skeptical man that I am a lover of the American Union — that, in case Virginia shall not make punctual payment, the control of our custom-houses, and the whole regulation of trade, shall be given to Congress, and that Virginia shall depend on Congress even for passports, till Virginia shall have paid the last farthing, and furnished the last soldier. Nay, sir, there is another alternative to which I would consent; — even that they should strike us out of the Union, and take away from us all federal privileges, till we comply with federal requisitions: but let it depend upon our own pleasure to pay our money in the most easy manner for our people. Were all the states, more terrible than the mother country, to join against us, I hope Virginia could defend herself; but, sir, the dissolution of the Union is most abhorrent to my mind. The first thing I have at heart is American liberty: the second thing is American union; and I hope the people of Virginia will endeavor to preserve that union. The increasing population of the Southern States is far greater than that of New England; consequently, in a short time, they will be far more numerous than the people of that country. Consider this, and you will find this state more particularly interested to support American liberty, and not bind our posterity by an improvident relinquishment of our rights. I would give the best security for a punctual compliance with requisitions; but I beseech gentlemen, at all hazards, not to give up this unlimited power of taxation. The honorable gentleman has told us that these powers, given to Congress, are accompanied by a judiciary which will correct all. On examination, you will find this very judiciary oppressively constructed; your jury trial destroyed, and the judges dependent on Congress.

In this scheme of energetic government, the people will find two sets of tax-gatherers — the state and the federal sheriffs. This, it seems to me, will produce such dreadful oppression as the people cannot possibly bear. The federal sheriff may commit what oppression, make what distresses, he pleases, and ruin you with impunity; for how are you to tie his hands? Have you any sufficiently decided means of preventing him from sucking your blood by speculations, commissions, and fees? Thus thousands of your people will be most shamefully robbed: our state sheriffs, those unfeeling blood-suckers {58} have, under the watchful eye of our legislature, committed the most horrid and barbarous ravages on our people. It has required the most constant vigilance of the legislature to keep them from totally ruining the people; a repeated succession of laws has been made to suppress their iniquitous speculations and cruel extortions; and as often has their nefarious ingenuity devised methods of evading the force of those laws: in the struggle they have generally triumphed over the legislature.

It is a fact that lands have been sold for five shillings, which were worth one hundred pounds: if sheriffs, thus immediately under the eye of our state legislature and judiciary, have dared to commit these outrages, what would they not have done if their masters had been at Philadelphia or New York? If they perpetrate the most unwarrantable outrage on your person or property, you cannot get redress on this side of Philadelphia or New York; and how can you get it there? If your domestic avocations could permit you to go thither, there you must appeal to judges sworn

to support this Constitution, in opposition to that of any state, and who may also be inclined to favor their own officers. When these harpies are aided by excisemen, who may search, at any time, your houses, and most secret recesses, will the people bear it? If you think so, you differ from me. Where I thought there was a possibility of such mischiefs, I would grant power with a niggardly hand; and here there is a strong probability that these oppressions shall actually happen. I may be told that it is safe to err on that side, because such regulations may be made by Congress as shall restrain these officers, and because laws are made by our representatives, and judged by righteous judges: but, sir, as these regulations may be made, so they may not; and many reasons there are to induce a belief that they will not. I shall therefore be an infidel on that point till the day of my death.

This Constitution is said to have beautiful features; but when I come to examine these features, sir, they appear to me horribly frightful. Among other deformities, it has an awful squinting; it squints towards monarchy; and does not this raise indignation in the breast of every true American?

Your President may easily become king. Your Senate is so imperfectly constructed that your dearest rights may be sacrificed by what may be a small minority; and a very small minority may continue forever unchangeably this government, {59} although horridly defective. Where are your checks in this government? Your strongholds will be in the hands of your enemies. It is on a supposition that your American governors shall be honest, that all the good qualities of this government are founded; but its defective and imperfect construction puts it in their power to perpetrate the worst of mischiefs, should they be bad men; and, sir, would not all the world, from the eastern to the western hemisphere, blame our distracted folly in resting our rights upon the contingency of our rulers being good or bad? Show me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men, without a consequent loss of liberty! I say that the loss of that dearest privilege has ever followed, with absolute certainty, every such mad attempt.

If your American chief be a man of ambition and abilities, how easy is it for him to render himself absolute! The army is in his hands, and if he be a man of address, it will be attached to him, and it will be the subject of long meditation with him to seize the first auspicious moment to accomplish his design; and, sir, will the American spirit solely relieve you when this happens? I would rather infinitely — and I am sure most of this Convention are of the same opinion — have a king, lords, and commons, than a government so replete with such insupportable evils. If we make a king, we may prescribe the rules by which he shall rule his people, and interpose such checks as shall prevent him from infringing them; but the President, in the field, at the head of his army, can prescribe the terms on which he shall reign master, so far that it will puzzle any American ever to get his neck from under the galling yoke. I cannot with patience think of this idea. If ever he violates the laws, one of two things will happen: he will come at the head of his army, to carry every thing before him; or he will give bail, or do what Mr. Chief Justice will order him. If he be guilty, will not the recollection of his crimes teach him to make one bold push for the American throne? Will not the immense difference between being master of every thing, and being ignominiously tried and punished, powerfully excite him to make this bold push? But, sir, where is the existing force to punish him? Can he not, at the head of his army, beat down every opposition? Away with your {60} President! we shall have a king: the army will salute

him monarch: your militia will leave you, and assist in making him king, and fight against you: and what have you to oppose this force? What will then become of you and your rights? Will not absolute despotism ensue?

[Here Mr. HENRY strongly and pathetically expatiated on the probability of the President's enslaving America, and the horrid consequences that must result.]

What can be more defective than the clause concerning the elections? The control given to Congress over the time, place, and manner of holding elections, will totally destroy the end of suffrage. The elections may be held at one place, and the most inconvenient in the state; or they may be at remote distances from those who have a right of suffrage: hence nine out of ten must either not vote at all, or vote for strangers; for the most influential characters will be applied to, to know who are the most proper to be chosen. I repeat, that the control of Congress over the *manner, &c.*, of electing, well warrants this idea. The natural consequence will be, that this democratic branch will possess none of the public confidence; the people will be prejudiced against representatives chosen in such an injudicious manner. The proceedings in the northern conclave will be hidden from the yeomanry of this country. We are told that the yeas and nays shall be taken, and entered on the journals. This, sir, will avail nothing: it may be locked up in their chests, and concealed forever from the people; for they are not to publish what parts they think require secrecy: they *may* think, and *will think*, the whole requires it. Another beautiful feature of this Constitution is, the publication from time to time of the receipts and expenditures of the public money.

This expression, *from time to time*, is very indefinite and indeterminate: it may extend to a century. Grant that any of them are wicked; they may squander the public money so as to ruin you, and yet this expression will give you no redress. I say they may ruin you; for where, sir, is the responsibility? The yeas and nays will show you nothing, unless they be fools as well as knaves; for, after having wickedly trampled on the rights of the people, they would act like fools indeed, were they to public and divulge {61} their iniquity, when they have it equally in their power to suppress and conceal it. Where is the responsibility — that leading principle in the British government? In that government, a punishment certain and inevitable is provided; but in this, there is no real, actual punishment for the grossest mal-administration. They may go without punishment, though they commit the most outrageous violation on our immunities. That paper may tell me they will be punished. I ask, By what law? They must make the law, for there is no existing law to do it. What! will they make a law to punish themselves?

This, sir, is my great objection to the Constitution, that there is no true responsibility — and that the preservation of our liberty depends on the single chance of men being virtuous enough to make laws to punish themselves.

In the country from which we are descended, they have real and not imaginary responsibility; for their mal-administration has cost their heads to some of the most saucy geniuses that ever were. The Senate, by making treaties, may destroy your liberty and laws for want of responsibility. Two thirds of those that shall happen to be present, can, with the President, make treaties that shall be the supreme law of the land; they may make the most ruinous treaties; and yet there is no punishment for them. Whoever shows me a punishment provided for them will oblige me. So, sir, notwithstanding there are eight pillars, they want another. Where will they make another? I

trust, sir, the exclusion of the evils wherewith this system is replete in its present form, will be made a condition precedent to its adoption by this or any other state. The transition, from a general unqualified admission to offices, to a consolidation of government, seems easy; for, though the American states are dissimilar in their structure, this will assimilate them. This, sir, is itself a strong consolidating feature, and is not one of the least dangerous in that system. Nine states are sufficient to establish this government over those nine. Imagine that nine have come into it. Virginia has certain scruples. Suppose she will, consequently, refuse to join with those states; may not she still continue in friendship and union with them? If she sends her annual requisitions in dollars, do you think their stomachs will be so squeamish as to refuse her dollars? Will they not accept her regiments? {62} They would intimidate you into an inconsiderate adoption, and frighten you with ideal evils, and that the Union shall be dissolved. 'Tis a bugbear, sir: the fact is, sir, that the eight adopting states can hardly stand on their own legs. Public fame tells us that the adopting states have already heart-burnings and animosity, and repent their precipitate hurry: this, sir, may occasion exceeding great mischief. When I reflect on these and many other circumstances, I must think those states will be found to be in confederacy with us. If we pay our quota of money annually, and furnish our ratable number of men, when necessary, I can see no danger from a rejection.

The history of Switzerland clearly proves that we might be in amicable alliance with those states without adopting this Constitution. Switzerland is a confederacy, consisting of dissimilar governments. This is an example which proves that governments of dissimilar structures may be confederated. That confederate republic has stood upwards of four hundred years; and, although several of the individual republics are democratic, and the rest aristocratic, no evil has resulted from this dissimilarity; for they have braved all the power of France and Germany during that long period. The Swiss spirit, sir, has kept them together; they have encountered and overcome immense difficulties with patience and fortitude. In the vicinity of powerful and ambitious monarchs, they have retained their independence, republican simplicity, and valor. [Here he makes a comparison of the people of that country and those of France, and makes a quotation from Addison illustrating the subject.] Look at the peasants of that country and of France; and mark the difference. You will find the condition of the former far more desirable and comfortable. No matter whether the people be great, splendid, and powerful, if they enjoy freedom. The Turkish Grand Signior, alongside of our President, would put us to disgrace; but we should be as abundantly consoled for this disgrace, when our citizens have been put in contrast with the Turkish slave. The most valuable end of government is the liberty of the inhabitants. No possible advantages can compensate for the loss of this privilege. Show me the reason why the American Union is to be dissolved. Who are those eight adopting states? Are they averse to give us a little time to consider, before we {63} conclude? Would such a disposition render a junction with them eligible; or is it the genius of that kind of government to precipitate people hastily into measures of the utmost importance, and grant no indulgence? If it be, sir, is it for us to accede to such a government? We have a right to have time to consider; we shall therefore insist upon it. Unless the government be amended, we can never accept it. The adopting states will doubtless accept our money and our regiments; and what is to be the consequence, if we are disunited? I believe it is yet doubtful, whether it is not proper to stand by a while, and see the effect of its adoption in other states. In forming a government, the utmost care should be taken to prevent its becoming oppressive; and this government is of such an intricate and complicated nature, that no man on this earth can know its real operation. The other

states have no reason to think, from the antecedent conduct of Virginia, that she has any intention of seceding from the Union, or of being less active to support the general welfare. Would they not, therefore, acquiesce in our taking time to deliberate — deliberate whether the measure be not perilous, not only for us, but the adopting states?

Permit me, sir, to say, that a great majority of the people, even in the adopting states, are averse to this government. I believe I would be right to say, that they have been egregiously misled. Pennsylvania has, *perhaps*, been tricked into it. If the other states who have adopted it have not been tricked, still they were too much hurried into its adoption. There were very respectable minorities in several of them; and if reports be true, a clear majority of the people are averse to it. If we also accede, and it should prove grievous, the peace and prosperity of our country, which we all love, will be destroyed. This government has not the affection of the people at present. Should it be oppressive, their affections will be totally estranged from it; and, sir, you know that a government, without their affections, can neither be durable nor happy. I speak as one poor individual; but when I speak, I speak the language of thousands. But, sir, I mean not to breathe the spirit, nor utter the language, of secession.

I have trespassed so long on your patience, I am really concerned that I have something yet to say. The honorable {64} member has said, we shall be properly represented. Remember, sir, that the number of our representatives is but ten, whereof six is a majority. Will those men be possessed of sufficient information? A particular knowledge of particular districts will not suffice. They must be well acquainted with agriculture, commerce, and a great variety of other matters throughout the continent; they must know not only the actual state of nations in Europe and America, the situations of their farmers, cottagers, and mechanics, but also the relative situations and intercourse of those nations. Virginia is as large as England. Our proportion of representatives is but ten men. In England they have five hundred and fifty-eight. The House of Commons, in England, numerous as they are, we are told, are bribed, and have bartered away the rights of their constituents: what, then, shall become of us? Will these few protect our rights? Will they be incorruptible? You say they will be better men than the English commoners. I say they will be infinitely worse men, because they are to be chosen blindfolded: their election (the term, as applied to their appointment, is inaccurate) will be an involuntary nomination, and not a choice.

I have, I fear, fatigued the committee; yet I have not said the one hundred thousandth part of what I have on my mind, and wish to impart. On this occasion, I conceived myself bound to attend strictly to the interest of the state, and I thought her dearest rights at stake. Having lived so long — been so much honored — my efforts, though small, are due to my country. I have found my mind hurried on, from subject to subject, on this very great occasion. We have been all out of order, from the gentleman who opened to-day to myself. I did not come prepared to speak, on so multifarious a subject, in so general a manner. I trust you will indulge me another time. Before you abandon the present system, I hope you will consider not only its defects, most maturely, but likewise those of that which you are to substitute for it. May you be fully apprized of the dangers of the latter, not by fatal experience, but by some abler advocate than I!

**Gov. RANDOLPH.**

Mr. Chairman, if we go on in this irregular manner, contrary to our resolution, instead of three or six weeks, it will take us six months to decide this question. I shall endeavor to make the committee sensible of {65} the necessity of establishing a national government. In the course of my argument, I shall show the inefficacy of the Confederation. It is too late to enter into the subject now, but I shall take the first opportunity for that purpose. I mention this to show that I had not answered him fully, nor in a general way, yesterday.

---

**FRIDAY, June 6, 1788.**[\[1\]](#)

The Convention, according to the order of the day, again resolved itself into a committee of the whole Convention, to take into further consideration the proposed plan of government. Mr. Wythe in the chair.

[The 1st and 2d sections still under consideration.]

## **Gov. RANDOLPH.**

Mr. Chairman, I am a child of the revolution. My country, very early indeed, took me under its protection, at a time when I most wanted it, and, by a succession of favors and honors, gratified even my most ardent wishes. I feel the highest gratitude and attachment to my country; her felicity is the most fervent prayer of my heart. Conscious of having exerted my faculties to the utmost in her behalf, if I have not succeeded in securing the esteem of my countrymen, I shall reap abundant consolation from the rectitude of my intentions: honors, when compared to the satisfaction accruing from a conscious independence and rectitude of conduct, are no equivalent. The unwearied study of my life shall be to promote her happiness. As a citizen, ambition and popularity are no objects with me. I expect, in the course of a year, to retire to that private station which I most sincerely and cordially prefer to all others. The security of public justice, sir, is what I most fervently wish, as I consider that object to be the primary step to the attainment of public happiness. I can declare to the whole world, that, in the part I take in this very important question, I am actuated by a regard for what I conceive to be our true interest. I can also, with equal sincerity, declare that I would join heart and hand in rejecting this system, did I not conceive it would promote our happiness; but, having a strong conviction on my mind, at this time, that by a disunion we shall throw away all those blessings we have so earnestly fought for, and that a rejection of the Constitution will operate disunion, pardon me if I discharge the obligation I owe to my country, by voting for its adoption. We are told that the report of dangers is false. The cry of {66} peace, sir, is false: say peace, when there is peace; it is but a sudden calm. The tempest growls over you: look round — wheresoever you look, you see danger. Where there are so many witnesses in many parts of America, that justice is suffocated, shall peace and happiness still be said to reign? Candor, sir, requires an undisguised representation of our situation. Candor, sir, demands a faithful exposition of facts. Many citizens have found justice strangled and trampled under foot, through the course of jurisprudence in this country. Are those who have debts due to them satisfied with your government? Are not creditors wearied with the tedious procrastination of your legal process — a process obscured by legislative mists? Cast your eyes to your seaports: see how commerce languishes. This country, so blessed, by nature,

with every advantage that can render commerce profitable, through defective legislation is deprived of all the benefits and emoluments she might otherwise reap from it. We hear many complaints on the subject of located lands; a variety of competitors claiming the same lands under legislative acts, public faith prostrated, and private confidence destroyed. I ask you if your laws are revered. In every well-regulated community, the laws command respect. Are yours entitled to reverence? We not only see violations of the constitution, but of national principles in repeated instances. How is the fact? The history of the violations of the constitution extends from the year 1776 to this present time — violations made by formal acts of the legislature: every thing has been drawn within the legislative vortex.

There is one example of this violation in Virginia, of a most striking and shocking nature — an example so horrid, that, if I conceived my country would passively permit a repetition of it, dear as it is to me, I would seek means of expatriating myself from it. A man, who was then a citizen, was deprived of his life thus: from a mere reliance on general reports, a gentleman in the House of Delegates informed the house, that a certain man (Josiah Philips) had committed several crimes, and was running at large, perpetrating other crimes. He therefore moved for leave to attain him; he obtained that leave instantly; no sooner did he obtain it, than he drew from his pocket a bill ready written for that effect; it was read three times in one day, and carried to {67} the Senate. I will not say that it passed the same day through the Senate; but he was attainted very speedily and precipitately, without any proof better than vague reports. Without being confronted with his accusers and witnesses, without the privilege of calling for evidence in his behalf, he was sentenced to death, and was afterwards actually executed. Was this arbitrary deprivation of life, the dearest gift of God to man, consistent with the genius of a republican government? Is this compatible with the spirit of freedom? This, sir, has made the deepest impression on my heart, and I cannot contemplate it without horror. There are still a multiplicity of complaints of the debility of the laws. Justice, in many instances, is so unattainable that commerce may, in fact, be said to be stopped entirely. There is no peace, sir, in this land. Can peace exist with injustice, licentiousness, insecurity, and oppression? These considerations, independent of many others which I have not yet enumerated, would be a sufficient reason for the adoption of this Constitution, because it secures the liberty of the citizen, his person and property, and will invigorate and restore commerce and industry. An additional reason to induce us to adopt it is that excessive licentiousness which has resulted from the relaxation of our laws, and which will be checked by this government. Let us judge from the fate of more ancient nations: licentiousness has produced tyranny among many of them: it has contributed as much (if not more) as any other cause whatsoever to the loss of their liberties. I have respect for the integrity of our legislatures; I believe them to be virtuous; but as long as the defects of the Constitution exist, so long will laws be imperfect.

The honorable gentleman went on further, and said that the accession of eight states is not a reason for our adoption. Many other things have been alleged out of order; instead of discussing the system regularly, a variety of points are promiscuously debated, in order to make temporary impression on the members. Sir, were I convinced of the validity of their arguments, I would join them heart and hand. Were I convinced that the accession of eight states did not render our accession also necessary to preserve the Union, I would not accede to it till it should be previously amended; but, sir, I am convinced that the Union will be lost by our rejection. Massachusetts has adopted it; she has recommended {68} subsequent amendments; her influence

must be very considerable to obtain them. I trust my countrymen have sufficient wisdom and virtue to entitle them to equal respect. Is it urged that, being *wiser*, we ought to prescribe amendments to the other states? I have considered this subject deliberately; wearied myself in endeavoring to find a possibility of preserving the Union, without our unconditional ratification; but, sir, in vain; I find no other means. I ask myself a variety of questions applicable to the adopting states, and I conclude, Will they repent of what they have done? Will they acknowledge themselves in an error? Or will they recede, to gratify Virginia? My prediction is, that they will not. Shall we stand by ourselves, and be severed from the Union, if amendments cannot be had? I have every reason for determining within myself that our rejection must dissolve the Union; and that that dissolution will destroy our political happiness. The honorable gentleman was pleased to draw out several other arguments out of order, — that this government would destroy the state governments, the trial by jury, &c. &c., — and concluded by an illustration of his opinion by a reference to the confederacy of the Swiss. Let us argue with unprejudiced minds. They say that the trial by jury is gone. Is this so? Although I have declared my determination to give my vote for it, yet I shall freely censure those parts which appear to me reprehensible.

The trial by jury in criminal cases is secured; in civil cases it is not so expressly secured as I should wish it; but it does not follow that Congress has the power of taking away this privilege, which is secured by the constitution of each state, and not given away by this Constitution. I have no fear on this subject. Congress must regulate it so as to suit every state. I will risk my property on the certainty that they will institute the trial by jury in such manner as shall accommodate the conveniences of the inhabitants in every state. The difficulty of ascertaining this accommodation was the principal cause of its not being provided for. It will be the interest of the individuals composing Congress to put it on this convenient footing. Shall we not choose men respectable for their good qualities? Or can we suppose that men tainted with the worst vices will get into Congress? I beg leave to differ from the honorable gentleman in another {69} point. He dreads that great inconveniences will ensue from the federal court; that our citizens will be harassed by being carried thither. I cannot think that this power of the federal judiciary will necessarily be abused; the inconvenience here suggested being of a general nature, affecting most of the states, will, by general consent of the states, be removed; and, I trust, such regulations shall be made in this case as will accommodate the people in every state. The honorable gentleman instanced the Swiss cantons, as an example, to show us the possibility, if not expediency, of being in amicable alliance with the other states, without adopting this system. Sir, references to history will be fatal in political reasons unless well guarded. Our mental ability is often so contracted, and powers of investigation so limited, that sometimes we adduce as an example in our favor what in fact militates against us. Examine the situation of that country comparatively to us: the extent and situation of that country is totally different from ours; their country is surrounded by powerful, ambitious, and reciprocally jealous nations; their territory small, and soil not very fertile. The peculiarity, sir, of their situation, has kept them together, and not that system of alliance to which the gentleman seems to attribute the durability and felicity of their connection.

[Here his excellency quoted some passages from Stanyard, illustrating his argument, and largely commented upon it; the effect of which was, that the narrow confines of that country rendered it very possible for a system of confederacy to accommodate those cantons, that would not suit the United States; that it was the fear of the ambitious and warlike nations that surrounded them, and the reciprocal jealousy of the other European powers, that rendered their union so desirable; and that, notwithstanding these circumstances, and their being a hardy race of

people, yet such was the injudicious construction of their confederacy, that very considerable broils interrupted their harmony sometimes.]

His excellency then continued: I have produced this example to show that we ought not to be amused with the historical references which have no kind of analogy to the points under our consideration. We ought to confine ourselves to those points, solely, which have an immediate and strict similitude to the subject of our discussion. The reference made by the honorable gentleman over the way is extremely inapplicable to us. Are the Swiss cantons circumstanced as we are? Are we surrounded by formidable {70} nations? Or are we situated in any manner like them? We are not, sir. Then it naturally results, that no such friendly intercourse as he flattered himself with could take place, in a case of a dissolution of our union. We are remotely situated from powerful nations, the dread of whose attack might impel us to unite firmly with one another; nor are we situated in an inaccessibly strong position; we have to fear much from one another. We must soon feel the fatal effects of an imperfect system of union. The honorable gentleman attacks the Constitution, as he thinks it is contrary to our bill of rights. Do we not appeal to the people, by whose authority all government is made? That bill of rights is of no validity, because, I conceive, it is not formed on due authority. It is not a part of our Constitution; it has never secured us against any danger; it has been repeatedly disregarded and violated. But we must not discard the Confederation, for the remembrance of its past services. I am attached to old servants. I have regard and tenderness for this old servant; but when reason tells us, that it can no longer be retained without throwing away all that it has gained us, and running the risk of losing every thing dear to us, must we still continue our attachment? Reason and my duty tell me not. Other gentlemen may think otherwise.

But, sir, is it not possible that men may differ in sentiments, and still be honest? We have an inquisition within ourselves, that leads us not to offend so much against charity. The gentleman expresses a necessity of being suspicious of those who govern. I will agree with him in the necessity of political jealousy to a certain extent; but we ought to examine how far this political jealousy ought to be carried. I confess that a certain degree of it is highly necessary to the preservation of liberty; but it ought not to be extended to a degree which is degrading and humiliating to human nature; to a degree of restlessness, and active disquietude, sufficient to disturb a community, or preclude the possibility of political happiness and contentment. Confidence ought also to be equally limited. Wisdom shrinks from extremes, and fixes on a medium as her choice. Experience and history, the least fallible judges, teach us that, in forming a government, the powers to be given must be commensurate to the object. A less degree will defeat the intention, and a greater will subject the people to the depravity of rulers, {71} who, though they are but the agents of the people, pervert their powers to their emoluments and ambitious views.

Mr. Chairman, I am sorry to be obliged to detain the house; but the relation of a variety of matters renders it now unavoidable. I informed the house yesterday, before rising, that I intended to show the necessity of having a national government in preference to the Confederation; also to show the necessity of conceding the power of taxation, and distinguishing between its objects; and I am the more happy that I possess materials of information for that purpose. My intention, then, is to satisfy the gentlemen of this committee that a national government is absolutely indispensable, and that a confederacy is not eligible, in our present situation: the introductory step to this will be, to endeavor to convince the house of the necessity of the Union, and that the

present Confederation is actually inadequate and unamendable. The extent of the country is objected, by the gentleman over the way, as an insurmountable obstacle to the establishing a national government in the United States. It is a very strange and inconsistent doctrine, to admit the necessity of the Union, and yet urge this last objection, which I think goes radically to the existence of the Union itself. If the extent of the country be a conclusive argument against a national government, it is equally so against a union with the other states. Instead of entering largely into a discussion of the nature and effect of the different kinds of government, or into an inquiry into the particular extent of country that may suit the genius of this or that government, I ask this question — Is this government necessary for the safety of Virginia? Is the union indispensable for our happiness? I confess it is imprudent for any nation to form alliance with another whose situation and construction of government are dissimilar to its own. It is impolitic and improper for men of opulence to join their interest with men of indigence and chance. But we are now inquiring particularly whether Virginia, as contradistinguished from the other states, can exist without the union — a hard question, perhaps, after what has been said. I will venture, however, to say, she cannot. I shall not rest contented with asserting — I shall endeavor to prove.

Look at the most powerful nations on earth. England and France have had recourse to this expedient. Those {72} countries found it necessary to unite with their immediate neighbors, and this union has prevented the most lamentable mischiefs. What divine preëminence is Virginia possessed of above other states? Can Virginia send her navy and thunder to bid defiance to foreign nations? And can she exist without a union with her neighbors, when the most potent nations have found such a union necessary, not only to their political felicity, but their national existence? Let us examine her ability. Although it be impossible to determine with accuracy what degree of internal strength a nation ought to possess to enable it to stand by itself, yet there are certain sure facts and circumstances which demonstrate that a particular nation cannot stand singly. I have spoken with freedom, and I trust I have done it with decency; but I must also speak the truth. If Virginia can exist without the union, she must derive that ability from one or other of these sources, — viz., from her natural situation, or because she has no reason to fear from other nations. What is her situation? She is not inaccessible: she is not a petty republic, like that of St. Marino, surrounded by rocks and mountains, with a soil not very fertile, nor worthy the envy of surrounding nations. Were this, sir, her situation, she might, like that petty state, subsist separated from all the world. On the contrary, she is very accessible: the large, capacious Bay of Chesapeake, which is but too excellently adapted for the admission of enemies, renders her very vulnerable.

I am informed — and I believe rightly, because I derive my information from those whose knowledge is most respectable — that Virginia is in a very unhappy position with respect to the access of foes by sea, though happily situated for commerce. This being her situation by sea, let us look at land. She has frontiers adjoining the states of Pennsylvania, Maryland, and North Carolina. Two of those states have declared themselves members of the Union: will she be inaccessible to the inhabitants of those states? Cast your eyes to the western country, that is inhabited by cruel savages, your natural enemies. Besides their natural propensity to barbarity, they may be excited, by the gold of foreign enemies, to commit the most horrid ravages on your people. Our greatly-increasing population is one remedy to this evil; but being scattered thinly over so extensive a {73} country, how difficult is it to collect their strength, or defend the country! This is one point of weakness. I wish, for the honor of my countrymen, that it was the

only one. There is another circumstance which renders us more vulnerable. Are we not weakened by the population of those whom we hold in slavery? The day may come when they may make impression upon us. Gentlemen who have been long accustomed to the contemplation of the subject, think there is a cause of alarm in this case: the number of those people, compared to that of the whites, is an immense proportion: their number amounts to 236,000 — that of the whites only to 352,000. Will the American spirit, so much spoken of, repel an invading enemy, or enable you to obtain an advantageous peace? Manufactures and military stores may afford relief to a country exposed: have we these at present? Attempts have been made to have these here. If we shall be separated from the Union, shall our chance of having these be greater? — or will not the want of these be more deplorable?

We shall be told of the exertions of Virginia under the Confederation — her achievements when she had no commerce. These, sir, were necessary for her immediate safety; nor would these have availed without the aid of the other states. Those states, then our friends, brothers, and supporters, will, if disunited from us, be our bitterest enemies. If, then, sir, Virginia, from her situation, is not inaccessible or invulnerable, let us consider if she be protected by having no cause to fear from other nations. Has she no cause to fear? You will have cause to fear, as a nation, if disunited; you will not only have this cause to fear from yourselves, from that species of population I before mentioned, and your once sister states, but from the arms of other nations. Have you no cause of fear from Spain, whose dominions border on your country? Every nation, every people, in our circumstances, have already had abundant cause to fear. Let us see the danger to be apprehended from France. Let us suppose Virginia separated from the other states; as part of the former confederated states, she will owe France a very considerable sum. Will France be as magnanimous as ever? France, by the law of nations, will have a right to demand the whole of her, or of the others. If France were to demand it, what would become of the property of America? Could she not {74} destroy what little commerce we have? Could she not seize our ships, and carry havoc and destruction before her on our shores? The most lamentable desolation would take place. We owe a debt to Spain also: do we expect indulgence from that quarter? That nation has a right to demand the debt due to it, and power to enforce that right. Will the Dutch be silent about the debt due to them? Is there any one who pretends that any of these nations will be patient? The debts due the British are also very considerable; these debts have been withheld contrary to treaty: if Great Britain will demand the payment of these debts peremptorily, what will be the consequence? Can we pay them if demanded? Will no danger result from a refusal? Will the British nation suffer their subjects to be stripped of their property? Is not that nation amply able to do her subjects justice? Will the resentment of that powerful and supercilious nation sleep forever? If we become one sole nation, uniting with our sister states, our means of defence will be greater; the indulgence for the payment of those debts will be greater, and the danger of an attack less probable. Moreover, vast quantities of lands have been sold by citizens of this country to Europeans, and these lands cannot be found. Will this fraud be countenanced or endured? Among so many causes of danger, shall we be secure, separated from our sister states? Weakness itself, sir, will invite some attack upon your country. Contemplate our situation deliberately, and consult history; it will inform you that people in our circumstances have ever been attacked, and successfully: open any page, and you will there find our danger truly depicted. If such a people had any thing, was it not taken? The fate which will befall us, I fear, sir, will be, that we shall be made a partition of. How will these our troubles be removed? Can we have any dependence on commerce? Can we make any computation on this subject?

Where will our flag appear? So high is the spirit of commercial nations, that they will spend five times the value of the object, to exclude their rivals from a participation in commercial profits; they seldom regard any expenses. If we should be divided from the rest of the states, upon what footing would our navigation in the Mississippi be? What would be the probable conduct of France and Spain? Every gentleman may imagine, in his own mind, the natural consequences. To these considerations I might add many others of a similar nature. {75} Were I to say that the boundary between us and North Carolina is not yet settled, I should be told that Virginia and that state go together. But what, sir, will be the consequence of the dispute that may arise between us and Maryland, on the subject of Potomac River? It is thought Virginia has a right to an equal navigation with them in that river. If ever it should be decided on grounds of prior right, their charter will inevitably determine it in their favor. The country called the Northern Neck will probably be severed from Virginia: there is not a doubt but the inhabitants of that part will annex themselves to Maryland, if Virginia refuse to accede to the Union. The recent example of those regulations lately made respecting that territory will illustrate that probability. Virginia will also be in danger of a conflict with Pennsylvania, on the subject of boundaries. I know that some gentlemen are thoroughly persuaded that we have a right to those disputed boundaries: if we have such a right, I know not where it is to be found.

Are we not borderers on states that will be separated from us? Call to mind the history of every part of the world, where nations bordered on one another, and consider the consequences of our separation from the Union. Peruse those histories, and you find such countries to have ever been almost a perpetual scene of bloodshed and slaughter — the inhabitants of one escaping from punishment into the other — protection given them — consequent pursuit — robbery, cruelty, and murder. A numerous standing army, that dangerous expedient, would be necessary, but not sufficient, for the defence of such borders. Every gentleman will amplify the scene in his own mind.

If you wish to know the extent of such a scene, look at the history of England and Scotland before the union; you will see their borderers continually committing depredations, and cruelties of the most calamitous and deplorable nature, on one another. Mr. Chairman, were we struck off from the Union, and disputes of the back lands should be renewed, which are of the most alarming nature, and which must produce uncommon mischiefs, can you inform me how this great subject would be settled? Virginia has a large, unsettled country; she has at last quieted it. But there are great doubts whether she has taken the best way to effect it. If she has not, disagreeable consequences may ensue. I have {76} before hinted at some other causes of quarrel between the other states and us; particularly the hatred that would be generated by commercial competitions. I will only add, on that subject, that controversies may arise concerning the fisheries, which may terminate in wars. Paper money may also be an additional source of disputes. Rhode Island has been in one continued train of opposition to national duties and integrity; they have defrauded their creditors by their paper money. Other states have also had emissions of paper money, to the ruin of credit and commerce. May not Virginia, at a future day, also recur to the same expedient? Has Virginia no affection for paper money, or disposition to violate contracts? I fear she is as fond of these measures as most other states in the Union. The inhabitants of the adjacent states would be affected by the depreciation of paper money, which would assuredly produce a dispute with those states. This danger is taken away by the present Constitution, as it provides "that no state shall emit bills of credit." Maryland has counteracted

the policy of this state frequently, and may be meditating examples of this kind again. Before the revolution, there was a contest about those back lands, in which even government was a party; it was put an end to by the war. Pennsylvania was ready to enter into a war with us, for the disputed lands near the boundaries, and nothing but the superior prudence of the man who was at the head of affairs in Virginia could have prevented it.

I beg leave to remind you of the strength of Massachusetts and other states to the north; and what would their conduct be to us, if disunited from them? In case of a conflict between us and Maryland, or Pennsylvania, they would be aided by the whole strength of the more northern states; in short, by that of the adopting states. For these reasons, I conceive that, if Virginia supposes she has no cause of apprehension, she will find herself in a fatal error.

Suppose the American spirit in the fullest vigor in Virginia; what military preparations and exertions is she capable of making? The other states have upwards of 330,000 men capable of bearing arms: this will be a good army, or they can very easily raise a good army out of so great a number. Our militia amounts to 50,000: even stretching it to the improbable amount (urged by some) of 60,000, — in case of an attack, what defence can we make? Who are militia? Can {77} we depend solely upon these? I will pay the last tribute of gratitude to the militia of my country: they performed some of the most gallant feats during the last war, and acted as nobly as men inured to other avocations could be expected to do; but, sir, it is dangerous to look to them as our sole protectors. Did ever militia defend a country? Those of Pennsylvania were said to differ very little from regulars; yet these, sir, were insufficient for the defence of that state. The militia of our country will be wanted for agriculture. On this noblest of arts depend the virtue and the very existence of a country; if it be neglected, every thing else must be in a state of ruin and decay. It must be neglected if those hands which ought to attend to it are occasionally called forth on military expeditions. Some also will be necessary for manufactures, and those mechanic arts which are necessary for the aid of the farmer and planter. If we had men sufficient in number to defend ourselves, it could not avail without other requisites. We must have a navy, to be supported in time of peace as well as war, to guard our coasts and defend us against invasions. The impossibility of building and equipping a fleet in short time constitutes the necessity of having a certain number of ships of war always ready in time of peace: the maintaining a navy will require money; and where, sir, can we get money for this and other purposes? How shall we raise it? Review the enormity of the debts due by this country. The amount of the debt we owe to the continent for bills of credit, rating at forty for one, will amount to between 6 and 700,000 pounds. There is also due the continent the balance of requisitions due by us; and, in addition to this proportion of the old Continental debt, there are the foreign, domestic, state, military, and loan-office debts; to which when you add the British debt, where is the possibility of finding money to raise an army or navy? Review, then, your real ability. Shall we recur to loans? Nothing can be more impolitic; they impoverish a nation. We, sir, have nothing to repay them; nor, sir, can we procure them. Our numbers are daily increasing by immigration; but this, sir, will not relieve us when our credit is gone and it is impossible to borrow money. If the imposts and duties in Virginia, even on the present footing, be very unproductive, and not equal to our necessity, what would they be if we were separated {78} from the Union? From the first of September to the first of June, the amount put into the treasury is only £59,000, or a little more. But, sir, if smuggling be introduced in consequence of high duties, or otherwise, and the Potomac should be lost, what hope is there of getting money there? Shall we be asked if the

impost would be bettered by the Union? I answer that it will, sir. Credit being restored, and confidence diffused in the country, merchants and men of wealth will be induced to come among us, immigration will increase, and commerce will flourish; the impost will therefore be more sure and productive.

Under these circumstances, can you find men to defend you? If not men, where can you have a navy? It is an old observation, that he who commands the sea will command the land; and it is justified by modern experience in war. The sea can only be commanded by commercial nations. The United States have every means, by nature, to enable them to distribute supplies mutually among one another; to supply other nations with many articles, and to carry for other nations. Our commerce would not be kindly received by foreigners, if transacted solely by ourselves. As it is the spirit of commercial nations to engross as much as possible the carrying trade, this makes it necessary to defend our commerce. But how shall we compass this end? England has arisen to the greatest height, in modern times, by her navigation act, and other excellent regulations. The same means would produce the same effects. We have inland navigation. Our last exports did not exceed £1,000,000. Our export trade is entirely in the hands of foreigners. We have no manufactures — depend for supplies on other nations — and so far are we from having any carrying trade, that, as I have already said, our exports are in the hands of foreigners. Besides the profit that might be made by our natural materials, much greater gains would accrue from their being first wrought before they were exported. England has reaped immense profits by this, nay, even by purchasing and working up those materials which their country did not afford: her success in commerce is generally ascribed to her navigation act. Virginia would not, encumbered as she is, agree to have such an act. Thus, for the want of a navy, are we deprived of the multifarious advantages of our natural situation; nor is it possible that, {79} if the Union was dissolved, we ever should have a navy sufficient either for our defence or the extension of our trade.

I beg gentlemen to consider these things — our inability to raise and man a navy, and the dreadful consequences of the dissolution of the Union. I will close this catalogue of the evils of the dissolution of the Union by recalling to your mind what passed in the year 1781. Such was the situation of our affairs then, that the power of dictator was given to the commander-in-chief, to save us from destruction. This shows the situation of the country to have been such as to make it ready to embrace an actual dictator. At some future period, will not our distresses impel us to do what the Dutch have done — throw all power into the hands of a stadtholder? How infinitely more wise and eligible than this desperate alternative, is a union with our American brethren! I feel myself so abhorrent to any thing that will dissolve our Union, that I cannot prevail with myself to assent to it directly or indirectly. If the Union is to be dissolved, what step is to be taken? Shall we form a partial confederacy? Or is it expected that we shall successfully apply to foreign alliance for military aid? This last measure, sir, has ruined almost every nation that used it: so dreadful an example ought to be most cautiously avoided; for seldom has a nation recurred to the expedient of foreign succor, without being ultimately crushed by that succor. We may lose our liberty and independence by an injudicious scheme of policy. Admitting it to be a scheme replete with safety, what nation shall we solicit? — France? She will disdain a connection with a people in our predicament. I would trust every thing to the magnanimity of that nation; but she would despise a people who had, like us, so imprudently separated from their brethren; and, sir, were she to accede to our proposal, with what facility could she become mistress of our country!

To what nation, then, shall we apply? To Great Britain? Nobody has as yet trusted that idea. An application to any other must be either fruitless or dangerous. To those who advocate local confederacies, and at the same time preach up for republican liberty, I answer that their conduct is inconsistent: the defence of such partial confederacies will require such a degree of force and expense as will destroy every feature of republicanism. Give {80} me leave to say, that I see nought but destruction in a local confederacy. With what state can we confederate but North Carolina? — North Carolina, situated worse than ourselves. Consult your own reason; I beseech gentlemen most seriously to reflect on the consequences of such a confederacy; I beseech them to consider whether Virginia and North Carolina, both oppressed with debts and slaves, can defend themselves externally, or make their people happy internally. North Carolina, having no strength but militia, and Virginia, in the same situation, will make, I fear, but a despicable figure in history. Thus, sir, I hope that I have satisfied you that we are unsafe without a union; and that in union alone safety consists.

I come now, sir, to the great inquiry, whether the Confederation be such a government as we ought to continue under — whether it be such a government as can secure the felicity of any free people. Did I believe the Confederation was a good thread, which might be broken without destroying its utility entirely, I might be induced to concur in putting it together; but I am so thoroughly convinced of its incapacity to be mended or spliced, that I would sooner recur to any other expedient.

When I spoke last, I endeavored to express my sentiments concerning that system, and to apologize (if an apology was necessary) for the conduct of its framers; that it was hastily devised to enable us to repel a powerful enemy, that the subject was novel, and that its inefficacy was not discovered till requisitions came to be made by Congress. In the then situation of America, a speedy remedy was necessary to ward off the danger, and this sufficiently answered that purpose; but so universally is its imbecility now known, that it is useless for me to exhibit it at this time. Has not Virginia, as well as every other state, acknowledged its debility, by sending delegates to the general Convention? The Confederation is, of all things, the most unsafe, not only to trust to in its present form, but even to amend.

The object of a federal government is to remedy and strengthen the weakness of its individual branches, whether that weakness arises from situation or from any external cause. With respect to the first, is it not a miracle that the Confederation carried us through the last war? It was our unanimity, sir, that carried us through it. That system {81} was not ultimately concluded till the year 1781. Although the greatest exertions were made before that time, when came requisitions for men and money, — its defects then were immediately discovered: the quotas of men were readily sent; not so those of money. One state feigned inability; another would not comply till the rest did; and various excuses were offered: so that no money was sent into the treasury — not a requisition was fully complied with. Loans were the next measure fallen upon: upwards of 80,000,000 of dollars were wanting, beside the emissions of dollars forty for one. These show the impossibility of relying on requisitions.

[Here his excellency enumerates the different delinquencies of different states, and the consequent distresses of Congress.] If the American spirit is to be depended upon, I call him to awake, to see how his Americans have been disgraced; but I have no hopes that things will be

better hereafter. I fully expect things will be as they have been, and that the same derangement will produce similar miscarriages. Will the American spirit produce money or credit, unless we alter our system? Are we not in a contemptible situation? Are we not the jests of other nations?

But it is insinuated by the honorable gentleman, that we want to be a grand, splendid, and magnificent people: we wish not to become so: the magnificence of a royal court is not our object. We want a government, sir — a government that will have stability, and give us security; for our present government is destitute of the one and incapable of producing the other. It cannot, perhaps, with propriety, be denominated a government, being void of that energy requisite to enforce sanctions. I wish my country not to be contemptible in the eyes of foreign nations. A well-regulated community is always respected. It is the internal situation, the defects of government, that attract foreign contempt: that contempt, sir, is too often followed by subjugation. Advert to the contemptuous manner in which a shrewd politician speaks of our government.

[Here his excellency quoted a passage from Lord Sheffield, the purport of which was, that Great Britain might engross our trade on her own terms; that the imbecility and inefficacy of our general government were such, that it was impossible we could counteract her policy, however rigid or illiberal towards us her commercial regulations might be.]

{82} Reflect but a moment on our situation. Does it not invite real hostility? The conduct of the British ministry to us is the natural effect of our unnerved government. Consider the commercial regulations between us and Maryland. Is it not known to gentlemen that the states have been making reprisals on each other — to obviate a repetition of which, in some degree, these regulations have been made? Can we not see, from this circumstance, the jealousy, rivalry, and hatred that would subsist between them, in case this state was out of the Union? They are importing states, and importing states will ever be competitors and rivals. Rhode Island and Connecticut have been on the point of war, on the subject of their paper money; Congress did not attempt to interpose. When Massachusetts was distressed by the late insurrection, Congress could not relieve her. Who headed that insurrection? Recollect the facility with which it was raised, and the very little ability of the ringleader, and you cannot but deplore the extreme debility of our merely nominal government. We are too despicable to be regarded by foreign nations. The defects of the Confederation consisted principally in the want of power: it had nominally powers, powers on paper, which it could not use. The power of making peace and war is expressly delegated to Congress; yet the power of granting passports, though within that of making peace and war, was considered by Virginia as belonging to herself. Without adequate powers vested in Congress, America cannot be respectable in the eyes of other nations. Congress, sir, ought to be fully vested with power to support the Union, protect the interests of the United States, maintain their commerce, and defend them from external invasions and insults, and internal insurrections; to maintain justice, and promote harmony and public tranquillity among the states.

A government not vested with these powers will ever be found unable to make us happy or respectable. How far the Confederation is different from such a government, is known to all America. Instead of being able to cherish and protect the states, it has been unable to defend itself against the encroachments made upon it by the states. Every one of them has conspired against it; Virginia as much as any. This fact could be proved by reference to actual history. I might quote the observations of an able modern author, not {83} because he is decorated with

the name of author, but because his sentiments are drawn from human nature, to prove the dangerous impolicy of withholding necessary powers from Congress; but I shall at this time fatigue the house as little as possible. What are the powers of Congress? They have full authority to recommend what they please; this recommendatory power reduces them to the condition of poor supplicants. Consider the dignified language of the members of the American Congress. May it please your high mightinesses of Virginia to pay your just proportionate quota of our national debt: we humbly supplicate that it may please you to comply with your federal duties. We implore, we beg your obedience! Is not this, sir, a fair representation of the powers of Congress? Their operations are of no validity when counteracted by the states. Their authority to recommend is a mere mockery of government. But the amendability of the Confederation seems to have great weight on the minds of some gentlemen. To what point will the amendments go? What part makes the most important figure? What part deserves to be retained? In it one body has the legislative, executive, and judicial powers; but the want of efficient powers has prevented the dangers naturally consequent on the union of these. Is this union consistent with an augmentation of their power? Will you, then, amend it by taking away one of these three powers? Suppose, for instance, you only vested it with the legislative and executive powers, without any control on the judiciary; what must be the result? Are we not taught by reason, experience, and governmental history, that tyranny is the natural and certain consequence of uniting these two powers, or the legislative and judicial powers, exclusively, in the same body? If any one denies it, I shall pass by him as an infidel not to be reclaimed. Whenever any two of these three powers are vested in one single body, they must, at one time or other, terminate in the destruction of liberty. In the most important cases, the assent of nine states is necessary to pass a law. This is too great a restriction, and whatever good consequences it may, in some cases, produce, yet it will prevent energy in many other cases. It will prevent energy, which is most necessary on some emergencies, even in cases wherein the existence of the community depends on vigor and expedition. It is incompatible with that secrecy which {84} is the life of execution and despatch. Did ever thirty or forty men retain a secret? Without secrecy no government can carry on its operations on great occasions; this is what gives that superiority in action to the government of one. If any thing were wanting to complete this farce, it would be, that a resolution of the Assembly of Virginia, and the other legislatures, should be necessary to confirm and render of any validity the Congressional acts; this would openly discover the debility of the general government to all the world. But, in fact, its imbecility is now nearly the same as if such acts were formally requisite. An act of the Assembly of Virginia, controverting a resolution of Congress, would certainly prevail. I therefore conclude that the Confederation is too defective to deserve correction. Let us take farewell of it, with reverential respect, as an old benefactor. It is gone, whether this house says so or not. It is gone, sir, by its own weakness.

## NOTE

I am afraid I have tired the patience of this house; but I trust you will pardon me, as I was urged by the importunity of the gentleman in calling for the reasons of laying the groundwork of this plan. It is objected by the honorable gentleman over the way (Mr. George Mason) that a republican government is impracticable in an extensive territory, and the extent of the United States is urged as a reason for the rejection of this Constitution. Let us consider the definition of a republican government, as laid down by a man who is highly esteemed. Montesquieu, so celebrated among politicians, says, that "a republican government is that in which the body, or

only a part, of the people is possessed of the supreme power; a monarchical, that in which a single person governs by fixed and established laws; a despotic government, that in which a single person, without law and without rule, directs every thing by his own will and caprice." This author has not distinguished a republican government from a monarchy by the extent of its boundaries, but by the nature of its principles. He, in another place, contradistinguishes it as a government of laws, in opposition to others which he denominates a government of men.

The empire or government of laws, according to that phrase, is that in which the laws are made with the free-will of the people; hence, then, if laws be made by the assent of the people, the government may be deemed free. When {85} laws are made with integrity, and executed with wisdom, the question is, whether a great extent of country will tend to abridge the liberty of the people. If defensive force be necessary in proportion to the extent of country, I conceive that, in a judiciously-constructed government, be the country ever so extensive, its inhabitants will be proportionably numerous, and able to defend it. Extent of country, in my conception, ought to be no bar to the adoption of a good government. No extent on earth seems to be too great, provided the laws be wisely made and executed. The principles of representation and responsibility may pervade a large as well as small territory; and tyranny is as easily introduced into a small as into a large district. If it be answered, that some of the most illustrious and distinguished authors are of a contrary opinion, I reply, that authority has no weight with me till I am convinced; that not the dignity of names, but the force of reasoning, gains my assent.

I intended to show the nature of the powers which ought to have been given to the general government, and the reason of investing it with the power of taxation; but this would require more time than my strength, or the patience of the committee, would now admit of. I shall conclude with a few observations, which come from my heart. I have labored for the continuance of the Union — the rock of our salvation. I believe that, as sure as there is a God in heaven, our safety, our political happiness and existence, depend on the union of the states; and that without this union, the people of this and the other states will undergo the unspeakable calamities which discord, faction, turbulence, war, and bloodshed, have produced in other countries. The American spirit ought to be mixed with American pride, to see the Union magnificently triumphant. Let that glorious pride, which once defied the British thunder, reanimate you again. Let it not be recorded of Americans, that, after having performed the most gallant exploits, after having overcome the most astonishing difficulties, and after having gained the admiration of the world by their incomparable valor and policy, they lost their acquired reputation, their national consequence and happiness, by their own indiscretion. Let no future historian inform posterity that they wanted wisdom {86} and virtue to concur in any regular, efficient government. Should any writer, doomed to so disagreeable a task, feel the indignation of an honest historian, he would reprehend and criminate our folly with equal severity and justice. Catch the present moment — seize it with avidity and eagerness — for it may be lost, never to be regained! If the Union be now lost, I fear it will remain so forever. I believe gentlemen are sincere in their opposition, and actuated by pure motives; but, when I maturely weigh the advantages of the Union, and dreadful consequences of its dissolution; when I see safety on my right, and destruction on my left; when I behold respectability and happiness acquired by the one, but annihilated by the other, — I cannot hesitate to decide in favor of the former. I hope my weakness, from speaking so long, will apologize for my leaving this subject in so mutilated a

condition. If a further explanation be desired, I shall take the liberty to enter into it more fully another time.

## Mr. MADISON

### NOTE

then arose — [but he spoke so low that his exordium could not be heard distinctly.] I shall not attempt to make impressions by any ardent professions of zeal for the public welfare. We know the principles of every man will, and ought to be, judged, not by his professions and declarations, but by his conduct; by that criterion I mean, in common with every other member, to be judged; and should it prove unfavorable to my reputation, yet it is a criterion from which I will by no means depart. Comparisons have been made between the friends of this Constitution and those who oppose it: although I disapprove of such comparisons, I trust that, in point of truth, honor, candor, and rectitude of motives, the friends of this system, here and in other states, are not inferior to its opponents. But professions of attachment to the public good, and comparisons of parties, ought not to govern or influence us now. We ought, sir, to examine the Constitution on its own merits solely: we are to inquire whether it will promote the public happiness: its aptitude to produce this desirable object ought to be the exclusive subject of our present researches. In this pursuit, we ought not to address our arguments to the feelings and passions, but to those understandings and judgments which were selected by the people of this country, to {87} decide this great question by a calm and rational investigation. I hope that gentlemen, in displaying their abilities on this occasion, instead of giving opinions and making assertions, will condescend to prove and demonstrate, by a fair and regular discussion. It gives me pain to hear gentlemen continually distorting the natural construction of language; for it is sufficient if any human production can stand a fair discussion. Before I proceed to make some additions to the reasons which have been adduced by my honorable friend over the way, I must take the liberty to make some observations on what was said by another gentleman, (Mr. Henry.) He told us that this Constitution ought to be rejected because it endangered the public liberty, in his opinion, in many instances. Give me leave to make one answer to that observation: Let the dangers which this system is supposed to be replete with be clearly pointed out: if any dangerous and unnecessary powers be given to the general legislature, let them be plainly demonstrated; and let us not rest satisfied with general assertions of danger, without examination. If powers be necessary, apparent danger is not a sufficient reason against conceding them. He has suggested that licentiousness has seldom produced the loss of liberty; but that the tyranny of rulers has almost always effected it.

### ENCROACHMENTS

Since the general civilization of mankind, I believe there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power, than by violent and sudden usurpations; but, on a candid examination of history, we shall find that turbulence, violence, and abuse of power, by the majority trampling on the rights of the minority, have produced factions and commotions, which, in republics, have, more frequently than any other cause, produced despotism. If we go over the whole history of ancient and modern republics, we shall find their destruction to have generally resulted from those causes. If we consider the

peculiar situation of the United States, and what are the sources of that diversity of sentiment which pervades its inhabitants, we shall find great danger to fear that the same causes may terminate here in the same fatal effects which they produced in those republics. This danger ought to be wisely guarded against. Perhaps, in the progress of this discussion, it will appear that the only possible remedy for those evils, and {88} means of preserving and protecting the principles of republicanism, will be found in that very system which is now exclaimed against as the parent of oppression.

I must confess I have not been able to find his usual consistency in the gentleman's argument on this occasion. He informs us that the people of the country are at perfect repose, — that is, every man enjoys the fruits of his labor peaceably and securely, and that every thing is in perfect tranquillity and safety. I wish sincerely, sir, this were true. If this be their happy situation, why has every state acknowledged the contrary? Why were deputies from all the states sent to the general Convention? Why have complaints of national and individual distresses been echoed and reechoed throughout the continent? Why has our general government been so shamefully disgraced, and our Constitution violated? Wherefore have laws been made to authorize a change, and wherefore are we now assembled here? A federal government is formed for the protection of its individual members. Ours has attacked itself with impunity. Its authority has been disobeyed and despised. I think I perceive a glaring inconsistency in another of his arguments. He complains of this Constitution, because it requires the consent of at least three fourths of the states to introduce amendments which shall be necessary for the happiness of the people. The assent of so many he urges as too great an obstacle to the admission of salutary amendments, which, he strongly insists, ought to be at the will of a bare majority. We hear this argument, at the very moment we are called upon to assign reasons for proposing a constitution which puts it in the power of nine states to abolish the present inadequate, unsafe, and pernicious Confederation! In the first case, he asserts that a majority ought to have the power of altering the government, when found to be inadequate to the security of public happiness. In the last case, he affirms that even three fourths of the community have not a right to alter a government which experience has proved to be subversive of national felicity! nay, that the most necessary and urgent alterations cannot be made without the absolute unanimity of all the states! Does not the thirteenth article of the Confederation expressly require that no alteration shall be made without the unanimous consent of all the states? Could any thing in theory be more perniciously improvident and injudicious than this submission of {89} the will of the majority to the most trifling minority? Have not experience and practice actually manifested this theoretical inconvenience to be extremely impolitic? Let me mention one fact, which I conceive must carry conviction to the mind of any one: the smallest state in the Union has obstructed every attempt to reform the government; that little member has repeatedly disobeyed and counteracted the general authority; nay, has even supplied the enemies of its country with provisions. Twelve states had agreed to certain improvements which were proposed, being thought absolutely necessary to preserve the existence of the general government; but as these improvements, though really indispensable, could not, by the Confederation, be introduced into it without the consent of every state, the refractory dissent of that little state prevented their adoption. The inconveniences resulting from this requisition, of unanimous concurrence in alterations in the Confederation, must be known to every member in this Convention; it is therefore needless to remind them of them. Is it not self-evident that a trifling minority ought not to bind the majority? Would not foreign influence be exerted with facility over a small minority? Would the honorable gentleman

agree to continue the most radical defects in the old system, because the petty state of Rhode Island would not agree to remove them?

## **EXCLUSIVE LEGISLATION**

He next objects to the exclusive legislation over the district where the seat of government may be fixed. Would he submit that the representatives of this state should carry on their deliberations under the control of any other member of the Union? If any state had the power of legislation over the place where Congress should fix the general government, this would impair the dignity, and hazard the safety, of Congress. If the safety of the Union were under the control of any particular state, would not foreign corruption probably prevail, in such a state, to induce it to exert its controlling influence over the members of the general government? Gentlemen cannot have forgotten the disgraceful insult which Congress received some years ago. When we also reflect that the previous cession of particular states is necessary before Congress can legislate exclusively any where, we must, instead of being alarmed at this part, heartily approve of it.

But the honorable member sees great danger in the provision concerning the militia. This I conceive to be an additional security to our liberty, without diminishing the power of the states in any considerable degree. It appears to me so highly expedient that I should imagine it would have found advocates even in the warmest friends of the present system. The authority of training the militia, and appointing the officers, is reserved to the states. Congress ought to have the power to establish a uniform discipline throughout the states, and **to provide for the execution of the laws, suppress insurrections, and repel invasions**: these are the only cases wherein they can interfere with the militia; and the obvious necessity of their having power over them in these cases must convince any reflecting mind. Without uniformity of discipline, military bodies would be incapable of action: **without a general controlling power to call forth the strength of the Union to repel invasions, the country might be overrun and conquered by foreign enemies**; without such a power to suppress insurrections, our liberties might be destroyed by domestic faction, and domestic tyranny be established.

## **Various means whereby nations lost their liberties**

The honorable member then told us that there was no instance of power once transferred being voluntarily renounced. Not to produce European examples, which may probably be done before the rising of this Convention, have we not seen already, in seven states, (and probably in an eighth state,) legislatures surrendering some of the most important powers they possessed? But, sir, by this government, powers are not given to any particular set of men; they are in the hands of the people; delegated to their representatives chosen for short terms; to representatives responsible to the people, and whose situation is perfectly similar to their own. As long as this is the case we have no danger to apprehend. When the gentleman called our recollection to the usual effects of the concession of powers, and imputed the loss of liberty generally to open tyranny, I wish he had gone on farther. Upon his review of history, he would have found that the loss of liberty very often resulted from factions and divisions; from local considerations, which eternally lead to quarrels; he would have found internal dissensions to have more frequently demolished civil liberty, than a tenacious disposition in rulers to retain any stipulated powers.

[Here Mr. Madison enumerated the various means whereby nations had lost their liberties.]

The power of raising and supporting armies is exclaimed against as dangerous and unnecessary. I wish there were no necessity of vesting this power in the general government. But suppose a foreign nation to declare war against the United States; must not the general legislature have the power of defending the United States? Ought it to be known to foreign nations that the general government of the United States of America has no power to raise and support an army, even in the utmost danger, when attacked by external enemies? Would not their knowledge of such a circumstance stimulate them to fall upon us? If, sir, Congress be not invested with this power, any powerful nation, prompted by ambition or avarice, will be invited, by our weakness, to attack us; and such an attack, by disciplined veterans, would certainly be attended with success, when only opposed by irregular, undisciplined militia. Whoever considers the peculiar situation of this country, the multiplicity of its excellent inlets and harbors, and the uncommon facility of attacking it, — however much he may regret the necessity of such a power, cannot hesitate a moment in granting it. One fact may elucidate this argument. In the course of the late war, when the weak parts of the Union were exposed, and many states were in the most deplorable situation by the enemy's ravages, the assistance of foreign nations was thought so urgently necessary for our protection, that the relinquishment of territorial advantages was not deemed too great a sacrifice for the acquisition of one ally. This expedient was admitted with great reluctance, even by those states who expected advantages from it. The crisis, however, at length arrived, when it was judged necessary for the salvation of this country to make certain cessions to Spain; whether wisely or otherwise is not for me to say; but the fact was, that instructions were sent to our representative at the court of Spain, to empower him to enter into negotiations for that purpose. How it terminated is well known. This fact shows the extremities to which nations will go in cases of imminent danger, and demonstrates the necessity of making ourselves more respectable. The necessity of making dangerous cessions, and of applying to foreign aid, ought to be excluded.

The honorable member then told us that there are heart-burnings in the adopting states, and that Virginia may, if she does not come into the measure, continue in amicable confederacy with the adopting states. I wish as seldom as possible to contradict the assertions of gentlemen; but I can venture to affirm, without danger of being in an error, that there is the most satisfactory evidence that the satisfaction of those states is increasing every day, and that, in that state where it was adopted only by a majority of nineteen, there is not one-fifth of the people dissatisfied. There are some reasons which induce us to conclude that the grounds of proselytism extend every where; its principles begin to be better understood; and the inflammatory violence wherewith it was opposed by designing, illiberal, and unthinking minds, begins to subside. I will not enumerate the causes from which, in my conception, the heart-burnings of a majority of its opposers have originated. Suffice it to say, that in all they were founded on a misconception of its nature and tendency. Had it been candidly examined and fairly discussed, I believe, sir, that but a very inconsiderable minority of the people of the United States would have opposed it. With respect to the Swiss, whom the honorable gentleman has proposed for our example, as far as historical authority may be relied on, we shall find their government quite unworthy of our imitation. I am sure, if the honorable gentleman had adverted to their history and government, he never would have quoted their example here; he would have found that, instead of respecting the rights of mankind, their government (at least of several of their cantons) is one of the vilest aristocracies that ever was instituted: the peasants of some of their cantons are more oppressed and degraded

than the subjects of any monarch in Europe; may, almost as much so as those of any Eastern despot. It is a novelty in politics, that from the worst of systems the happiest consequences should ensue. Their aristocratical rigor, and the peculiarity of their situation, have so long supported their union: without the closest alliance and amity, dismemberment might follow; their powerful and ambitious neighbors would immediately avail themselves of their least jarrings. As we are not circumstanced like circumstanced like them, no conclusive precedent can be drawn from their situation. I trust the gentleman does not carry his idea so far as to recommend a separation from the adopting states. This government may secure our happiness; this is at least as probable as that it shall be oppressive. If eight states have, from a persuasion of its policy and utility, adopted it, shall Virginia shrink from it, without a full conviction of its danger and inutility? I hope she will never shrink from any duty: I trust she will not determine without the most serious reflection and deliberation.

## **Jurisdiction**

I confess to you, sir, were uniformity of religion to be introduced by this system, it would, in my opinion, be ineligible; but I have no reason to conclude that uniformity of government will produce that of religion. This subject is, for the honor of America, perfectly free and unshackled. The government has no jurisdiction over it: the least reflection will convince us there is no danger to be feared on this ground.

But we are flattered with the probability of obtaining previous amendments. This calls for the most serious attention of this house. If amendments are to be proposed by one state, other states have the same right, and will also propose alterations. These cannot but be dissimilar, and opposite in their nature. I beg leave to remark, that the governments of the different states are in many respects dissimilar in their structure; their legislative bodies are not similar; their executive are more different. In several of the states, the first magistrate is elected by the people at large; in others, by joint ballot of the members of both branches of the legislature; and in others, in other different manners. This dissimilarity has occasioned a diversity of opinion on the theory of government, which will, without many reciprocal concessions, render a concurrence impossible. Although the appointment of an executive magistrate has not been thought destructive to the principles of democracy in many of the states, yet, in the course of the debate, we find objections made to the federal executive: it is urged that the President will degenerate into a tyrant. I intended, in compliance with the call of the honorable member, to explain the reasons of proposing this Constitution, and develop its principles; but I shall postpone my remarks till we hear the supplement which, he has informed us, he intends to add to what he has already said.

## **Enumerated Jurisdiction**

Give me leave to say something of the nature of the government, and to show that it is safe and just to vest it with the power of taxation. There are a number of opinions; but the {94} principal question is, whether it be a federal or consolidated government. In order to judge properly of the question before us, we must consider it minutely in its principal parts. I conceive myself that it is of a mixed nature; it is in a manner unprecedented; we cannot find one express example in the experience of the world. It stands by itself. In some respects it is a government of a federal nature; in others, it is of a consolidated nature. Even if we attend to the manner in which the

Constitution is investigated, ratified, and made the act of the people of America, I can say, notwithstanding what the honorable gentleman has alleged, that this government is not completely consolidated, nor is it entirely federal. Who are parties to it? The people — but not the people as composing one great body; but the people as composing thirteen sovereignties. Were it, as the gentleman asserts, a consolidated government, the assent of a majority of the people would be sufficient for its establishment; and, as a majority have adopted it already, the remaining states would be bound by the act of the majority, even if they unanimously reprobated it. Were it such a government as is suggested, it would be now binding on the people of this state, without having had the privilege of deliberating upon it. But, sir, no state is bound by it, as it is, without its own consent. Should all the states adopt it, it will be then a government established by the thirteen states of America, not through the intervention of the legislatures, but by the people at large. In this particular respect, the distinction between the existing and proposed governments is very material. The existing system has been derived from the dependent derivative authority of the legislatures of the states; whereas this is derived from the superior power of the people. If we look at the manner in which alterations are to be made in it, the same idea is, in some degree, attended to. By the new system, a majority of the states cannot introduce amendments; nor are all the states required for that purpose; three fourths of them must concur in alterations; in this there is a departure from the federal idea. The members to the national House of Representatives are to be chosen by the people at large, in proportion to the numbers in the respective districts. When we come to the Senate, its members are elected by the states in their equal and political capacity. But had the government been completely consolidated, {95} the Senate would have been chosen by the people in their individual capacity, in the same manner as the members of the other house. Thus it is of a complicated nature; and this complication, I trust, will be found to exclude the evils of absolute consolidation, as well as of a mere confederacy. If Virginia was separated from all the states, her power and authority would extend to all cases: in like manner, were all powers vested in the general government, it would be a consolidated government; but the powers of the federal government are enumerated; it can only operate in certain cases; it has legislative powers on defined and limited objects, beyond which it cannot extend its jurisdiction.

But the honorable member has satirized, with peculiar acrimony, the powers given to the general government by this Constitution. I conceive that the first question on this subject is, whether these powers be necessary; if they be, we are reduced to the dilemma of either submitting to the inconvenience or losing the Union. Let us consider the most important of these reprobated powers; that of direct taxation is most generally objected to. With respect to the exigencies of government, there is no question but the most easy mode of providing for them will be adopted. When, therefore, direct taxes are not necessary, they will not be recurred to. It can be of little advantage to those in power to raise money in a manner oppressive to the people. To consult the conveniences of the people will cost them nothing, and in many respects will be advantageous to them. Direct taxes will only be recurred to for great purposes. What has brought on other nations those immense debts, under the pressure of which many of them labor? Not the expenses of their governments, but war. If this country should be engaged in war, — and I conceive we ought to provide for the possibility of such a case, — how would it be carried on? By the usual means provided from year to year? As our imports will be necessary for the expenses of government and other common exigencies, how are we to carry on the means of defence? How is it possible a war could be supported without money or credit? And would it be possible for a government to

have credit without having the power of raising money? No; it would be impossible for any government, in such a case, to defend itself. Then, I say, sir, that it is necessary to establish funds for extraordinary {96} exigencies, and to give this power to the general government; for the utter inutility of previous requisitions on the states is too well known. Would it be possible for those countries, whose finances and revenues are carried to the highest perfection, to carry on the operations of government on great emergencies, such as the maintenance of a war, without an uncontrolled power of raising money? Has it not been necessary for Great Britain, notwithstanding the facility of the collection of her taxes, to have recourse very often to this and other extraordinary methods of procuring money? Would not her public credit have been ruined, if it was known that her power to raise money was limited? Has not France been obliged, on great occasions, to use unusual means to raise funds? It has been the case in many countries, and no government can exist unless its powers extend to make provisions for every contingency. If we were actually attacked by a powerful nation, and our general government had not the power of raising money, but depended solely on requisitions, our condition would be truly deplorable: if the revenue of this commonwealth were to depend on twenty distinct authorities, it would be impossible for it to carry on its operations. This must be obvious to every member here; I think, therefore, that it is necessary, for the preservation of the Union, that this power shall be given to the general government.

### Note

But it is urged that its consolidated nature, joined to the power of direct taxation, will give it a tendency to destroy all subordinate authority; that its increasing influence will speedily enable it to absorb the state governments. I cannot think this will be the case. If the general government were wholly independent of the governments of the particular states, then, indeed, usurpation might be expected to the fullest extent. But, sir, **on whom does this general government depend? It derives its authority from these governments, and from the same sources from which their authority is derived.** The members of the federal government are taken from the same men from whom those of the state legislatures are taken. If we consider the mode in which the federal representatives will be chosen, we shall be convinced that the general will never destroy the individual governments; and this conviction must be strengthened by an attention to the construction of the Senate. The representatives will be chosen probably under the influence of the members of the state legislatures; but there is not the least probability that the election of the latter will be influenced by the former. One hundred and sixty members represent this commonwealth in one branch of the legislature, are drawn from the people at large, and must ever possess more influence than the few men who will be elected to the general legislature.

The reasons offered on this subject, by a gentleman on the same side, (Mr. Nicholas,) were unanswerable, and have been so full that I shall add but little more on the subject. **Those who wish to become federal representatives must depend on their credit with that class of men who will be the most popular in their counties;** who generally represent the people in the state governments; they can, therefore, never succeed in any measure contrary to the wishes of those on whom they depend. It is almost certain, therefore, that the deliberations of the members of the federal House of Representatives will be directed to the interest of the people of America. As to the other branch, the senators will be appointed by the legislatures; and, though elected for six years, I do not conceive they will so soon forget the source from whence they derive their

political existence. This election of one branch of the federal by the state legislatures, secures an absolute dependence of the former on the latter. The biennial exclusion of one third will lessen the facility of a combination, and may put a stop to intrigues. **I appeal to our past experience, whether they will attend to the interests of their constituent states.** Have not those gentlemen, who have been honored with seats in Congress, *often signalized themselves by their attachment to their seats?* I wish this government may answer the expectation of its friends, and foil the apprehension of its enemies. I hope the patriotism of the people will continue, and be a sufficient guard to their liberties. I believe its tendency will be, that the state governments will counteract the general interest, and ultimately prevail. The number of the representatives is yet sufficient for our safety, and will gradually increase; and, if we consider their different sources of information, the number will not appear too small.

## Mr. NICHOLAS.

### NOTE

Mr. Chairman, if the resolution taken by the house of going regularly through the system, clause {98} by clause, had been followed, I should confine myself to one particular paragraph; but as, to my surprise, the debates have taken a different turn, I shall endeavor to go through the principal parts of the argument made use of by the gentlemen in opposition to the proposed plan of government. The worthy gentleman entertained us very largely on the impropriety and dangers of the powers given by this plan to the general government; but his argument appears to me inconclusive and inaccurate; it amounts to this — that the powers given to any government ought to be small. I believe this, sir, is a new idea in politics: — powers, being given for some certain purpose, ought to be proportionate to that purpose, or else the end for which they are delegated will not be answered. It is necessary to give powers, to a certain extent, to any government. If a due medium be not observed in the delegation of such powers, one of two things must happen: if they be too small, the government must moulder and decay away; if too extensive, the people must be oppressed. As there can be no liberty without government, it must be as dangerous to make powers too limited as too great. He tells us that the Constitution annihilates the Confederation. Did he not prove that every people had a right to change their government when it should be deemed inadequate to their happiness? The Confederation being found utterly defective, will he deny our right to alter or abolish it? But he objects to the expression, "We, the people," and demands the reason why they had not said, "We, the United States of America." In my opinion, the expression is highly proper: it is submitted to the people, because on them it is to operate: till adopted, it is but a dead letter, and not binding on any one; when adopted, it becomes binding on the people who adopt it. It is proper on another account. We are under great obligations to the federal Convention, for recurring to the people, the source of all power. The gentleman's argument militates against himself: he says that persons in power never relinquish their powers willingly. If, then, the state legislatures would not relinquish part of the powers they now possess, to enable a general government to support the Union, reference to the people is necessary.

We are, in the next place, frightened by two sets of collectors, who, he tells us, will oppress us with impunity. The amount of the sums to be raised of the people is the same, whether the state legislatures lay the taxes for themselves, or for the general government; whether each of them

lays and collects taxes for its own exclusive purposes; the manner of raising it only is different. So far as the amount of the imposts may exceed that of the present collections, so much will the burdens of the people be less. Money cannot be raised in a more judicious manner than by imposts; it is not felt by the people; it is a mode which is practised by many nations: nine tenths of the revenues of Great Britain and France are raised by indirect taxes; and were they raised by direct taxes, they would be exceedingly oppressive. At present, the reverse of this proposition holds in this country; for very little is raised by indirect taxes.

The public treasuries are supplied by means of direct taxes, which are not so easy for the people. But the people will be benefited by this change. Suppose the imposts will only operate a reduction of one fifth of the public burdens; then, sir, out of every ten shillings we have now to pay, we shall only have to pay eight shillings: and suppose this to be apportioned so that we pay four shillings to the federal and four shillings to the state collector, — what inconvenience or oppression can arise from it? Would this be as oppressive as the payment of ten shillings to the state collector? Our constituents do not suspect our delegates to the state legislature, but we suspect the members of the future Congress.

But, sir, they tell us this power of direct taxation ought not to be intrusted to the general government, because its members cannot be acquainted with the local situation of the people. Where do the members of the state legislatures get their information? It is by their own experience, and intercourse with the people. Cannot those of the general government derive information from every source from which the state representatives get theirs, so as to enable them to impose taxes judiciously? We have the best security we can wish for: if they impose taxes on the people which are oppressive, they subject themselves and their friends to the same inconvenience, and to the certainty of never being confided in again. And what will be the consequence of laying taxes on improper objects? Will the funds be increased by it? By no means. I may venture to say, the amount of the taxes will diminish in proportion of the difficulty {100} and impropriety of the mode of levying them. What advantage, then, would it be to the members of Congress to render the collection of taxes oppressive to the people? They would be certainly out of their senses to oppress the people without any prospect of emolument to themselves.

But another objection is made, which I never heard of before. The gentleman has told us that the number of representatives may be reduced to one for every state. Is this a just surmise, even supposing it to be only said, that the number should not exceed one for every thirty thousand? Had it stopped there, any state, by his doctrine, might have no representative at all. Is it possible that this interpretation could ever be thought of? for the worthy gentleman allowed it was not a natural construction. But the Constitution says that representation and taxation shall be in proportion to the number of the people, and that each state shall have at least one representative. What will be the consequence of this? Each state must pay its proportion of taxes; and its representation is to be equal to its taxes. I ask gentlemen if this be not a safe mode of representation. The gentleman then told us the representatives would never wish their number to be increased. But, sir, the increase of their number will increase their importance. How will it affect their interest in elections? The greater their number, the greater their chance of reëlection. It is a natural supposition that every one of them will have the greatest interest with the people in that part of his district where he resides; the more their number, the more districts will there be,

and the greater certainty of their being reëlected, as it will be easier for them to have influence in small than in large districts. But this power of direct taxes is not to be got over; the gentleman will try every thing in alternative. What will be the consequence of these alternatives? It will lead Congress to have a contest with particular states. After refusal and opposition, what is to be done? Must force be used for the purpose? How is it to be procured? It would, in a little time, expend more money than the sum which it was intended to procure; and the fatal consequences of such a scheme, provided it were practicable, are self-evident. I am astonished that gentlemen should wish to put it on this footing; for the consequences would assuredly be, in the first place, a disappointment to Congress. Would this previous { 101 } alternative diminish or retrench the powers of Congress, if ultimately they are to have recourse to this power? One thing will be the certain consequence: Congress, in making requisitions, must reckon on a disappointment, and will therefore increase them according to the expected disappointment: by these means, the burdens of the people must be enlarged. He then wonders that gentlemen could come to so sudden a resolution of adopting it. As to the time, it will require as much to reject as to adopt it; and if a deliberate discussion be the most rational mode of proceeding, a precipitate rejection will, at least, be as imprudent as a sudden adoption. He declares that he would, in despite of an erring world, reject it, and wishes this state to continue in opposition. Were our country separated by nature from the other states, we might be safe without the Union; but as we are bordered on the adopting states, security can be found in union only. Consider the consequences of disunion: attend to the situation of those citizens who are contiguous to Maryland; look at the country called the Northern Neck; if we reject the Constitution, will not its inhabitants shake off their dependence on us? But, sir, the worthy member has declared, as a reason for not changing our government, that no terrors had been experienced, that no insurrections had happened, among us. It was indeed a wonder that this was the case, considering the relaxation of the laws. Tumults have happened in other states. Had they been attempted here by an enterprising adventurer, I believe he could hardly have been prevented by the laws; for I believe every citizen in this country has complained of their want of energy. The worthy member has exclaimed, with uncommon vehemence, against the mode provided for securing amendments. He thinks amendments can never be obtained, because so great a number is required to concur. Had it rested solely with Congress, there might have been danger. The committee will see that there is another mode provided, besides that which originated with Congress. On the application of the legislatures of two thirds of the several states, a convention is to be called to propose amendments, which shall be a part of the Constitution when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof. It is natural to conclude that those states who will apply for calling the convention { 102 } will concur in the ratification of the proposed amendments.

There are strong and cogent reasons operating on my mind, that the amendments, which shall be agreed to by those states, will be sooner ratified by the rest than any other that can be proposed. The conventions which shall be so called will have their deliberations confined to a few points; no local interest to divert their attention; nothing but the necessary alterations. They will have many advantages over the last Convention. No experiments to devise; the general and fundamental regulations being already laid down.

He makes another objection — that, contrary to the articles of our bill of rights, we may be taxed without our own consent; that taxes may be imposed, although every member from Virginia

should oppose the measure. The argument is not accurate. A tax imposed on the people of this state, by our legislature, may be opposed by the members from the county of Albemarle, without being repugnant to our bill of rights; because Albemarle is represented, and the act of the majority is binding on the minority. In like manner, our privilege of representation in the federal government will prevent any of the general laws from being unconstitutional although contrary to the individual opinions of our representatives.

## **Martial Law**

But it is complained that they may suspend our laws. The suspension of the writ of *habeas corpus* is only to take place in cases of rebellion or invasion. This is necessary in those cases; in every other case, Congress is restrained from suspending it. In no other case can they suspend our laws; and this is a most estimable security. But the influence of New England and the other Northern States is dreaded; there are apprehensions of their combining against us. Not to advert to the improbability and illiberality of this idea, it must be supposed that our population will, in a short period, exceed theirs, as their country is well settled, and we have very extensive uncultivated tracts. We shall soon outnumber them in as great a degree as they do us at this time; therefore this government, which, I trust, will last to the remotest ages, will be very shortly in our favor. Treason consists in levying war against the United States, or in adhering to their enemies, giving them aid and comfort. { 103 } The punishment of this well-defined crime is to be declared by Congress; no oppression, therefore, can arise on this ground. This security does away the objection that the most grievous oppressions might happen under color of punishing crimes against the general government. The limitation of the forfeiture to the life of the criminal is also an additional privilege.

We are next told that there is wanting in this government that responsibility which has been the salvation of Great Britain, although one half of the House of Commons purchase their seats. It has been already shown that we have much greater security from our federal representatives than the people in England can boast. But the worthy member has found out a way of solving our difficulties. He tells us that we have nothing to fear, if separated from the adopting states; but to send on our money and men to Congress. In that case, can we receive the benefits of the union? If we furnish money at all, it will be our proportionate share. The consequence will be, that we shall pay our share, without the privilege of being represented. So that, to avoid the inconvenience of not having a sufficient number of representatives, he would advise us to relinquish the number we are entitled to, and have none at all. I believe, sir, there is a great and decided majority of the people in favor of the system; it is so in that part of the country wherein I reside. It is true, sir, that many of the people have declared against a government, which, they were told, destroyed the trial by jury; against a government, sir, which established a standing army; against a government which abridged the liberty of the press; against a government which would tax all their property from them; against a government which infringed the right of conscience; and against a government, sir, which should banish them to France, to be common soldiers, and which would eventually destroy all their rights and privileges. This, sir, is the government of which they have given their disapprobation. Still, sir, a majority have considered this government in a different light, and have given their approbation of it. I believe, sir, that, on a fair and candid investigation, very few would oppose it. Those who think that the evils I have enumerated will result from it, exceed me in point of credulity.

---

[1. Elliot misprinted this as Friday, June 16, 1788.]

---

**S**ATURDAY, *June 7, 1788.*

{ 104 } [The first and second sections still under consideration.]

**Mr. CORBIN.**

Mr. Chairman, permit me to make a few observations on this great question. It is with great difficulty I prevail on myself to enter into the debate, when I consider the great abilities of those gentlemen who have already spoken on the subject. But as I am urged by my duty to my constituents, and as I conceive that the different manner of treating the subject may make different impressions, I shall offer my observations with diffident respect, but with firmness and independence. I will promise my acknowledgments to those honorable gentlemen who were in the federal Convention, for the able and satisfactory manner in which they discharged their duty to their country. The introductory expression of "We, the people," has been thought improper by the honorable gentleman. I expected no such objection as this. Ought not the people, sir, to judge of that government whereby they are to be ruled? We are, sir, deliberating on a question of great consequence to the people of America, and to the world in general. We ought, therefore, to decide with extreme caution and circumspection: it is incumbent upon us to proceed without prejudice or prepossession. No member of the committee entertains a greater regard than myself for the gentleman on the other side, who has placed himself in the front of opposition, (Mr. Henry.) No man admires more than I do his declamatory talents; but I trust that neither declamation nor elegance of periods will mislead the judgment of any member here, and that nothing but the force of reasoning will operate conviction. He has asked, with an air of triumph, whether the Confederation was not adequate to the purposes of the federal government: permit me to say, No. If, sir, perfection existed in that system, why was the federal Convention called? Why did every state except Rhode Island send deputies to that Convention?

Was it not from a persuasion of its inefficacy? If this be not sufficient to convince him, let me call the recollection of the honorable gentleman to other circumstances. Let him go into the interior parts of the country, and inquire into the situation of the farmers. He will be told that tobacco, and other produce, are miserably low, merchandise dear, and taxes high. Let him go through the United States. He { 105 } will perceive appearances of ruin and decay every where. Let him visit the sea-coast — go to our ports and inlets. In those ports, sir, where we had every reason to see the fleets of all nations, he will behold but a few trifling little boats; he will every where see commerce languish; the disconsolate merchant, with his arms folded, ruminating, in despair, on the wretched ruins of his fortune, and deploring the impossibility of retrieving it. The West Indies are blocked up against us. Not the British only, but other nations, exclude us from those islands; our fur trade gone to Canada; British sentinels within our own territories; our posts

withheld. To these distresses we may add the derangement of our finances: yet the honorable gentleman tells us they are not sufficient to justify so radical a change. Does he know the consequences of deranged finances? What confusions, disorders, and even revolutions, have resulted from this cause, in many nations! Look at France at this time: that kingdom is almost convulsed; ministers of state, and first princes of the blood, banished; manufacturers and merchants become bankrupt, and the people discontented; all owing to the derangement of their finances.

The honorable gentleman must be well acquainted with the debts due by the United States, and how much is due to foreign nations. Has not the payment of these been shamefully withheld? How long, sir, shall we be able, by fair promises, to satisfy these creditors? How long can we amuse, by idle words, those who are amply possessed of the means of doing themselves justice? No part of the principal is paid to those nations; nor has even the interest been paid as honorably and punctually as it ought. Nay, we were obliged to borrow money last year to pay the interest. What! borrow money to discharge the interest of what was borrowed, and continually augment the amount of the public debt! Such a plan would destroy the richest country on earth. What is to be done? Compel the delinquent states to pay requisitions to Congress? How are they to be compelled? By the instrumentality of such a scheme as was proposed to be introduced in the year 1784?<sup>[1]</sup> Is this cruel mode of compulsion eligible? It consistent with the {106} spirit of republicanism? This savage mode, which could be made use of under the Confederation, leads directly to civil war and destruction. How different is this from the genius of the proposed Constitution! By this proposed plan, the public money is to be collected by mild and gentle means; by a peaceable and friendly application to the individuals of the community: whereas, by the other scheme, the public treasury must be supplied through the medium of the sword, by desolation and murder — by the blood of the citizens. Yet we are told that there is too much energy in this system. Coercion is necessary in every government. Justice, sir, cannot be done without it. It is more necessary in federal governments than any other, because of the natural imbecility of such governments.

The honorable gentleman is possessed of much historical knowledge. I appeal to that knowledge therefore. Will he not agree that there was a coercive power in the federal government of the Amphictyonic? The coercive power of the Amphictyonic council was so great as to enable it to punish disobedience and refractory behavior in the most severe manner. Is there not an instance of its carrying fire and sword through the territories, and levelling to the ground the towns, of those who disobeyed it? [Here Mr. Corbin mentions particular instances.] Is there no coercion in the Germanic body? This body, though composed of three hundred different component sovereignties, principalities and cities, and divided into nine circles, is controlled by one superintending power, the emperor. Is there no coercive power in the confederate government of the Swiss? In the alliance between them and France, there is a provision whereby the latter is to interpose and settle differences that may arise among them; and this interposition has been more than once used. Is there none in Holland? What is the stadtholder? This power is necessary in all governments; a superintending coercive power is absolutely indispensable. This does not exist under the present Articles of Confederation. To vest it with such a power, on its present construction, without any alteration, would be extremely dangerous, and might lead to civil war. Gentlemen must, before this, have been convinced of the necessity of an alteration. Our state vessel has sprung a leak; we must embark in a new bottom, or sink into perdition.

The honorable gentleman has objected to the Constitution, {107} on the old worn-out idea that a republican government is best calculated for a small territory. If a republic, sir, cannot be accommodated to an extensive country, let me ask, How small must a country be to suit the genius of republicanism? In what particular extent of country can a republican government exist? If contracted into as small a compass as you please, it must labor under many disadvantages. Too small an extent will render a republic weak, vulnerable, and contemptible. Liberty, in such a petty state, must be on a precarious footing; its existence must depend on the philanthropy and good nature of its neighbors. Too large an extent, it is said, will produce confusion and tyranny. What has been so often deprecated will be removed by this plan. The extent of the United States cannot render this government oppressive. The powers of the general government are only of a general nature, and their object is to protect, defend, and strengthen the United States; but the internal administration of government is left to the state legislatures, who exclusively retain such powers as will give the states the advantages of small republics, without the danger commonly attendant on the weakness of such governments.

There are controversies even about the name of this government. It is denominated by some a federal, by others a consolidated government. The definition given of it by my honorable friend (Mr. Madison) is, in my opinion, accurate. Let me, however, call it by another name — a representative federal republic, as contradistinguished from a confederacy. The former is more wisely constructed than the latter; it places the remedy in the hands which *feel* the disorder: the other places the remedy in those hands which *cause* the disorder. The evils that are most complained of in such governments (and with justice) are faction, dissension, and consequent subjection of the minority to the caprice and arbitrary decisions of the majority, who, instead of consulting the interest of the whole community collectively, attend sometimes to partial and local advantages. To avoid this evil is perhaps the great *desideratum* of republican wisdom; it may be termed the philosopher's stone. Yet, sir, this evil will be avoided by this Constitution: faction will be removed by the system now under consideration, because all the causes which are generally productive {108} of faction are removed. This evil does not take its flight entirely; for were jealousies and divisions entirely at an end, it might produce such lethargy as would ultimately terminate in the destruction of liberty, to the preservation of which, watchfulness is absolutely necessary. It is transferred from the state legislatures to Congress, where it will be more easily controlled. Faction will decrease in proportion to the diminution of counsellors. It is much easier to control it in small than in large bodies. Our state legislature consists of upwards of one hundred and sixty, which is a greater number than Congress will consist of at first. Will not more concord and unanimity exist in one than in thirteen such bodies? Faction will more probably decrease, or be entirely removed, if the interest of a nation be entirely concentrated, than if entirely diversified. If thirteen men agree, there will be no faction. Yet if opposite, and of heterogeneous dispositions, it is impossible that a majority of such clashing minds can ever concur to oppress the minority. It is impossible that this government, which will make us one people, will have a tendency to assimilate our situations, and is admirably calculated to produce harmony and unanimity, can ever admit of an oppressive combination by one part of the Union against the other.

A confederate government is, of all others, best calculated for an extensive country. Its component individual governments are, of all others, best calculated for an extensive country. Its component individual governments administer and afford all the local conveniences that the most

compact governments can do; and the strength and energy of the confederacy may be equal to those of any government. A government of this kind may extend to all the western world; nay, I may say, *ad infinitum*. But it is needless to dwell any longer on this subject; for the objection that an extensive territory is repugnant to a republican government applies against this and every state in the Union, except Delaware and Rhode Island. Were the objection well founded, a republican government could exist in none of the states, except those two. Such an argument goes to the dissolution of the Union, and its absurdity is demonstrated by our own experience.

But an objection is urged against this government because of its power of laying direct taxes. Let me ask the honorable {109} gentleman who opposes it on this ground, if he reflects whether this power be indispensable or not. Sir, if it be not vested with the power of commanding all the resources of the state when necessary, it will be trifling. Wars are as much (and more) carried on by the length of the purse, as by that of the sword. They cannot be carried on without money. Unless this power be given to Congress, foreign nations may crush you. The concession of this power is necessary to do Virginia justice, by compelling the delinquent states to pay as well as she: while she paid her quotas, and her citizens were much distressed to pay their taxes, other states most shamefully neglected or refused to pay their proportions. I trust gentlemen need not be alarmed on the subject of taxation, nor intimidated by the idea of double collectors, who, they tell us, will oppress and ruin the people. From our attention to our situation, we shall see that this mode of levying money, though indispensably necessary on great emergencies, will be but seldom recurred to. Let us attend to the finances of this country.

Mr. CORBIN then stated the probable annual amount of duties on imported articles throughout the continent, including West India produce, which, he said, from the best calculation he could procure, would exceed the annual expenses of the administration of the general government, including the civil list, contingent charges, and the interest of the foreign and domestic debts, by eighty or ninety thousand pounds; that, he said, would enable the United States to discharge, in a few years, the principal debts due to foreign nations; that, in the course of thirty years, that surplus would enable the United States to perform the most splendid enterprises. He then concluded that no danger was to be apprehended from the power of direct taxation, since there was every reason to believe it would be very seldom used. He then made an estimate of the state debt, and clearly proved that, with economical regulations, all the demands of the internal administration of government would be paid with facility and ease from the different resources of the state; and that there would also be a considerable surplus, which, with prudence and economy, might answer many valuable purposes.

Mr. Corbin then continued as follows: The honorable gentleman declared in the most solemn manner, that, if he could see one single trait in that government to secure liberty, {110} he would not object to it. I meet him on this ground. Liberty is secured, sir, by the limitation of its powers, which are clearly and unequivocally defined, and which are to be exercised by our own representatives freely chosen. What power is given that will endanger liberty? I consider all the traits of this system as having a tendency to the security of our liberty. I consider all its powers necessary, and only given to avoid greater evils; and if this conclusion of mine be well founded, let me ask if public liberty is not secured by bars and adamant bolts — secured by the strongest guards and checks which human ingenuity can invent. Will this dread power of taxation render liberty insecure? Sir, without this power, other powers will answer no purpose.

Government cannot exist without the means of procuring money. My honorable friend told us he considered this clause as the vitals of the Constitution. I will change the phrase, and say that I consider this part as the lungs of the Constitution. If it be sick, the whole system is consumptive, and must soon decay; and this power can never be dangerous if the principles of equal and free representation be fully attended to. While the right of suffrage is secured, we have little to fear. This government, sir, fully secures us this noble privilege, on the purest and simplest principles of equality. That number which, in any one part of the country, has a right to send a representative, has the same right in another part. What does the Constitution say? That thirty thousand shall have one representative, no matter where. If this be not equal representation, what, in the name of God, is equal representation? But, says the honorable gentleman, the Constitution may be satisfied by one from each state. I conceive there is no fear of this. There is not a power to diminish the number. Does it not say that representatives shall be apportioned according to the number of the people, and that direct taxes shall be regulated by the same rules? Virginia, in the first instance, will have ten times as many as Delaware, and afterwards in proportion to their numbers. What is the criterion of representation? Do the people wish land only to be represented? They have their wish: for the qualifications which the laws of the states require to entitle a man to vote for a state representative are the qualifications required by this plan to vote for a representative to Congress; and in this state, and most of the others, the {111} possession of a freehold is necessary to entitle a man to the privilege of a vote. Do they wish persons to be represented? Here also they are indulged; for the number of representatives is determined by the number of people: this idea is so well attended to, that even three fifths of those who are not free are included among those of whom thirty thousand shall have a right to elect one representative; so that, in either point of view, their wish is gratified. Is not liberty secured on this foundation? If it be not secured by one or the other mode, or by both, I am totally without reason. Liberty seems intrenched on this ground.

But the gentleman objects that the number is not sufficient. My opinion, with deference to that gentleman, and others who may be of different opinion from me, is, that it is fully sufficient. Being delegated solely for general purposes, a few intelligent men will suffice; at least one for every thirty thousand, aided by the Senate, seems sufficient. Are combinations, or factions, so often formed in small as in numerous bodies? Are laws better made in large than in small assemblies? Is not the influence of popular declaimers less in small than in great bodies? Would not a more numerous representation be very expensive? Is economy of no consideration? We ought, sir, to attend to the situation of the people; and our measures should be as economical as possible, without extending, however, our parsimony to a dangerous length. Objections should be founded on just and real grounds, and ought not to be urged out of a mere obstinacy. Besides, it is by no means certain that a very numerous body is more independent, or upright, than a small one. Why should the number of our representatives be greater, Mr. Chairman? The county of Middlesex, in England, which includes the cities of London and Westminster, contains upwards of nine hundred and ninety thousand souls, and yet sends to Parliament no more than eight members. Among all the clamors of the people there, it never entered into the brain of any of them that these eight were not enough. They complain that the boroughs of Old Sarum, Newton, and Gatton, and other such places, should send each two members to Parliament, although without houses or inhabitants, while the richest city sends but four. They also complain of the influence of the landed interest in some cases; that the county of Cornwall sends forty members to Parliament, {112} although it pays but eighteen parts, out of five hundred and thirteen, to the

subsidy and land tax, when the county of Middlesex, which is calculated to pay two hundred and fifty parts out of five hundred and thirteen, sends but eight members. In that country, it has been uniformly found that those members, who are chosen by numerous respectable electors, make the greatest opposition to oppression and corruption, and signalize themselves for the preservation of liberty. The collective body of the commons there have generally exerted themselves in the defence of freedom, and have been successful in their exertions, notwithstanding the inequality of their election. Our representatives are chosen in the fairest manner; their election is founded in absolute equality. Is the American spirit so degenerated, notwithstanding these advantages, that the love of liberty is more predominant and warm in the breast of a Briton than in that of an American? When liberty is on a more solid foundation here than in Britain, will Americans be less ready to maintain and defend it than Britons? No, sir; the spirit of liberty and independence of the people of this country, at present, is such that they could not be enslaved under any government that could be described. What danger is there, then, to be apprehended from a government which is theoretically perfect, and the possible blemishes of which can only be demonstrated by actual experience?

The honorable gentleman then urges an objection respecting the militia, who, he tells us, will be made the instruments of tyranny to deprive us of our liberty. Your militia, says he, will fight against you. Who are the militia? Are we not militia? Shall we fight against ourselves? No, sir; the idea is absurd. We are also terrified by the dread of a standing army. It cannot be denied that we ought to have the means of defence, and be able to repel an attack.

If some of the community are exclusively inured to its defence, and the rest attend to agriculture, the consequence will be, that the arts of war and defence, and of cultivating the soil, will be understood. Agriculture will flourish, and military discipline will be perfect. If, on the contrary, our defence be solely intrusted to militia, ignorance of arms and negligence of farming will ensue: the former plan is, in every respect, more to the interest of the state. By it we shall have good farmers and soldiers; by the latter we shall have { 113 } neither. If the inhabitants be called out on sudden emergencies of war, their crops, the means of their subsistence, may be destroyed by it. If we are called in the time of sowing seed, or of harvest, the means of subsistence might be lost; and the loss of one year's crop might have been prevented by a trivial expense, if appropriated to the purpose of supporting a part of the community, exclusively occupied in the defence of the whole. I conceive that this idea, if it be a new one, is yet founded on solid and very substantial reasons. But, sir, we are told of the expediency and propriety of previous amendments. What end would it answer to attempt it? Will the states which have adopted the Constitution rescind their adopting resolutions? Had we adopted it, would we recede from it to please the caprice of any other state? Pride, sir, revolts at the idea. Admitting this state proposes amendments previous to her adoption, must there not be another federal convention? Must there not be also a convention in each state? Suppose some of our proposed conditions to be rejected; will not our exclusion out of the Union be the consequence? Or would other conventions again be called, and would be eternally revolving and devising expedients, without coming to a final decision? The loss of the union, sir, must be the result of a pertinacious demand of precedent conditions. My idea is, that we should go hand in hand with Massachusetts: adopt it first, and then propose amendments of a general nature; for local ones cannot be expected. Consider the situation of Massachusetts, commanding the north, and the importance and respectability of Virginia to the south. These, sir, are the two most populous, wealthy, and powerful states in the

Union. Is it not very probable that their influence would have very great weight in carrying any amendments? Would any gentleman turn a deaf ear to their solicitations? By union alone can we exist: by no other means can we be happy. Union must be the object of every gentleman here. I never yet have heard any gentleman so wild and frantic in his opposition as to avow an attachment to partial confederacies. By previous adoption, the union will be preserved; by insisting on alterations previous to our adoption, the union may be lost, and our political happiness destroyed by internal dissensions. I trust, therefore, that this Convention, after deliberate discussion, will not hesitate to determine on a previous ratification {114} of a system which, even in its present form, seems competent to the perpetual preservation of our security and happiness.

## **Mr. HENRY**

then arose, and expressed a desire that the honorable gentleman on the other side (Gov. Randolph) should continue his observations on the subject he had left unfinished the day before; that he had before, and would now, give him a patient hearing, as he wished to be informed of every thing that gentlemen could urge in defence of that system which appeared to him so defective.

## **Gov. RANDOLPH.**

Mr. Chairman, as the gentleman who was last up has given us an opportunity of continuing our observations, I shall, in resuming the subject, endeavor to put this question in a more correct and accurate point of view than it has yet been put in.

I took the liberty, yesterday, of declaring to the house the necessity of a national rather than a federal government, and that the union was necessary for Virginia for many powerful reasons; that this necessity arose from the certainty of her being involved in disputes and war with the adjoining states, and the probability of an attack by foreign nations, particularly by those nations to which she is greatly in debt, and which she is unable to pay; from her inability to raise an army to protect her citizens from internal seditions and external attacks, and her inability to raise a navy to protect her trade and her coasts against descents and invasions. I also, in the course of my argument on this occasion, showed the imbecility of the present system, in order to obviate and detect the sophistry of that truly delusive opinion, which has taken possession of the minds of some gentlemen, that this shipwrecked vessel is sufficiently strong and safe for us to embark in. Whether I have succeeded or not, I have given the full effusions of my soul, in my attempt to prove the futility of that opinion. Permit me now to pursue the object of my inquiry respecting the powers necessary to be given to the general government. I shall discard general considerations at present, as I wish to be as brief as possible, and take up the particular idea of direct taxation. Is it necessary that the legislative power of the United States should be authorized to levy taxes? A strange question to be agitated in this house, after hearing the delinquency of other states, and even of {115} Virginia herself! Money is the nerve — the life and soul of a government. It is the utmost folly to say that a government could be carried on without this great agent of human affairs. Wars cannot be carried on without a full and uncontrolled discretionary power to raise money in an eligible manner. Nay, sir, government cannot be administered in time

of peace without this power. For how is it to be done? It is needless to impress any further on the minds of the gentlemen who hear me the necessity of this power in governments. If so, ought the general government to be more circumscribed in the power of providing for its own safety and existence than any other government? Ought it to depend for the means of its preservation on other bodies? This is actually the case with the Confederation. The power of raising money was nominally vested in that system. In March, 1781, even Maryland, the most backward state then, conceded that Congress should have the power of receiving and demanding their proportionate quotas of the states. This was an acknowledgment of the necessity of vesting a power in Congress to raise such sums as emergencies might require; but the means which were proposed have been found inadequate to compass the end: the propriety of the means is alone disputed. No doubt it is the universal opinion of the people of this commonwealth, that its legislature should have the power of raising money at its own will and pleasure. There are two ways whereby this may be effected — by requisitions, or taxation: there is no other manner; for it surpasses the ingenuity of man to devise any other mode of raising money than by one of these two methods. If the alternative of requisitions be determined upon, as more eligible, it will not avail without coercion. If that of taxation be preferred, it will be sufficient without any coercion. If our legislature were to depend on requisitions for money to answer the ends of government, then, sir, the absurdity and sophistry of the arguments urged in defence of such a mode of procuring money would strike the weakest intellect. If the mere pleasure of individuals were alone to be consulted, if it were left to the choice of your people to pay or not, your treasury would be much poorer than it is; and the advocates of this pernicious policy would perhaps be ashamed of their pertinacity. Suppose, for a moment, the only existing {116} mode of raising a revenue in Virginia to be that of requisitions; suppose your requisitions sent on to every county; say that money is wanted; assume the most pressing language — "We earnestly entreat you; we humbly supplicate and solicit you would furnish us with one thousand or one hundred pounds, to defray the necessary charges of our government!" What would be the result of such applications for voluntary contributions? You would be laughed at for your folly, for thinking human nature could be thus operated upon. From my knowledge of human nature, and of my countrymen, I am perfectly certain this would be the case. The argument will be found good in all cases; it will admit of any extension. I ask any gentleman in this house, if states would comply with what even a few individuals would refuse? Would not the requisitions of Congress meet a similar fate? This, sir, has as often happened as it has been the pleasure of the states to withhold the quotas. Not a shilling has been put into the Continental treasury but with the utmost reluctance. The probable delinquency of other states has been the pretext of non-compliance, with every state. It has been thought hard that our General Assembly should pay when Congress ordered us. Our representatives have been supposed careless of our interest in paying the demands of Congress, while delinquencies happened in other states. Punctuality, sir, instead of being held in that estimation which it really merits, has been looked upon as an improvident expenditure of the substance of the people, and a subjection of the inhabitants to grievances and burdens to which the people of delinquent states were not exposed. This idea has been held in many states, and would hold again. Whosoever depends on the mere right to demand their respective proportions of the states, shows a total ignorance of human actions, and betrays an unacquaintance with the principles of sure policy. The principal ends of all political institutions are the happiness and safety of the community; but a reliance on congressional requisitions would leave the country exposed and open to those who should choose to invade us, or lead to such sedition and confusion among ourselves as must subvert and destroy every object of human society. If

requisitions be not faithfully complied with, military coercion seems necessary: coercion, judiciously and moderately { 117 } used, is proper; but, if severely and cruelly inflicted, begets unconquerable aversion and hatred. If the spirit of resentment actuates individuals, will not states be equally vindictive? What species of military coercion could the general government adopt for the enforcement of obedience to its demands? Either an army sent into the heart of a delinquent state, or blocking up its ports. Have we lived to this, then, that, in order to suppress and exclude tyranny, it is necessary to render the most affectionate friends the most bitter enemies? — set the father against the son, and make the brother slay the brother? Is this the happy expedient that is to preserve liberty? Will it not destroy it? If an army be once introduced to force us, if once marched into Virginia, figure to yourself what the dreadful consequence will be: the most lamentable civil war must ensue. Have we any troops but militia to confront those disciplined bands that would be sent to force our compliance with requisitions? The most virulent railings are vented against the federal executive. We are told that the President can fix himself in the chair of state, establish himself as a monarch, and destroy the liberties of the people.

It has too often happened that powers delegated for the purpose of promoting the happiness of a community have been perverted to the advancement of the personal emoluments of the agents of the people; but the powers of the President are too well guarded and checked to warrant this illiberal aspersion. Let us candidly consider the consequences of the favorite plan of requisitions, and see whether, instead of imaginary or problematical, there be not real, palpable dangers. To compel your obedience, a rapacious army will penetrate into the bosom of your country, carrying destruction and desolation before it. The commander of such an army will be liable to the corruptions and passions incident to other men. If he be possessed of military genius, address, and ambition, he may procure this army to proclaim him king. Who can tell the result? Who can oppose him with success? Who can say to him, Sir, you shall not be a despot! The reasoning, however inconclusive or illogical it may appear to some, is, in my estimation, more accurate than arguments drawn from the possibility of a President's becoming a tyrant.

Mr. Chairman, I should object to the so-much-admired alternative { 118 } of gentlemen, were there no other reason than the danger of an army to enforce requisitions, and the danger of its general becoming our master. I will not mention those nations that might be applied to for aid in such a case: it could easily be procured, but the remedy would be worse than the disease. I speak with respect to Virginia alone. Suppose our trade was to be taken into the hands of Congress; they would find little to satisfy their demands. If permitted by other nations, the compensation they could derive from the exclusive control of our trade would be but trivial. Great Britain, France, and Holland, are intimately concerned to carry on trade with us: those nations would disapprove of the measure; and such evasions would be practised on such an occasion as would render it totally ineffectual. If Congress were then to block up our ports, or send an army into our country, Virginia would be in such a horrid situation as would induce her to call for the aid of foreign nations: they have their eyes fixed on us; they watch every opportunity to avail themselves of our divisions. It is their interest we should be weak and divided. Any of them would readily engage in our dissensions; none of them would be displeased at our distractions. But what would be their object in assisting us? On what principles have auxiliaries ever been sent to the aid of a country? Show me an instance (except the conduct of France to America) where auxiliaries have not either attempted or actually made themselves masters of those they assisted. With respect to France, her magnanimity to America is almost unprecedented. She has

displayed a degree of disinterestedness and generosity not often exemplified in the annals of mankind. Till France joined us, our troops were not able to withstand the enemy. Yet the fate of many other nations ought to convince us that the assistance of foreigners is the most dangerous and the last experiment that ought to be recurred to. Yet the predilection for retaining the power of direct taxation is not to be overcome.

An expedient, proposed by a gentleman whom I do not now see in the house, (Mr. George Mason,) is, that this power shall be only given to the general government as an alternative after requisitions shall have been refused. The most positive requisitions will be unavailable, and failure will produce war. A formal refusal, or negligent non-compliance {119} with the demands of Congress, under a knowledge of the existence of this execrated alternative, would be a prelude to active opposition. I consider this expedient very little better than the ineffectual mode of simple requisitions. The only difference is, that it gives a little more time to a refractory state to provide itself with arms and foreign alliance, to enable it to oppose the operation of this alternative, and resist federal collectors, as was observed by the honorable gentleman in the chair. The proper time will be picked for the commencement of opposition, and for putting the bayonet to the breasts of their fellow-citizens. Suppose a requisition to be made on Virginia for two hundred thousand pounds: she fails to comply: taxes are then to be collected in the common manner. Is it not probable that the aversion to the exercise of this power by the general government will incite discontented minds to oppose it? Then, sir, the dogs of war are to be let loose, and inconceivable mischief to ensue. If the inability of the people requires an extension of the time of payment, let them be indulged as far as may be consistent with a regard for the public exigencies; but let us not be so infatuated as to choose an expedient which must either be inadequate to the destined purpose, or eventuate in bloodshed and war. Requisitions, sir, however modified, must come within this description; they strike me with horror and disgust. I would as soon see a separation from the Union, and trust to the genius, patriotism, vigilance, and activity — to the morals and natural uprightness — of the people, as ask a government with no other powers than those whereof our present system is possessed. This is an improvement on that system; and if we reject it, we are ruined.

Our credit is depressed and irretrievably gone, without a change of that system which has caused its depression. It is humiliating and disgraceful to recur to loans, situated as we are. It is ruinous on any condition on which our credit could be competent to obtain them; though, under a regular, judicious system of administration, they may be very salutary and beneficial. If some accounts be believed, your ambassador has received from the king of France those stipends which have supported him. Is this honorable? Is it safe for America? Safety, sir, forbids so dishonorable and despicable a conduct as to leave our representatives in a state of absolute dependence on another power. Will not this situation be {120} freely and forcibly represented to him? — "Remember, sir, the bread you eat to-morrow depends on the bounty of the Count de Vergennes!" Is it possible that, in our present circumstances, we can inspire any one with confidence in our engagements? Where, in the hour of distress and calamity, shall Congress be able to borrow money? The present revenues are appropriated to different purposes, and are, from the incompetency of requisitions, inadequate to the public exigencies. Admitting the impost will be sufficiently productive to enable Congress to discharge its engagements, and answer all the demands of government, in case of a war, will not necessity and the fear of danger render it necessary for the general government to divert the revenues, from the usual appropriations, to the

defence of the Union? The necessity of such a diversion does not lessen the certainty that the public credit would be destroyed by it. The interest on the public debt could not be paid; foreign and domestic creditors would be disappointed and irritated; and the displeasure of the former might lead to the most serious consequences. What could the general government do, in such a situation, without the power of providing money by taxation? Requisitions would be fruitless and ineffectual; nor could a government, which depended on such a slender and inefficient force, meet with credulity enough any where to trust it. Will you expose the Continental Congress to such a critical distress? Do you consult public liberty by reducing it to an extremity, whereof none can with certainty foretell the dangerous consequences? Is it not laying a train by which liberty is to be blown up? By withholding a necessary power, you may unwarily lay the foundation of usurpation itself.

I conclude with my firm belief, that I show my friendship for Virginia more steadfastly by discarding these requisitions, than by any proposition I could suggest.

The benefits arising from loans are innumerable. Every nation, even the most wealthy and the oldest nations, have found it necessary to recur to loans in time of war. This country has found it so even in time of peace; but on a supposition of war, we *must* borrow money. It will be inevitable. How can Congress have credit to borrow any sum to a considerable amount, on any reasonable conditions, unless it have full scope and complete command over the resources of {121} the Union? Whatever may be the visionary and fanciful conclusions of political skeptics, the credit of a nation will be found to be coextensive with its ability. If Congress have an uncontrolled power to raise money as contingencies may render it necessary, it can borrow with ease; but if it have not this power, it is not possible that any confidence can be put in it.

The difficulty of justly apportioning the taxes among the states, under the present system, has been complained of; the rule of apportionment being the value of all lands and improvements within the states. The inequality between the rich lands of James River and the barrens of Massachusetts has been thought to militate against Virginia. If taxes could be laid according to the real value, no inconvenience could follow; but, from a variety of reasons, this value was very difficult to be ascertained; and an error in the estimation must necessarily have been oppressive to a part of the community. But in this new Constitution, there is a more just and equitable rule fixed — a limitation beyond which they cannot go. Representatives and taxes go hand in hand: according to the one will the other be regulated. The number of representatives is determined by the number of inhabitants; they have nothing to do but to lay taxes accordingly. I will illustrate it by a familiar example. At present, before the population is actually numbered, the number of representatives is sixty-five. Of this number, Virginia has a right to send ten; consequently she will have to pay ten parts out of sixty-five parts of any sum that may be necessary to be raised by Congress. This, sir, is the line. Can Congress go beyond the bounds prescribed in the Constitution? Has Congress a power to say that she shall pay fifteen parts out of sixty-five parts? Were they to assume such a power, it would be a usurpation so glaring, that rebellion would be the immediate consequence. Congress is only to say on what subject the tax is to be laid. It is a matter of very little consequence how it will be imposed, since it must be clearly laid on the most productive article in each particular state. I am surprised that such strong objections should have been made to, and such fears and alarms excited by, this power of direct taxation, since experience shows daily that it is neither inconvenient nor oppressive. A collector goes to a man's

house; the man pays him with freedom, or makes an {122} apology for his inability to do it then: at a future day, if payment be not made, distress is made, and acquiesced in by the party. What difference is there between this and a tax imposed by Congress? Is it not done by lawful authority? The distinction is between a Virginian and Continental authority. Yet, in both cases, it is imposed by ourselves, through the medium of our representatives. When a tax will come to be laid by Congress, the collector will apply in like manner, and in the same manner receive payment, or an apology; at a future day, likewise, the same consequences will result from a failure. I presume, sir, there is a manifest similarity between the two cases. When gentlemen complain of the novelty, they ought to advert to the singular one that must be the consequence of the requisitions — an army sent into your country to force you to comply. Will not this be the dissolution of the Union, if ever it takes effect? Let us be candid on this subject: let us see if the criterion here fixed be not equal and just. Were the tax laid on one uniform article through the Union, its operation would be oppressive on a considerable part of the people. When any sum is necessary for the general government, every state will immediately know its exact proportion of it, from the number of their people and representatives; nor can it be doubted that the tax will be laid on each state, in the manner that will best accommodate the people of such state, as thereby it will be raised with more facility; for an oppressive mode can never be so productive as the most easy for the people.

The system under consideration is objected to in an unconnected and irregular manner: detached parts are attacked without considering the whole: this, sir, is disingenuous and unreasonable. Ask if the powers be unnecessary. If the end proposed can be obtained by any other means, the powers may be unnecessary. Infallibility was not arrogated by the Convention: they included in the system those powers they thought necessary. If you do not think the ceding those powers indispensable, never give them up. But, I trust, this power of imposing direct taxes has been proved to be essential to the very existence of the Union. The advocates for the national government, circumstanced as they are, with the accession of so many states, never will give their assent to leave it in the power of the states {123} to sacrifice the Union. It has been observed, by an honorable gentleman over the way, (Mr. George Mason,) that there could not be a fellow-feeling between the national representatives and their constituents, and that oppression must be inseparable from their exercise of the power of imposing taxes. I beg leave to remind you of a similar complaint made on a similar occasion. I allude to the Scotch union. If gentlemen cast their eyes to that period, they will find there an instructive similitude between our circumstances and the situation of those people. The advocates for a union with England declared that it would be a foundation of lasting peace, remove all jealousies between them, increase their strength and riches, and enable them to resist more effectually the efforts of the Pretender. These were irresistible arguments, one would be inclined to believe; arguments *a priori*, which challenge conviction, and which appear perfectly conclusive, since now verified by actual events. Yet the opposers of that union declaimed that the independence of Scotland was gone; that the peerage of Scotland was degraded; that the people of England would alone be gainers; and that the people of Scotland would be the losers. How are the facts? Both kingdoms have derived great benefits from that union, and the predictions of the advocates for that union have been fully verified. The arguments used on that occasion apply with more cogency to our situation.

The people of Rhode Island may say their independence will be lost by a union with the other states; that they will be degraded, their consequence lost, and their liberties endangered. Many such specious and plausible arguments may be urged by their great men, who would no longer retain the importance which their paper money, and other causes, give them in a single state; yet the topographical situation of that state renders union more essential to its existence than to that of any other state. It is urged that the independence of Virginia will be gone by the union. Will not all the happy effects of the union I have just mentioned, and more, redound to Virginia from this union? But our representatives are suspected. On a further inspection of the system before you, this objection must vanish. Ten representatives will have no fellow-feeling for their constituents! Will not the people choose men of integrity, and in similar {124} circumstances with themselves, to represent them? What laws can they make that will not operate on themselves and friends, as well as on the rest of the people? Will the people reelect the same men to repeat oppressive legislation? Will the people commit suicide against themselves, and discard all those maxims and principles of interest and selfpreservation which actuate mankind in all their transactions? Will the ten miles square transform our representatives into brutes and tyrants? I see no grounds to distrust them: but suppose they will be inclined to do us mischief; how can they effect it? If the federal necessities call for the sum of sixty-five thousand pounds, our proportion of that sum is ten thousand pounds. If, instead of this just proportion, they should require a greater sum, a conflict would ensue. What steps could they take to enforce the payment of the unjust and tyrannical demand? They must summon up all the genius of better men; but in case of actual violence, they could not raise the thousandth part of ten thousand pounds. In case of a struggle, sir, the people would be irresistible. If they should be so liable to lapse from virtue, yet would not one man be found, out of a multitude, to guard the interests of the people — not one man to hold up his head to discover the tyrannical projects of a corrupt and depraved majority?

Suppose the House of Representatives all equally infatuated, and determined on so wicked an intention as to infringe the rights of the people; they have not the whole authority in their own hands. There are twenty-six senators, distinguished for their wisdom, not elevated by popular favor, but chosen by a select body of intelligent men: will they also be corrupt? Will their honor and virtue be contaminated and disgraced in one instant? Sixty-five representatives and twenty-six senators are then to be suddenly changed from upright men to monsters: ninety-one persons, selected for superior qualities, are to compose this Pandemonium of iniquity. The supposition of their degenerating to such a degree is unwarrantable, and inconsistent with an admission of their being freely chosen by a people capable of discerning merit; and should a majority ever be so forgetful of their duty as to wish to trample on the immunities of the people, there is no reason to doubt that some of them will be so far inspired with a zeal for liberty as to warn their country of {125} any dangerous combinations against their privileges. The people, to heighten their security, may send those to the general government who have been signalized for their wisdom and virtue. What security have the people of Virginia against the possible abuses of their legislature, that is not here? But their number is objected to, as being too small. I should reluctantly assent to this representative body, did I conceive it consisted of too few.

It is an established maxim, that such a body ought to be numerous enough to be well acquainted with the interest of the people, to prevent corruption, and give a chance to men of merit to be elected. If the number be not sufficient for these purposes, I confess it to be a defect. The number

is sixty-five, of which ten represent this state. Cannot they inform themselves of the situation of America? I appeal to those who hear me, if they could not rely on the intelligence of ten men they could fix upon, sooner than upon any crowd they could have. I do not reflect on my countrymen; but there is a certain listlessness and inattention to the interest of the community, such indecision or faction in numerous bodies, that I would rather depend on the virtue and knowledge of some few men than on ever so many. The mode of their election must induce us to believe that they will be men of experience and information. The state will be laid off and divided into ten districts: from each of these a man is to be elected. He must be really the choice of the people, not the man who can distribute the most gold; for the riches of Croesus would not avail. The qualifications of the electors being the same as those of the representatives for the state legislatures, and the election being under the control of the legislature, the prohibitory provisions against undue means of procuring votes to the state representation extend to the federal representatives: the extension of the sphere of election to so considerable a district will render it impossible for contracted influence, or local intrigues, or personal interest, to procure an election. Inquiries will be made, by the voters, into the characters of the candidates. Greater talents, and a more extensive reputation, will be necessary to procure an election for the federal than for the state representation. The federal representatives must therefore be well known for their integrity, and their knowledge of the country they represent. We shall have ten men thus elected. { 126 } What are they going yonder for? Not to consult for Virginia alone, but for the interest of the United States collectively. Will not such men derive sufficient information from their own knowledge of their respective states, and from the codes of the different states? The want of information ought no longer to be urged as an objection.

With respect to merit, sir, the house must be satisfied that there is ample room for it. A cottager will receive the votes of this country, as well as the descendant of any aristocrat of this country. Is it not notorious that virtue and ability have been preferred generally, here, to virtue and connections? The present number, sixty-five, is to be increased according to the progressive augmentation of the number of the people. From the present number of inhabitants, which is estimated at three hundred and fifty-two thousand whites, and two hundred and thirty-six thousand blacks, we shall be entitled to fifteen representatives. But here another objection will be offered: it will be complained that the taxes will be increased according to the number of representatives; on which I will only observe here, that the same rule operates in all the states, and that it is not more unjust or oppressive in one state than in another. The number of representatives is as great as can be paid by America at this time; and whatever other gentlemen may conclude on that subject, I think, for my part, that it would be fortunate if the number was to continue as it is at present for a long time; or, at least, that it should be limited not to exceed a certain amount; for, if you swell the legislative list to such a degree as the increase of population, at a reasonable calculation, will, at a period not very remote, entitle the people to send, it will introduce corruption and confusion, and prevent that secrecy without which success can never be expected in negotiations or other transactions. It was my purpose to answer the objections against the power of the national government to lay direct taxes, and against the mode of representation.

It is needless to dwell much longer on the subject. Were one to rise from the dead to declare the expediency of that power, I could not be more firmly persuaded than I am now of its propriety. To dissuade us from conceding this power, gentlemen alarm us with apprehensions that the most

intolerable oppressions will be committed by the federal collectors. {127} Let us consider this dispassionately, and whether the idea be well founded, which is suggested, that a conflict will frequently happen between the state and congressional collector for property seized and claimed by both. If there be no necessity, or strong temptation, to increase the present number of officers, no addition will be made to them. Congress will have every inducement, and, from the mode of their appointment, must be inclined, to lighten the burdens of the people. They can derive no advantage from a contrary conduct. In other countries, where the fate of the poor is wretched, officers are created merely for the emolument of certain individuals; but, by the structure of this government, the interest of the people must always be considered; nor will any but necessary officers be created. The number of officers, and their compensations, will be as inconsiderable as the nature of their business will admit of. With respect to collectors of the general taxes, I have not the least doubt that Congress will employ the state officers and sheriffs, because it will be economical, and agreeable to the people; a considerable sum will be saved by it. They will employ such men, Mr. Chairman, unless they determine to throw away the public money in an unjustifiable manner. They will never adopt measures which may produce discontent in the country, when they can effect the same purpose by peaceable and satisfactory means. With regard to any personal abuse or misconduct of a collector, such an officer would be amenable to the laws, like any other citizen. He is only protected by the law where he acts lawfully: in such cases, the evil would not be repeated; it would not continue. Congress can take away their offices from such men as abuse them, and give them to others. It cannot be believed that they will carry their wickedness so far as to trust men of this stamp.

As to the mode of paying the taxes, little need be said: it is immaterial which way they are to be paid; for they are to be paid only once. I had an objection which pressed heavily on my mind: I was solicitous to know the objects of taxation. I wished to make some discrimination with regard to the demands of Congress, and of the states, on the same object. As neither can restrain the other in this case — as the power of both is unlimited — it will be their interest mutually to avoid interferences: it will most certainly be the {128} interest of either to avoid imposing a tax on an article which shall have been previously taxed by the other. This consideration, and the structure of the government, satisfy me. I cannot foretell, in the course of human events, what Virginia and the United States may be exposed to, blindfolded as I am with respect to futurity; but I would not restrain Congress in this case, unless I meant to destroy the government itself. What will be the consequence of withholding this power from Congress? Will it not be reduced to the most dangerous distress, if a war should happen? The case has happened, and may again. In case of domestic war, or an invasion, every shilling they could lay their hands on would be necessary, but not sufficient, to carry it on. What could the general government do without this force to procure money, for the prosecution of the war and its other exigencies? I beg the friends of the Union to consider the necessity of this power: without it we may abandon the government altogether: it is the soul of the government; no substitute will answer in its stead. The history of other confederacies will instruct us that the general government must operate on the individuals of the community, or else be totally insufficient. Not ancient confederacies only, but certain modern ones, will point out to us the horrid situation in which these states must be involved, unless the general government be vested with this power. The history of those confederacies will discover to us the dreadful misfortunes which their people will have suffered by the imbecility of their governments. If some other gentleman will not, I shall discover, at another opportunity, that mournful history.

## Mr. MADISON.

Mr. Chairman, in considering this great subject, I trust we shall find that part which gives the general government the power of laying and collecting taxes indispensable, and essential to the existence of any efficient or well-organized system of government: if we consult reason, and be ruled by its dictates, we shall find its justification there: if we review the experience we have had, or contemplate the history of nations, here we find ample reasons to prove its expediency. There is little reason to depend for necessary supplies on a body which is fully possessed of the power of withholding them. If a government depends on other governments for its revenues — if it must depend on the voluntary contributions of its members — its existence must be precarious. A government which relies on thirteen independent sovereignties for the means of its existence, is a solecism in theory and a mere nullity in practice. Is it consistent with reason that such a government can promote the happiness of any people? It is subversive of every principle of sound policy, to trust the safety of a community with a government totally destitute of the means of protecting itself or its members. Can Congress, after the repeated unequivocal proofs it has experienced of the utter inutility and inefficacy of requisitions, reasonably expect that they would be hereafter effectual or productive? Will not the same local interests, and other causes, militate against a compliance? Whoever hopes the contrary must ever be disappointed. The effect, sir, cannot be changed without a removal of the cause. Let each county in this commonwealth be supposed free and independent; let your revenues depend on requisitions of proportionate quotas from them; let application be made to them repeatedly: — is it to be presumed that they would comply, or that an adequate collection could be made from partial compliances? It is now difficult to collect the taxes from them: how much would that difficulty be enhanced, were you to depend solely on their generosity! I appeal to the reason of every gentleman here, whether he is not persuaded that the present Confederation is as feeble as the government of Virginia would be in that case: to the same reason I appeal, whether it be compatible with prudence to continue a government of such manifest and palpable debility.

If we recur to history, and review the annals of mankind, I undertake to say that no instance can be produced, by the most learned man, of any confederate government that will justify a continuation of the present system, or that will not demonstrate the necessity of this change, and of substituting, for the present pernicious and fatal plan, the system now under consideration, or one equally energetic. The uniform conclusion drawn from a review of ancient and modern confederacies is, that, instead of promoting the public happiness, or securing public tranquillity, they have, in every instance, been productive of anarchy and confusion, ineffectual for the preservation of harmony, and a prey to their own dissensions and foreign invasions.

The Amphictyonic league resembled our Confederation in its nominal powers; it was possessed of rather more power. The component states retained their sovereignty, and enjoyed an equality of suffrage in the federal council. But, though its powers were more considerable in many respects than those of our present system, yet it had the same radical defect. Its powers were exercised over its individual members, in their political capacities. To this capital defect it owed its disorders and final destruction. It was compelled to recur to the sanguinary coercion of war to enforce its decrees. The struggles consequent on a refusal to obey a decree, and an attempt to enforce it, produced the necessity of applying to foreign assistance. By complying with such an application, together with his intrigues, Philip of Macedon acquired sufficient influence to

become a member of the league. This artful and insidious prince soon after became master of their liberties.

The Achæan league, though better constructed than the Amphictyonic, in material respects, was continually agitated with domestic dissensions, and driven to the necessity of calling in foreign aid; this, also, eventuated in the demolition of their confederacy. Had they been more closely united, their people would have been happier; and their united wisdom and strength would not only have rendered unnecessary all foreign interpositions in their affairs, but would have enabled them to repel the attack of an enemy. If we descend to more modern examples, we shall find the same evils resulting from the same sources.

The Germanic system is neither adequate to the external defence nor internal felicity of the people. The doctrine of quotas and requisitions flourishes here. Without energy, without stability, the empire is a nerveless body. The most furious conflicts, and the most implacable animosities, between its members, strikingly distinguish its history. Concert and cooperation are incompatible with such an injudiciously constructed system.

The republic of the Swiss is sometimes instanced for its stability; but even there, dissensions and wars of a bloody nature have been frequently seen between the cantons. A peculiar coincidence of circumstances contributes to the continuance of their political connection. Their feeble association owes its existence to their singular situation. There is a schism, this moment, in their confederacy, which, without { 131 } the necessity of uniting for their external defence, would immediately produce its dissolution.

The confederate government of Holland is a further confirmation of the characteristic imbecility of such governments. From the history of this government we might derive lessons of the most important utility.

[Here Mr. Madison quoted sundry passages from De Witt respecting the people of Holland, and the war which they had so long supported against the Spanish monarch, showing the impolitic and injudicious structure of their confederacy; that it was entirely destitute of energy, because their revenues depended chiefly on requisitions; that, during that long war, the provinces of Guelderland and Overysseel had not paid their respective quotas, but had evaded, altogether, their payments; in consequence of which, two sevenths of the resources of the community had never been brought into action, nor contributed in the least towards the prosecution of the war; that the fear of pressing danger stimulated Holland and the other provinces to pay all the charges of the war; that those two provinces had continued their delinquencies; that the province of Holland alone paid more than all the rest — still those provinces who paid up their proportional shares claimed from the failing states the amount of their arrearages; that the most fatal consequences had nearly resulted from the difficulty of adjusting those claims, and from the extreme aversion of the delinquent states to discharge even their most solemn engagements; that there are existing controversies between the provinces on this account at present; and, to add to the evils consequent upon requisitions, that unanimity, and the revision and sanction of their constituents, were necessary to give validity to the decisions of the States-General.]

Mr. Madison then added, that these radical defects in their confederacy must have dissolved their association long ago, were it not for their peculiar position — circumscribed in a narrow territory; surrounded by the most powerful nations in the world; possessing peculiar advantages from their situation — an extensive navigation and a powerful navy — advantages which it was clearly the interest of those nations to diminish or deprive them of; and that their late unhappy dissensions were manifestly produced by the vices of their system. He then continued: We may

derive much benefit from the experience of that unhappy country. Governments destitute of energy will ever produce anarchy. These facts are worthy the most serious consideration of every gentleman here. Does not the history of these confederacies coincide with the lesson drawn from our own experience? I most earnestly pray that America may have sufficient wisdom to avail herself of the instructive information she may derive from a contemplation of the sources of {132} their misfortunes, and that she may escape a similar fate by avoiding the causes from which their infelicity sprang. If the general government is to depend on the voluntary contribution of the states for its support, dismemberment of the United States may be the consequence. In cases of imminent danger, the states more immediately exposed to it only would exert themselves; those remote from it would be too supine to interest themselves warmly in the fate of those whose distresses they did not immediately perceive. The general government ought, therefore, to be empowered to defend the whole Union.

Must we not suppose that those parts of America which are most exposed will first be the scenes of war? Those nations whose interest is incompatible with an extension of our power, and who are jealous of our resources to become powerful and wealthy, must naturally be inclined to exert every means to prevent our becoming formidable. Will they not be impelled to attack the most exposed parts of the Union? Will not their knowledge of the weakness of our government stimulate them the more readily to such an attack? Those parts to which relief can be afforded with most difficulty are the extremities of the country, and will be the first objects of our enemies. The general government, having no resources beyond what are adequate to its existing necessities, will not be able to afford any effectual succor to those parts which may be invaded.

America, in such a case, would palpably perceive the danger and folly of withholding from the Union a power sufficient to protect the whole territory of the United States. Such an attack is far from improbable; and if it be actually made, it is difficult to conceive a possibility of escaping the catastrophe of a dismemberment. On this subject we may receive an estimable and instructive lesson from an American confederacy — from an example which has happened in our country, and which applies to us with peculiar force, being most analogous to our situation: I mean that species of association or union which subsisted in New England. The colonies of Massachusetts, Bristol, Connecticut, and New Hampshire, were confederated together.

The object of that confederacy was, primarily, to defend themselves against the inroads and depredations of the Indians. They had a common council, consisting of deputies {133} from each party, with an equality of suffrage in their deliberations. The general expenditures and charges were to be adequately defrayed. Its powers were very similar to those of the Confederation. Its history proves clearly that a government founded on such principles must ever disappoint the hopes of those who expect its operation to be conducive to the public happiness.

There are facts on record to prove that, instead of answering the end of its institution, or the expectation of its framers, it was violated with impunity, and only regarded when it coincided perfectly with the views and immediate interests of the respective parties.

The strongest member of the union availed itself of its circumstances to infringe their confederacy. Massachusetts refused to pay its quotas. In the war between England and Holland, it was found particularly necessary to make exertions for the protection of that country.

Massachusetts, being then more powerful and less exposed than the other colonies, refused its contributions to the general defence. In consequence of this, the common council remonstrated against the council of Massachusetts. This altercation terminated in the dissolution of their union. From this brief account of a system perfectly resembling our present one, we may easily divine the inevitable consequences of a longer adherence to the latter.

## Safety in the Union

[Mr. Madison then recapitulated many instances of the prevalent persuasion of the wisest patriots of the states, that the safety of all America depended on union, and that the government of the United States must be possessed of an adequate degree of energy, or that otherwise their connection could not be justly denominated a union. He likewise enumerated the expedients that had been attempted by the people of America to form an intimate association, from the meeting at New York, in the year 1754, downwards; that their sentiments on this subject had been uniform, both in their colonial and independent conditions; and that a variety of causes had hitherto prevented the adoption of an adequate system.]

He then continued thus: If we take experience for our guide, we shall find still more instructive direction on this subject. The weakness of the existing articles of the Union showed itself during the war. It has manifested itself, since the peace, to such a degree as admits of no doubt, to a rational, intelligent, and unbiased mind, of the necessity of alteration; nay, this necessity is obvious to all America; it has forced itself on the minds of the people, { 134 } The committee has been informed that the Confederation was not completed till the year 1781, when a great portion of the war was ended; consequently, no part of the merit of the antecedent operations of the war could justly be attributed to that system. Its debility was perceived almost as soon as it was put in operation. A recapitulation of the proofs which have been experienced of its inefficacy is unnecessary. It is most notorious that feebleness universally marked its character. Shall we be safe, in another war, in the same situation? That instrument required the voluntary contributions of the states, and thereby sacrificed some of our best privileges. The most intolerable and unwarrantable oppressions were committed on the people during the late war. The gross enormity of those oppressions might have produced the most serious consequences, were it not for the spirit of liberty, which preponderated against every consideration.

A scene of injustice, partiality, and oppression, may bring heavenly vengeance on any people. We are now, by our suffering, expiating the crimes of the otherwise glorious revolution. Is it not known to every member of this committee, that the great principles of a free government were reversed through the whole progress of that scene? Was not every state harassed? Was not every individual oppressed, and subjected to repeated distresses? Was this right? Was it a proper form of government that warranted, authorized, or overlooked, the most wanton deprivation of property? Had the government been vested with complete power to procure a regular and adequate supply of revenue, those oppressive measures would have been unnecessary. But, sir, can it be supposed that a repetition of such measures would ever be acquiesced in? Can a government that stands in need of such measures secure the liberty, or promote the happiness or glory, of any country? If we do not change this system, consequences must ensue that gentlemen do not now apprehend. If other testimony were necessary, I might appeal to that which I am sure is very weighty, but which I mention with reluctance. At the conclusion of the war, the man who had the most extensive acquaintance with the nature of the country, who well understood its interests, and who had given the most unequivocal and most brilliant proofs of attachment to its

welfare, when he laid down his arms, wherewith he had so nobly {135} and successfully defended his country, publicly testified his disapprobation of the present system, and suggested that some alteration was necessary to render it adequate to the security of our happiness. I did not introduce that great name to bias any gentleman here. Much as I admire and revere the man, I consider these members as not to be actuated by the influence of any man; but I introduced him as a respectable witness to prove that the Articles of the Confederation were inadequate, and that we must resort to something else. His modesty did not point out what ought to be done, but said that some great change was necessary. But, sir, testimony, if wished for, may be found in abundance, and numerous conclusive reasons urged for this change. Experience was daily producing such irresistible proofs of the defects of this system, this commonwealth was induced to exert her influence to meliorate it: she began that noble work, in which I hope she will persist: she proposed to revise it; her proposition met with that concurrence which that of a respectable party will always meet. I am sure, if demonstration were necessary on the part of this commonwealth, reasons have been abundantly heard, in the course of this debate, manifold and cogent enough, not only to operate conviction, but to disgust an attentive hearer. Recollect the resolution of the year 1784. It was then found that the whole burden of the Union was sustained by a few states. This state was likely to be saddled with a very disproportionate share. That expedient was proposed (to obviate this inconvenience) which has been placed in its true light. It has been painted in sufficient horrors by the honorable gentleman who spoke last.

I agree with the honorable gentleman (Mr. Henry) that national splendor and glory are not our objects; but does he distinguish between what will render us secure and happy at home, and what will render us respectable abroad? If we be free and happy at home, we shall be respectable abroad.

The Confederation is so notoriously feeble, that foreign nations are unwilling to form any treaties with us; they are apprized that our general government cannot perform any of its engagements, but that they may be violated at pleasure by any of the states. Our violation of treaties already entered into proves this truth unequivocally. No nation will, therefore, make any stipulations with Congress, conceding {136} any advantages of importance to us: they will be the more averse to entering into engagements with us, as the imbecility of our government enables them to derive many advantages from our trade, without granting us any return. But were this country united by proper bands, in addition to other great advantages, we could form very beneficial treaties with foreign states. But this can never happen without a change in our system. Were we not laughed at by the minister of that nation, from which we may be able yet to extort some of the most salutary measures for this country? Were we not told that it was necessary to temporize till our government acquired consistency? Will any nation relinquish national advantages to us? You will be greatly disappointed, if you expect any such good effects from this contemptible system. Let us recollect our conduct to that country from which we have received the most friendly aid. How have we dealt with that benevolent ally? Have we complied with our most sacred obligations to that nation? Have we paid the interest punctually from year to year? Is not the interest accumulating, while not a shilling is discharged of the principal? The magnanimity and forbearance of that ally are so great that she has not called upon us for her claims, even in her own distress and necessity. This, sir, is an additional motive to increase our exertions. At this moment of time a very considerable amount is due from us to that country and others.

[Here Mr. Madison mentioned the amount of the debts due to different foreign nations.]

We have been obliged to borrow money even to pay the interest of our debts. This is a ruinous and most disgraceful expedient. Is this a situation on which America can rely for security and happiness? How are we to extricate ourselves? The honorable member told us we might rely on the punctuality and friendship of the states, and that they will discharge their quotas for the future. The contributions of the states have been found inadequate from the beginning, and are diminishing instead of increasing. From the month of June, 1787, till June, 1788, they have only paid 276,641 dollars into the federal treasury for the purposes of supporting the national government, and discharging the interest of the national debts — a sum so very insufficient, that it must greatly alarm the friends of their country. Suggestions {137} and strong assertions dissipate before these facts. I shall no longer fatigue the committee at this time, but will resume the subject as early as I can.

## **Mr. HENRY.**

I have thought, and still think, that a full investigation of the actual situation of America ought to precede any decision of this great and important question. That government is no more than a choice among evils, is acknowledged by the most intelligent among mankind, and has been a standing maxim for ages. If it be demonstrated that the adoption of the new plan is a little or a trifling evil, then, sir, I acknowledge that adoption ought to follow; but, sir, if this be a truth, that its adoption may entail misery on the free people of this country, I then insist that rejection ought to follow. Gentlemen strongly urge, its adoption will be a mighty benefit to us; but, sir, I am made of so incredulous materials, that assertions and declarations do not satisfy me. I must be convinced, sir. I shall retain my infidelity on that subject till I see our liberties secured in a manner perfectly satisfactory to my understanding.

There are certain maxims by which every wise and enlightened people will regulate their conduct. There are certain political maxims which no free people ought ever to abandon — maxims of which the observance is essential to the security of happiness. It is impiously irritating the avenging hand of Heaven, when a people, who are in the full enjoyment of freedom, launch out into the wide ocean of human affairs, and desert those maxims which alone can preserve liberty. Such maxims, humble as they are, are those only which can render a nation safe or formidable. Poor little humble republican maxims have attracted the admiration, and engaged the attention, of the virtuous and wise in all nations, and have stood the shock of ages. We do not now admit the validity of maxims which we once delighted in. We have since adopted maxims of a different, but more refined nature — new maxims, which tend to the prostration of republicanism.

We have one, sir, *that all men are by nature free and independent, and have certain inherent rights, of which, when they enter into society, they cannot by any compact deprive or divest their posterity.* We have a set of maxims of the same spirit, which must be beloved by every friend to liberty, to virtue, to mankind: our bill of rights contains those admirable maxims.

{138} Now, sir, I say, let us consider whether the picture given of American affairs ought to drive us from those beloved maxims.

The honorable gentleman, Governor Randolph, has said that it is too late in the day for us to reject this new plan. That system which was once execrated by the honorable member must now be adopted, let its defects be ever so glaring. That honorable member will not accuse me of want of candor, when I cast in my mind what he has given the public,<sup>[2]</sup> and compare it to what has happened since. It seems to me very strange and unaccountable that that which was the object of his execration should now receive his encomiums. Something extraordinary must have operated so great a change in his opinion. It is too late in the day! Gentlemen must excuse me if they should declare, again and again, that it was too late, and I should think differently. I never can believe, sir, that it is too late to save all that is precious: if it be proper, and, independently of every external consideration, wisely constructed, let us receive it: but, sir, shall its adoption by eight states induce us to receive it, if it be replete with the most dangerous defects? They urge that subsequent amendments are safer than previous amendments, and that they will answer the same ends.

At present we have our liberties and privileges in our own hands. Let us not relinquish them. Let us not adopt this system till we see them secure. There is some small possibility that, should we follow the conduct of Massachusetts, amendments might be obtained. There is a small possibility of amending any government; but, sir, shall we abandon our most inestimable rights, and rest their security on a mere possibility? The gentleman fears the loss of the Union. If eight states have ratified it unamended, and we should rashly imitate their precipitate example, do we not thereby disunite from several other states? Shall those who have risked their lives for the sake of the Union be at once thrown out of it? If it be amended, every state will accede to it; but by an imprudent adoption in its defective and dangerous state, a schism must inevitably be the consequence. { 139 } I can never, therefore, consent to hazard our most unalienable rights on an absolute uncertainty.

You are told there is no peace, although you fondly flatter yourselves that all is peace; no peace; a general cry and alarm in the country; commerce, riches, and wealth, vanished; citizens going to seek comforts in other parts of the world; laws insulted; many instances of tyrannical legislation. These things, sir, are new to me. He has made the discovery. As to the administration of justice, I believe that failures in commerce, &c., cannot be attributed to it. My age enables me to recollect its progress under the old government. I can justify it by saying that it continues in the same manner in this state as it did under the former government. As to other parts of the continent, I refer that to other gentlemen. As to the ability of those who administer it, I believe they would not suffer by a comparison with those who administered it under the royal authority. Where is the cause of complaint if the wealthy go away? Is this, added to the other circumstances, of such enormity, and does it bring such danger over this commonwealth, as to warrant so important and so awful a change, in so precipitate a manner? As to insults offered to the laws, I know of none. In this respect, I believe this commonwealth would not suffer by a comparison with the former government. The laws are as well executed, and as patiently acquiesced in, as they were under the royal administration. Compare the situation of the country — compare that of our citizens to what it was then — and decide whether persons and property are not as safe and secure as they were at that time. Is there a man in this commonwealth whose person can be insulted with impunity? Cannot redress be had here for personal insults or injuries, as well as in any part of the world — as well as in those countries where aristocrats and monarchs triumph and reign? Is not the protection of property in full operation here? The contrary cannot with truth be charged on

this commonwealth. Those severe charges, which are exhibited against it, appear to be totally groundless. On a fair investigation, we shall be found to be surrounded by no real dangers.

We have the animating fortitude and persevering alacrity of republican men to carry us through misfortunes and calamities. It is the fortune of a republic to be able to {140} withstand the stormy ocean of human vicissitudes. I know of no danger awaiting us. Public and private security are to be found here in the highest degree. Sir, it is the fortune of a free people not to be intimidated by imaginary dangers. Fear is the passion of slaves. Our political and natural hemisphere are now equally tranquil. Let us recollect the awful magnitude of the subject of our deliberation; let us consider the latent consequences of an erroneous decision, and let not our minds be led away by unfair misrepresentations and uncandid suggestions. There have been many instances of uncommon lenity and temperance used in the exercise of power in this commonwealth. I could call your recollection to many that happened during the war and since; but every gentleman here must be apprized of them.

The honorable member has given you an elaborate account of what he judges tyrannical legislation, and an *ex post facto law*, (in the case of Josiah Philips.) He has misrepresented the facts. That man was not executed by a tyrannical stroke of power. Nor was he a Socrates. He was a fugitive murderer and an outlaw — a man who commanded an infamous banditti, and at a time when the war was at the most perilous stage. He committed the most cruel and shocking barbarities. He was an enemy to the human name. Those who declare war against the human race may be struck out of existence as soon as they are apprehended. He was not executed according to those beautiful legal ceremonies which are pointed out by the laws in criminal cases. The enormity of his crimes did not entitle him to it. I am truly a friend to legal forms and methods; but, sir, the occasion warranted the measure. A pirate, an outlaw, or a common enemy to all mankind, may be put to death at any time. It is justified by the laws of nature and nations.

The honorable member tells us, then, that there are burnings and discontents in the hearts of our citizens in general, and that they are dissatisfied with their government. I have no doubt the honorable member believes this to be the case, because he says so. But I have the comfortable assurance that it is certain fact that it is not so. The middle and lower ranks of people have not those illuminated ideas which the well-born are so happily possessed of; they cannot so readily perceive latent objects. The microscopic eyes of modern statesmen can see abundance of defects in old systems; {141} and their illuminated imaginations discover the necessity of a change. They are captivated by the parade of the number ten — the charms of the ten miles square. Sir, I fear this change will ultimately lead to our ruin. My fears are not the force of imagination; they are but too well founded. I tremble for my country; but, sir, I trust, I rely, and I am confident, that this political speculation has not taken so strong a hold of men's minds as some would make us believe.

The dangers which may arise from our geographical situation will be more properly considered a while hence. At present, what may be surmised on the subject, with respect to the adjacent states, is merely visionary. Strength, sir, is a relative term. When I reflect on the natural force of those nations that might be induced to attack us, and consider the difficulty of the attempt, and uncertainty of the success, and compare thereto the relative strength of our country, I say that we are strong. We have no cause to fear from that quarter; we have nothing to dread from our

neighboring states. The superiority of our cause would give us an advantage over them, were they so unfriendly or rash as to attack us. As to that part of the community, which the honorable gentleman spoke of as being in danger of being separated from us, — what excitement or inducement could its inhabitants have to wish such an event? It is a matter of doubt, whether they would derive any advantage to themselves, or be any loss to us, by such a separation. Time has been, and may yet come, when they will find it their advantage and true interest to be united with us. There is no danger of a dismemberment of our country, unless a Constitution be adopted which will enable the government to plant enemies on our backs. By the Confederation, the rights of territory are secured. No treaty can be made without the consent of nine states. While the consent of nine states is necessary to the cession of territory, you are safe. If it be put in the power of a less number, you will most infallibly lose the Mississippi. As long as we can preserve our unalienable rights, we are in safety. This new Constitution will involve in its operation the loss of the navigation of that valuable river.

The honorable gentleman cannot be ignorant of the *Spanish transactions*. A treaty had been nearly entered into with Spain, to relinquish that navigation. That relinquishment {142} would absolutely have taken place, had the consent of seven states been sufficient. The honorable gentleman told us then, that, eight states having adopted the system, we cannot suppose they will recede on our account. I know not what they may do; but this I know — that a people of infinitely less importance than those of Virginia stood the terror of war. Vermont, sir, withstood the terror of thirteen states. Maryland did not accede to the Confederation till the year 1781. These two states, feeble as they are comparatively to us, were not afraid of the whole Union. Did either of these states perish? No, sir, they were admitted freely into the Union. Will not Virginia, then, be admitted? I flatter myself that those states which have ratified the new plan of government will open their arms and cheerfully receive us, although we should propose certain amendments as the conditions on which we should ratify it. During the late war, all the states were in pursuit of the same object. To obtain that object, they made the most strenuous exertions. They did not suffer trivial considerations to impede its acquisition. Give me leave to say that, if the smallest states in the Union were admitted into it, after having unreasonably procrastinated their accession, the greatest and most mighty state in the Union will be easily admitted, when her reluctance to an immediate accession to this system is founded on the most reasonable grounds. When I call this the most mighty state in the Union, do I not speak the truth? Does not Virginia surpass every state in the Union, in number of inhabitants, extent of territory, felicity of position, and affluence and wealth? Some infatuation hangs over men's minds, that they will inconsiderately precipitate into measures the most important, and give not a moment's deliberation to others, nor pay any respect to their opinions. Is this federalism? Are these the beloved effects of the federal spirit, that its votaries will never accede to the just propositions of others? Sir, were there nothing objectionable in it but that, I would vote against it. I desire to have nothing to do with such men as will obstinately refuse to change their opinions. Are our opinions not to be regarded? I hope that you will recollect that you are going to join with men who will pay no respect even to this state.

Switzerland consists of thirteen cantons expressly confederated {143} for national defence. They have stood the shock of four hundred years; that country has enjoyed internal tranquillity most of that long period. Their dissensions have been, comparatively to those of other countries, very few. What has passed in the neighboring countries? War, dissensions, and intrigues; — Germany

involved in the most deplorable civil war thirty years successively, continually convulsed with intestine divisions, and harassed by foreign wars! France, with her mighty monarchy, perpetually at war. Compare the peasants of Switzerland with those of any other mighty nation: you will find them far more happy: for one civil war among them, there have been five or six among other nations: their attachment to their country and freedom, their resolute intrepidity in their defence, the consequent security and happiness which they have enjoyed, and the respect and awe which these things produced in the bordering nations, have signalized those republicans. Their valor, sir, has been active; every thing that sets in motion the springs of the human heart engaged them to that protection of their inestimable privileges. They have not only secured their own liberty, but have been the arbiters of the fate of other people. Here, sir, contemplate the triumph of the republican governments over the pride of monarchy. I acknowledge, sir, that the necessity of national defence has prevailed in invigorating their councils and arms, and has been, in a considerable degree, the means of keeping these honest people together. But, sir, they have had wisdom enough to keep together, and render themselves formidable. Their heroism is proverbial. They would heroically fight for their government and their laws. One of the illumined sons of these times would not fight for those objects. Those virtuous and simple people have not a mighty and splendid President, nor enormously expensive navies and armies, to support. No, sir; those brave republicans have acquired their reputation no less by their undaunted intrepidity than by the wisdom of their frugal and economical policy. Let us follow their example, and be equally happy. The honorable member advises us to adopt a measure which will destroy our bill of rights; for, after having his picture of nations, and his reasons for abandoning all the powers retained to the states by the Confederation, { 144 } I am more firmly persuaded of the impropriety of adopting this new plan in its present shape.

I had doubts of the power of those who went to the Convention, but now we are possessed of it, let us examine it. When we trusted the great object of revising the Confederation to the greatest, and best, and most enlightened, of our citizens, we thought their deliberations would have been solely confined to that revision. Instead of this, a new system, totally different in its nature, and vesting the most extensive powers in Congress, is presented. Will the ten men you are to send to Congress be more worthy than those seven were? If power grew so rapidly in their hands, what may it not do in the hands of others? If those who go from this state will find power accompanied with temptation, our situation must be truly critical. When about forming a government, if we mistake the principles, or commit any other error, the very circumstance promises that power will be abused. The greatest caution and circumspection are therefore necessary; nor does this proposed system, on its investigation here, deserve the least charity.

The honorable gentleman says that the national government is without energy. I perfectly agree with him; and when he cries out, *Union*, I agree with him; but I tell him not to mistake the end for the means. The end is union; the most capital means, I suppose, are an army and navy. On a supposition, I will acknowledge this; still the bare act of agreeing to that paper, though it may have an amazing influence, will not pay our millions. There must be things to pay debts. What these things are, or how they are to be produced, must be determined by our political wisdom and economy.

The honorable gentleman alleges that previous amendments will prevent the junction of our riches from producing great profits and emoluments, which would enable us to pay our public

debts, by excluding us from the Union. I believe, sir, that a previous ratification of a system notoriously and confessedly defective will endanger our riches, our liberty, our all. Its defects are acknowledged; they cannot be denied. The reason offered by the honorable gentleman for adopting this defective system, is its adoption by the eight states. I say, sir, that, if we present nothing but what is {145} reasonable in the shape of amendments, they will receive us. Union is as necessary for them as for us. Will they, then, be so unreasonable as not to join us? If such be their disposition, I am happy to know it in time.

The honorable member then observed, that nations will expend millions for commercial advantages; that is, that they will deprive you of every advantage if they can. Apply this another way. Their cheaper way, instead of laying out millions in making war upon you, will be to corrupt your senators. I know that, if they be not above all price, they may make a sacrifice of our commercial interests. They may advise your President to make a treaty that will not only sacrifice all your commercial interests, but throw prostrate your bill of rights. Does he fear that their ships will outnumber ours on the ocean, or that nations whose interest comes in contact with ours, in the progress of their guilt, will perpetrate the vilest expedients to exclude us from a participation in commercial advantages? Does he advise us, in order to avoid this evil, to adopt a Constitution, which will enable such nations to obtain their ends by the more easy mode of contaminating the principles of our senators? Sir, if our senators will not be corrupted, it will be because they will be good men, and not because the Constitution provides against corruption; for there is no real check secured in it, and the most abandoned and profligate acts may with impunity be committed by them.

With respect to Maryland, what danger from thence? I know none. I have not heard of any hostility premeditated or committed. Nine tenths of the people have not heard of it. Those who are so happy as to be illumined have not informed their fellow-citizens of it. I am so valiant as to say that no danger can come, from that source, sufficient to make me abandon my republican principles. The honorable gentleman ought to have recollected that there were no tyrants in America, as there are in Europe. The citizens of republican borders are only terrible to tyrants. Instead of being dangerous to one another, they mutually support one another's liberties. We might be confederated with the adopting states without ratifying this system. No form of government renders a people more formidable. A confederacy of states joined together becomes strong as the United Netherlands. The government of Holland, execrated as it is, proves that {146} the present Confederation is adequate to every purpose of human association. There are seven provinces confederated together for a long time, containing numerous opulent cities, and many of the finest ports in the world. The recollection of the situation of that country would make me execrate monarchy. The singular felicity and success of that people are unparalleled: freedom has done miracles there in reclaiming land from the ocean. It is the richest spot on the face of the globe. Have they no men or money? Have they no fleets or armies? Have they no arts or sciences among them? How did they repel the attacks of the greatest nations in the world? How have they acquired their amazing influence and power? Did they consolidate government, to effect these purposes, as we do? No, sir, they have trampled over every obstacle and difficulty, and have arrived at the summit of political felicity, and of uncommon opulence, by means of a confederacy — that very government which gentlemen affect to despise. They have, sir, avoided a consolidation as the greatest of evils. They have lately, it is true, made one advance to that fatal progression. This misfortune burst on them by iniquity and artifice. That stadtholder, that

executive magistrate, contrived it, in conjunction with other European nations. It was not the choice of the people. Was it owing to his energy that this happened? If two provinces have paid nothing, what have not the rest done? And have not these two provinces made other exertions? Ought they, to avoid this inconvenience, to have consolidated their different states, and have a ten miles square? Compare that little spot, nurtured by liberty, with the fairest country in the world. Does not Holland possess a powerful navy and army, and a full treasury? They did not acquire these by debasing the principles and trampling on the rights of their citizens. Sir, they acquired these by their industry, economy, and by the freedom of their government. Their commerce is the most extensive in Europe; their credit is unequalled; their felicity will be an eternal monument of the blessings of liberty: every nation in Europe is taught by them what they are, and what they ought to be. The contrast between those nations and this happy people is the most splendid spectacle for republicans — the greatest cause of exultation and triumph to the sons of freedom. While other nations, precipitated by the rage of {147} ambition or folly, have, in the pursuit of the most magnificent projects, riveted the fetters of bondage on themselves and descendants, these republicans secured their political happiness and freedom. Where is there a nation to be compared to them? Where is there now, or where was there ever, a nation of so small a territory, and so few in number, so powerful, so wealthy, so happy? What is the cause of this superiority? Liberty, sir, the freedom of their government. Though they are now, unhappily, in some degree consolidated, yet they have my acclamations, when put in contrast with those millions of their fellow-men who lived and died like slaves. The dangers of a consolidation ought to be guarded against in this country. I shall exert my poor talents to ward them off. Dangers are to be apprehended in whatever manner we proceed; but those of a consolidation are the most destructive. Let us leave no expedient untried to secure happiness. But, whatever be our decision, I am consoled if American liberty will remain entire only for half a century; and I trust that mankind in general, and our posterity in particular, will be compensated for every anxiety we now feel.

Another gentleman tells us that no inconvenience will result from the exercise of the power of taxation by the general government; that two shillings out of ten may be saved by the impost; and that four shillings may be paid to the federal collector, and four to the state collector. A change of government will not pay money. If, from the probable amount of the imposts, you take the enormous and extravagant expenses which will certainly attend the support of this great consolidated government, I believe you will find no reduction of the public burdens by this new system. The splendid maintenance of the President, and of the members of both houses, and the salaries and fees of the swarm of officers and dependants of the government, will cost this continent immense sums. Double sets of collectors will double the expenses; to those are to be added oppressive excisemen and custom-house officers. Sir, the people have an hereditary hatred to custom-house officers. The experience of the mother country leads me to detest them. They have introduced their baneful influence into the administration, and destroyed one of the most beautiful systems that ever the world saw. Our forefathers enjoyed liberty there while that system was in its purity; but it is now contaminated by influence of every kind.

{148} The style of the government (*We, the people*) was introduced perhaps to recommend it to the people at large; to those citizens who are to be levelled and degraded to the lowest degree; who are likened to a *herd*;<sup>[3]</sup> and who, by the operation of this blessed system, are to be transformed from respectable, independent citizens, to abject, dependent subjects or slaves. The

honorable gentleman has anticipated what we are to be reduced to, by degradingly assimilating our citizens to a herd.

[Here Governor Randolph arose, and declared that he did not use that word to excite any odium, but merely to convey an idea of a multitude.]

Mr. Henry replied, that it made a deep impression on his mind, and that he verily believed that system would operate as he had said. He then continued: I will exchange that *abominable* word for *requisitions*. Requisitions, which gentlemen affect to despise, have nothing degrading in them. On this depends our political prosperity. I never will give up that *darling* word *requisitions*: my country may give it up; a majority may wrest it from me, but I will never give it up till my grave. Requisitions are attended with one singular advantage. They are attended by deliberation. They secure to the states the benefit of correcting oppressive errors. If our Assembly thought requisitions erroneous, if they thought the demand was too great, they might at least supplicate Congress to reconsider — that it was a little too much. The power of direct taxation was called by the honorable gentleman the *soul* of the government: another gentleman called it the *lungs* of the government. We all agree that it is the most important part of the body politic. If the power of raising money be necessary for the general government, it is no less so for the states. If money be the vitals of Congress, is it not precious for those individuals from whom it is to be taken? Must I give my soul, my lungs, to Congress? Congress must have our souls; the state must have our souls. This is dishonorable and disgraceful. These two coordinate, interfering, unlimited powers of harassing the community are unexampled: it is unprecedented in history. They are the visionary projects of modern politicians. Tell me not of imaginary means, but of reality; this political { 149 } solecism will never tend to the benefit of the community. It will be as oppressive in practice as it is absurd in theory. If you part from this, which the honorable gentleman tells you is the soul of Congress, you will be inevitably ruined. I tell you, they shall not have the soul of Virginia. They tell us that one collector may collect the federal and state taxes. The general government being paramount to the state legislatures, if the sheriff is to collect for both, — his right hand for Congress, his left for the state, — his right hand being paramount over the left, his collections will go to Congress. We shall have the rest. Deficiencies in collections will always operate against the states. Congress, being the paramount, supreme power, must not be disappointed. Thus Congress will have an unlimited, unbounded command over the soul of this commonwealth. After satisfying their uncontrolled demands, what can be left for the states? Not a sufficiency even to defray the expense of their internal administration. They must therefore glide imperceptibly and gradually out of existence. This, sir, must naturally terminate in a consolidation. If this will do for other people, it never will do for me.

If we are to have one representative for every thirty thousand souls, it must be by implication. The Constitution does not positively secure it. Even say it is a natural implication, — why not give us a right to that proportion in express terms, in language that could not admit of evasions or subterfuges? If they can use implication for us, they can also use implication against us. We are giving power; they are getting power; judge, then, on which side the implication will be used! When we once put it in their option to assume constructive power, danger will follow. Trial by jury, and liberty of the press, are also on this foundation of implication. If they encroach on these rights, and you give your implication for a plea, you are cast; for they will be justified by the last part of it, which gives them full power "to make all laws which shall be necessary and proper to carry their power into execution." Implication is dangerous, because it is unbounded: if it be

admitted at all, and no limits be prescribed, it admits of the utmost extension. They say that every thing that is not given is retained. The reverse of the proposition is true by implication. They do not carry their implication so far when they speak of the {150} general welfare — no implication when the sweeping clause comes. Implication is only necessary when the existence of privileges is in dispute. The existence of powers is sufficiently established. If we trust our dearest rights to implication, we shall be in a very unhappy situation.

Implication, in England, has been a source of dissension. There has been a war of implication between the king and people. For a hundred years did the mother country struggle under the uncertainty of implication. The people insisted that their rights were implied; the monarch denied the doctrine. The Bill of Rights, in some degree, terminated the dispute. By a bold implication, they said they had a right to bind us in all cases whatsoever. This constructive power we opposed, and successfully. Thirteen or fourteen years ago, the most important thing that could be thought of was to exclude the possibility of construction and implication. These, sir, were then deemed perilous. The first thing that was thought of was a bill of rights. We were not satisfied with your constructive, argumentative rights.

Mr. Henry then declared a bill of rights indispensably necessary; that a general positive provision should be inserted in the new system, securing to the states and the people every right which was not conceded to the general government; and that every implication should be done away. It being now late, he concluded by observing, that he would resume the subject another time.

---

1. Alluding to a motion made in the House of Delegates, in the year 1784, to enable Congress to compel the delinquent states to pay their respective quotas, by means of an armed force.

2. Alluding to his excellency's letter on that subject to the speaker of the House of Delegates, vol. i. p. 482.

3. Governor Randolph had, cursorily, mentioned the word "herd" in his second speech.

---

**MONDAY, *June 9, 1788.***

[The 1st and 2d sections still under consideration.]

**Mr. HENRY.**

Mr. Chairman, I find myself again constrained to trespass on the patience of this committee. I wish there was a prospect of union in our sentiments: so much time would not then be taken up. But when I review the magnitude of the subject under consideration, and of dangers which appear to me in this new plan of government, and compare thereto my poor abilities to secure our rights, it will take much more time, in my poor, unconnected way, to traverse the objectionable parts of it; there are friends here who will be abler than myself to make good those objections

which to us appear well founded. If we recollect, on last Saturday, I made some observations on some of those dangers which these gentlemen would fain {151} persuade us hang over the citizens of this commonwealth, to induce us to change the government, and adopt the new plan. Unless there be great and awful dangers, the change is dangerous, and the experiment ought not to be made. In estimating the magnitude of these dangers, we are obliged to take a most serious view of them — to see them, to handle them, and to be familiar with them. It is not sufficient to feign mere imaginary dangers; there must be a dreadful reality. The great question between us is, Does that reality exist? These dangers are partially attributed to bad laws, execrated by the community at large. It is said the people wish to change the government. I should be happy to meet them on that ground. Should the people wish to change it, we should be innocent of the dangers. It is a fact that the people do not wish to change their government. How am I to prove it? It will rest on my bare assertion, unless supported by an internal conviction in men's breasts. My poor say-so is a mere nonentity. But, sir, I am persuaded that four fifths of the people of Virginia must have amendments to the new plan, to reconcile them to a change of their government. It is a slippery foundation for the people to rest their political salvation on my or their assertions. No government can flourish unless it be founded on the affection of the people. Unless gentlemen can be sure that this new system is founded on that ground, they ought to stop their career.

I will not repeat what the gentlemen say — I will mention one thing. There is a dispute between us and the Spaniards about the right of navigating the Mississippi. This dispute has sprung from the federal government. I wish a great deal to be said on this subject. I wish to know the origin and progress of the business, as it would probably unfold great dangers. In my opinion, the preservation of that river calls for our most serious consideration. It has been agitated in Congress. Seven states have voted, so that it is known to the Spaniards that, under our existing system, the Mississippi shall be taken from them. Seven states wished to relinquish this river to them. The six Southern States opposed it. Seven states not being sufficient to convey it away, it remains now ours. If I am wrong, there is a number on this floor who can contradict the facts; I will readily retract. This new government, I conceive, will enable those {152} states who have already discovered their inclination that way, to give away this river. Will the honorable gentleman advise us to relinquish its inestimable navigation, and place formidable enemies on our backs? This weak, this poor Confederation cannot secure us. We are resolved to take shelter under the shield of federal authority in America. The southern parts of America have been protected by that weakness so much execrated. I hope this will be explained. I was not in Congress when these transactions took place. I may not have stated every fact. I may have misrepresented matters. I hope to be fully acquainted with every thing relative to the object. Let us hear how the great and important right of navigating that river has been attended to, and whether I am mistaken in my opinion that federal measures will lose it to us forever. If a bare majority of Congress can make laws, the situation of our western citizens is dreadful.

We are threatened with danger for the non-payment of our debt due to France. We have information come from an illustrious citizen of Virginia, who is now in Paris, which disproves the suggestions of such danger. This citizen has not been in the airy regions of theoretic speculation: our ambassador is this worthy citizen. The ambassador of the United States of America is not so despised as the honorable gentleman would make us believe. A servant of a republic is as much respected as that of a monarch. The honorable gentleman tells us that hostile

fleets are to be sent to make reprisals upon us: our ambassador tells you that the king of France has taken into consideration to enter into commercial regulations, on reciprocal terms, with us, which will be of peculiar advantage to us. Does this look like hostility? I might go farther; I might say, not from public authority, but good information, that his opinion is, that you reject this government. His character and abilities are in the highest estimation; he is well acquainted, in every respect, with this country; equally so with the policy of the European nations. This illustrious citizen advises you to reject this government till it be amended. His sentiments coincide entirely with ours. His attachment to, and services done for, this country are well known. At a great distance from us, he remembers and studies our happiness. Living in splendor and dissipation, he thinks yet of bills of rights — thinks of those little, despised things called *maxims*. Let us follow the sage advice {153} of this common friend of our happiness. It is little usual for nations to send armies to collect debts. The house of Bourbon, that great friend of America, will never attack her for her unwilling delay of payment. Give me leave to say, that Europe is too much engaged about objects of greater importance, to attend to us. On that great theatre of the world, the little American matters vanish. Do you believe that the mighty monarch of France, beholding the greatest scenes that ever engaged the attention of a prince of that country, will divert himself from those important objects, and now call for a settlement of accounts with America? This proceeding is not warranted by good sense. The friendly disposition to us, and the actual situation of France, render the idea of danger from that quarter absurd. Would this countryman of ours be fond of advising us to a measure which he knew to be dangerous? And can it be reasonably supposed that he can be ignorant of any premeditated hostility against this country? The honorable gentleman may suspect the account; but I will do our friend the justice to say, that he would warn us of any danger from France.

Do you suppose the Spanish monarch will risk a contest with the United States, when his feeble colonies are exposed to them? Every advance the people make to the westward, makes him tremble for Mexico and Peru. Despised as we are among ourselves, under our present government, we are terrible to that monarchy. If this be not a fact, it is generally said so.

We are, in the next place, frightened by dangers from Holland. We must change our government to escape the wrath of that republic. Holland groans under a government like this new one. A stadtholder, sir, a Dutch president, has brought on that country miseries which will not permit them to collect debts with fleets or armies. The wife of a Dutch stadtholder brought one hundred thousand men against that republic, and prostrated all opposition. This President will bring miseries on us like those of Holland. Such is the condition of European affairs, that it would be *unsafe for them to send fleets* or armies to collect debts. But here, sir, they make a transition to objects of another kind. We are presented with dangers of a very uncommon nature. I am not acquainted with the arts of painting. Some gentlemen have a peculiar talent for them. They are practised with {154} great ingenuity on this occasion. As a counterpart to what we have already been intimidated with, we are told that some lands have been sold, which cannot be found; and that this will bring war on this country. Here the picture will not stand examination. Can it be supposed, if a few land speculators and jobbers have violated the principles of probity, that it will involve this country in war? Is there no redress to be otherwise obtained, even admitting the delinquents and sufferers to be numerous? When gentlemen are thus driven to produce imaginary dangers, to induce this Convention to assent to this change, I am sure it will not be uncandid to say that the change itself is really dangerous. Then the Maryland compact is broken, and will

produce perilous consequences. I see nothing very terrible in this. The adoption of the new system will not remove the evil. Will they forfeit good neighborhood with us, because the compact is broken? Then the disputes concerning the Carolina line are to involve us in dangers. A strip of land running from the westward of the Alleghany to the Mississippi, is the subject to this pretended dispute. I do not know the length or breadth of this disputed spot. Have they not regularly confirmed our right to it, and relinquished all claims to it? I can venture to pledge that the people of Carolina will never disturb us. The strength of this despised country has settled an immense tract of country to the westward. Give me leave to remark, that the honorable gentleman's observations on our frontiers, north and south, east and west, are all inaccurate.

Will Maryland fight against this country for seeking amendments? Were there not sixty members in that state who went in quest of amendments? Sixty, against eight or ten, were in favor of pursuing amendments. Shall they fight us for doing what they themselves have done? They have sought amendments, but differently from the manner in which I wish amendments to be got. The honorable gentleman may plume himself on this difference. Will they fight us for this dissimilarity? Will they fight us for seeking the object they seek themselves? When they do, it will be time for me to hold my peace. Then, sir, comes Pennsylvania, in terrible array. Pennsylvania is to go in conflict with Virginia. Pennsylvania has been a good neighbor heretofore. She is federal — something terrible — Virginia cannot look her in the face. If we sufficiently attend to the actual situation of things, we {155} shall conclude that Pennsylvania will do what we do. A number of that country are strongly opposed to it. Many of them have lately been convinced of its fatal tendency. They are disgorged of their federalism. I beseech you to bring this matter home to yourselves. Was there a possibility for the people of that state to know the reasons of adopting that system, or understand its principles, in so very short a period after its formation? This is the middle of June. Those transactions happened last August. The matter was circulated by every effort of industry, and the most precipitate measures taken to hurry the people into adoption. Yet now, after having had several months to investigate it, a very large part of this community, a great majority of this community, do not understand it. I have heard gentlemen of respectable abilities declare they did not understand it. If, after great pains, men of high learning, who have received the aids of a regular education, do not understand it, — if the people of Pennsylvania understood it in so short a time, it must have been from intuitive understandings, and uncommon acuteness of perception. Place yourselves in their situation; would you fight your neighbors for considering this great and awful matter? If you wish for real amendments, such as the security of the trial by jury, it will reach the hearts of the people of that state. Whatever may be the disposition of the aristocratical politicians of that country, I know there are friends of human nature in that state. If so, they will never make war on those who make professions of what they are attached to themselves.

As to the danger arising from borderers, it is mutual and reciprocal. If it be dangerous for Virginia, it is equally so for them. It will be their true interest to be united with us. The danger of our being their enemies will be a prevailing argument in our favor. It will be as powerful to admit us into the Union, as a vote of adoption, without previous amendments, could possibly be.

Then the savage Indians are to destroy us. We cannot look them in the face. The danger is here divided; they are as terrible to the other states as to us. But, sir, it is well known that we have nothing to fear from them. Our back settlers are considerably stronger than they. Their

superiority increases daily. Suppose the states to be confederated all around us; what we want in numbers, we shall {156} make up otherwise. Our compact situation and natural strength will secure us. But, to avoid all dangers, we must take shelter under the federal government. Nothing gives a decided importance but this federal government. You will *sip sorrow*, according to the vulgar phrase, if you want any other security than the laws of Virginia.

A number of characters, of the greatest eminence in this country, object to this government for its consolidating tendency. This is not imaginary. It is a formidable reality. If consolidation proves to be as mischievous to this country as it has been to other countries, what will the poor inhabitants of this country do? This government will operate like an ambuscade. It will destroy the state governments, and swallow the liberties of the people, without giving previous notice. If gentlemen are willing to run the hazard, let them run it; but I shall exculpate myself by my opposition and monitory warnings within these walls. But then comes paper money. We are at peace on this subject. Though this is a thing which that mighty federal Convention had no business with, yet I acknowledge that paper money would be the bane of this country. I detest it. Nothing can justify a people in resorting to it but extreme necessity. It is at rest, however, in this commonwealth. It is no longer solicited or advocated.

Sir, I ask you, and every other gentleman who hears me, if he can retain his indignation at a system which takes from the state legislatures the care and preservation of the interest of the people. One hundred and eighty representatives, the choice of the people of Virginia, cannot be trusted with their interests. They are a mobbish, suspected herd. This country has not virtue enough to manage its own internal interests. These must be referred to the chosen ten. If we cannot be trusted with the private contracts of the citizens, we must be depraved indeed. If he can prove that, by one uniform system of abandoned principles, the legislature has betrayed the rights of the people, then let us seek another shelter. So degrading an indignity, so flagrant an outrage on the states, so vile a suspicion, is humiliating to my mind, and many others.

Will the adoption of this new plan pay our debts? This, sir, is a plain question. It is inferred that our grievances are to be redressed, and the evils of the existing system to {157} be removed, by the new Constitution. Let me inform the honorable gentleman that no nation ever paid its debts by a change of government, without the aid of industry. You never will pay your debts but by a radical change of domestic economy. At present you buy too much, and make too little, to pay. Will this new system promote manufactures, industry, and frugality? If, instead of this, your hopes and designs will be disappointed, you relinquish a great deal, and hazard indefinitely more, for nothing. Will it enhance the value of your lands? Will it lessen your burdens? Will your looms and wheels go to work by the act of adoption? If it will, in its consequence, produce these things, it will consequently produce a reform, and enable you to pay your debts. Gentlemen must prove it. I am a skeptic, an infidel, on this point. I cannot conceive that it will have these happy consequences. I cannot confide in assertions and allegations. The evils that attend us lie in extravagance and want of industry, and can only be removed by assiduity and economy. Perhaps we shall be told by gentlemen that these things will happen, because the administration is to be taken from us, and placed in the hands of the few, who will pay greater attention, and be more studiously careful than we can be supposed to be.

With respect to the economical operation of the new government, I will only remark, that the national expenses will be increased; if not doubled, it will approach it very nearly. I might, without incurring the imputation of illiberality or extravagance, say that the expense will be multiplied tenfold. I might tell you of a numerous standing army, a great, powerful navy, a long and rapacious train of officers and dependants, independent of the President, senators, and representatives, whose compensations are without limitation. How are our debts to be discharged unless the taxes are increased, when the expenses of the government are so greatly augmented? The defects of this system are so numerous and palpable, and so many states object to it, that no union can be expected, unless it be amended. Let us take a review of the facts. New Hampshire and Rhode Island have rejected it. They have refused to become federal. New York and North Carolina are reported to be strongly against it. From high authority, give me leave to tell that New York is in high opposition. Will any gentleman say that { 158 } North Carolina is not against it? They may say so; but I say that the adoption of it in those two states amounts to entire uncertainty. The system must be amended before these four states will accede to it; besides, there are several other states which are dissatisfied, and wish alterations. Massachusetts has, in decided terms, proposed amendments; but, by her previous ratification, has put the cart before the horse. Maryland instituted a committee to propose amendments. It then appears that two states have actually refused to adopt; two of those who have adopted have a desire of amending; and there is a probability of its being rejected by New York and North Carolina. The other states have acceded without proposing amendments. With respect to them, local circumstances have, in my judgment, operated to produce its unconditional, instantaneous adoption. The locality of the seat of government, ten miles square, and the seat of justice, with all their concomitant emoluments, operated so powerfully with the first adopting state, that it was adopted without taking time to reflect. We are told that numerous advantages will result, from the concentration of the wealth and grandeur of the United States in one happy spot, to those who will reside in or near it. Prospects of profits and emoluments have a powerful influence on the human mind. We, sir, have no such projects as that of a grand seat of government for thirteen states, and perhaps for one hundred states hereafter. Connecticut and New Jersey have their localities also. New York lies between them. They have no ports, and are not importing states. New York is an importing state, and, taking advantage of its situation, makes them pay duties for all the articles of their consumption: thus these two states, being obliged to import all they want through the medium of New York, pay the particular taxes of that state. I know the force and effect of reasoning of this sort, by experience. When the impost was proposed, some years ago, those states which were not importing states readily agreed to concede to Congress the power of laying an impost on all goods imported, for the use of the Continental treasury. Connecticut and New Jersey, therefore, are influenced by advantages of trade in their adoption. The amount of all imposts is to go into one common treasury. This favors adoption by the non-importing states, as they participate in the profits which were before exclusively enjoyed by the importing states. { 159 } Notwithstanding this obvious advantage to Connecticut, there is a formidable minority there against it. After taking this general view of American affairs, as respecting federalism, will the honorable gentleman tell me that he can expect union in America? When so many states are pointedly against it; when two adopting states have pointed out, in express terms, their dissatisfaction as it stands; and when there is so respectable a body of men discontented in every state, — can the honorable gentleman promise himself harmony, of which he is so fond? If he can, I cannot. To me it appears unequivocally clear that we shall not have that harmony. If it appears to the other states that our aversion is founded on just grounds, will they not be willing to indulge us? If

disunion will really result from Virginia's proposing amendments, will they not wish the reëstablishment of the union, and admit us, if not on such terms as we prescribe, yet on advantageous terms? Is not union as essential to their happiness as to ours? Sir, without a radical alteration, the states will never be embraced in one federal pale. If you attempt to force it down men's throats, and call it union, dreadful consequences must follow. He has said a great deal of disunion, and the dangers that are to arise from it. When we are on the subject of disunion and dangers, let me ask, how will his present doctrine hold with what has happened? Is it consistent with that noble and disinterested conduct which he displayed on a former occasion? Did he not tell us that he withheld his signature? Where, then, were the dangers which now appear to him so formidable? He saw all America eagerly confiding that the result of their deliberations would remove their distresses. He saw all America acting under the impulses of hope, expectation, and anxiety, arising from their situation, and their partiality for the members of that Convention; yet his enlightened mind, knowing that system to be defective, magnanimously and nobly refused its approbation. He was not led by the illumined, the illustrious few. He was actuated by the dictates of his own judgment; and a better judgment than I can form. He did not stand out of the way of information. He must have been possessed of every intelligence. What alteration has a few months brought about? The eternal difference between right and wrong does not fluctuate. It is immutable. I ask this question as { 160 } a public man, and out of no particular view. I wish, as such, to consult every source of information, to form my judgment on so awful a question. I had the highest respect for the honorable gentleman's abilities. I considered his opinion as a great authority. He taught me, sir, in despite of the approbation of that great federal Convention, to doubt of the propriety of that system. When I found my honorable friend in the number of those who doubted, I began to doubt also. I coincided with him in opinion. I shall be a stanch and faithful disciple of his. I applaud that magnanimity which led him to withhold his signature. If he thinks now differently, he is as free as I am. Such is my situation, that, as a poor individual, I look for information every where.

This government is so new, it wants a name. I wish its other novelties were as harmless as this. He told us we had an American dictator in the year 1781. We never had an American President. In making a dictator, we followed the example of the most glorious, magnanimous, and skilful nations. In great dangers, this power has been given. Rome had furnished us with an illustrious example. America found a person for that trust: she looked to Virginia for him. We gave a dictatorial power to hands that used it gloriously; and which were rendered more glorious by surrendering it up. Where is there a breed of such dictators? Shall we find a set of American Presidents of such a breed? Will the American President come and lay prostrate at the feet of Congress his laurels? I fear there are few men who can be trusted on that head. The glorious republic of Holland has erected monuments of her warlike intrepidity and valor; yet she is now totally ruined by a stadtholder, a Dutch president.

The destructive wars into which that nation has been plunged, have since involved her in ambition. The glorious triumphs of Blenheim and Ramillies were not so conformable to the genius, nor so much to the true interest of the republic, as those numerous and useful canals, and dikes, and other objects, at which ambition spurns. That republic has, however, by the industry of its inhabitants, and policy of its magistrates, suppressed the ill effects of ambition. Notwithstanding two of their provinces have paid nothing, yet I hope the example of Holland will tell us that we can live { 161 } happily without changing our present despised government.

Cannot people be as happy under a mild as under an energetic government? Cannot content and felicity be enjoyed in republics as well as in monarchies, because there are whips, chains, and scourges, used in the latter? If I am not as rich as my neighbor, if I give my mite — my all — republican forbearance will say that it is sufficient. So said the honest confederates of Holland — You are poor, we are rich. We will go on, and do better than be under an oppressive government. Far better will it be for us to continue as we are, than to go under that tight, energetic government.

I am persuaded of what the honorable gentleman says, that separate confederacies will ruin us. In my judgment, they are evils never to be thought of till a people are driven by necessity. When he asks my opinion of consolidation, of one power to reign over America with a strong hand, I will tell him I am persuaded of the rectitude of my honorable friend's opinion, (Mr. Mason,) that one government cannot reign over so extensive a country as this is, without absolute despotism. Compared to such a consolidation, small confederacies are little evils; though they ought to be recurred to but in case of necessity. Virginia and North Carolina are despised. They could exist separated from the rest of America. Maryland and Vermont were not overrun when out of the confederacy. Though it is not a desirable object, yet I trust that, on examination, it will be found that Virginia and North Carolina would not be swallowed up, in case it was necessary for them to be joined together.

When we come to the spirit of domestic peace, the humble genius of Virginia has formed a government suitable to the genius of her people. I believe the hands that formed the American Constitution triumph in the experiment. It proves that the man who formed it, and perhaps by accident, did what design could not do in other parts of the world. After all your reforms in government, unless you consult the genius of its inhabitants, you will never succeed; your system can have no duration. Let me appeal to the candor of the committee, if the want of money be not the source of all our misfortunes. We cannot be blamed for not making dollars. This want of money cannot be supplied by changes in government. The only possible remedy, as I have before asserted, is industry, aided by economy. Compare the {162} genius of the people with the government of this country. Let me remark, that it stood the severest conflict, during the war, to which ever human virtue has been called. I call upon every gentleman here to declare, whether the king of England had any subjects so attached to his family and government, so loyal, as we were? But the genius of Virginia called on us for liberty — called us from those beloved endearments, which, from long habits, we were taught to love and revere. We entertained, from our earliest infancy, the most sincere regard and reverence for the mother country. Our partiality extended to a predilection for her customs, habits, manners, and laws. Thus inclined, when the deprivation of our liberty was attempted, what did we do? What did the genius of Virginia tell us? *Sell all, and purchase liberty!* — This was a severe conflict. Republican maxims were then esteemed. Those maxims, and the genius of Virginia, landed you safe on the shore of freedom.

On this awful occasion, did you want a federal government? Did federal ideas possess your minds? Did federal ideas lead you to the most splendid victories? I must again repeat the favorite idea, that the genius of Virginia did, and will again, lead us to happiness. To obtain the most splendid prize, you did not consolidate. You accomplished the most glorious ends by the assistance of the genius of your country. Men were then taught by that genius, that they were fighting for what was most dear to them. View the most affectionate father, the most tender

mother, operated on by liberty, nobly stimulating their sons — their dearest sons — sometimes their only son — to advance to the defence of their country. We have seen sons of Cincinnatus, without splendid magnificence or parade, going, with the genius of their great progenitor, Cincinnatus, to the plough; men who served their country without ruining it — men who had served it to the destruction of their private patrimonies — their country owing them amazing amounts, for the payment of which no adequate provision was then made. We have seen such men throw prostrate their arms at your feet. They did not call for those emoluments which ambition presents to some imaginations. The soldiers, who were able to command every thing, instead of trampling on those laws which they were instituted to defend, most strictly obeyed them. The hands of justice have not been laid on a single American soldier.

{163} Bring them into contrast with Europeans. You will see an astonishing superiority over the latter. There has been a strict subordination to the laws. The honorable gentleman's office gave him an opportunity of viewing if the laws were administered so as to prevent riots, routs, and unlawful assemblies. From his then situation, he could have furnished us with the instances in which licentiousness trampled on the laws. Among all our troubles, we have paid almost to the last shilling for the sake of justice; we have paid as well as any state: I will not say better. To support the general government and our own legislature — to pay the interest of the public debts and defray contingencies — we have been heavily taxed. To add to these things, the distresses produced by paper money, and by tobacco contracts, were sufficient to render any people discontented. These, sir, were great temptations; but in the most severe conflict of misfortunes, this code of laws, this genius of Virginia — call it what you will — triumphed over every thing.

Why did it please the gentleman (Mr. Corbin) to bestow such epithets on our country? Have the worms taken possession of the wood, that our strong vessel — our political vessel — has sprung a leak? He may know better than I, but I consider such epithets to be the most illiberal and unwarrantable aspersions on our laws. The system of laws under which we have lived has been tried and found to suit our genius. I trust we shall not change this happy system. I cannot so easily take leave of an old friend. Till I see him following after and pursuing other objects, which can pervert the great objects of human legislation, pardon me if I withhold my assent.

Some here speak of the difficulty in forming a new code of laws. Young as we were, it was not wonderful if there was a difficulty in forming and assimilating one system of laws. I shall be obliged to the gentleman if he would point out those glaring, those great faults. The efforts of assimilating our laws to our genius have not been found altogether vain. I shall pass over some other circumstances which I intended to mention, and endeavor to come to the capital objection which my honorable friend made. My worthy friend said that a republican form of government would not suit a very extensive country; but that, if a government were judiciously organized, and limits prescribed to it, an attention {164} to these principles might render it possible for it to exist in an extensive territory. Whoever will be bold to say that a continent can be governed by that system, contradicts all the experience of the world. It is a work too great for human wisdom. Let me call for an example. Experience has been called the best teacher. I call for an example of a great extent of country, governed by one government, or Congress, call it what you will. I tell him that a government may be trimmed up according to gentlemen's fancy, but it never can operate; it would be but very short-lived. However disagreeable it may be to lengthen my objections, I cannot help taking notice of what the honorable gentleman said. To me it appears

that there is no check in that government. The President, senators, and representatives, all, immediately or mediately, are the choice of the people. Tell me not of checks on paper; but tell me of checks founded on self-love. The English government is founded on self-love. This powerful, irresistible stimulus of self-love has saved that government.

It has interposed that hereditary nobility between the king and commons. If the host of lords assist or permit the king to overturn the liberties of the people, the same tyranny will destroy them; they will therefore keep the balance in the democratic branch. Suppose they see the commons encroach upon the king: self-love, that great energetic check, will call upon them to interpose; for, if the king be destroyed, their destruction must speedily follow. Here is a consideration, which prevails, in my mind, to pronounce the British government superior, in this respect, to any government that ever was in any country. Compare this with your congressional checks. I beseech gentlemen to consider whether they can say, when trusting power, that a mere patriotic profession will be equally operative and efficacious as the check of self-love. In considering the experience of ages, is it not seen that fair, disinterested patriotism, and professions of attachment to rectitude, have never been solely trusted to by an enlightened, free people? If you depend on your President's and senators' patriotism, you are gone. Have you a resting-place like the British government? Where is the rock of your salvation? The real rock of political salvation is self-love, perpetuated from age to age in every human breast, and manifested in every action. If {165} they can stand the temptations of human nature, you are safe. If you have a good President, senators, and representatives, there is no danger. But can this be expected from human nature? Without real checks, it will not suffice that some of them are good. A good President, or senator, or representative, will have a natural weakness. Virtue will slumber.

The wicked will be continually watching: consequently you will be undone. Where are your checks? You have no hereditary nobility — an order of men to whom human eyes can be cast up for relief; for, says the Constitution, there is no title of nobility to be granted — which, by the by, would not have been so dangerous as the perilous cession of powers contained in this paper; because, as Montesquieu says, when you give titles of nobility, you know what you give; but when you give power, you know not what you give. If you say that, out of this depraved mass, you can collect luminous characters, it will not avail, unless this luminous breed will be propagated from generation to generation; and even then, if the number of vicious characters will preponderate, you are undone.

And that this will certainly be the case is, to my mind, perfectly clear. In the British government there are real balances and checks: in this system there are only ideal balances. Till I am convinced that there are actual efficient checks, I will not give my assent to its establishment. The President and senators have nothing to lose. They have not that interest in the preservation of the government that the king and lords have in England. They will, therefore, be regardless of the interests of the people. The Constitution will be as safe with one body as with two. It will answer every purpose of human legislation. How was the constitution of England when only the commons had the power? I need not remark, that it was the most unfortunate era when that country returned to king, lords, and commons, without sufficient responsibility in the king. When the commons of England, in the manly language which became freemen, said to their king, *You are our servant*, then the temple of liberty was complete. From that noble source have we

derived our liberty: that spirit of patriotic attachment to one's country, that zeal for liberty, and that enmity to tyranny, which signalized the then champions of liberty, {166} we inherit from our British ancestors. And I am free to own that, if you cannot love a republican government, you may love the British monarchy; for, although the king is not sufficiently responsible, the responsibility of his agents, and the efficient checks interposed by the British Constitution, render it less dangerous than other monarchies, or oppressive tyrannical aristocracies. What are the checks of exposing accounts? The checks upon paper are inefficient and nugatory. Can you search your President's closet? Is this a real check? We ought to be exceedingly cautious in giving up this life, this soul, of money, this power of taxation, to Congress. What powerful check is there here to prevent the most extravagant and profligate squandering of the public money? What security have we in money matters? Inquiry is precluded by this Constitution. I never wish to see Congress supplicate the states. But it is more abhorrent to my mind to give them an unlimited and unbounded command over our souls, our lives, our purses, without any check or restraint. How are you to keep inquiry alive? How discover their conduct? We are told, by that paper, that a regular statement and account of the receipts and expenditures of all public money shall be published from time to time. Here is a beautiful check! What time? Here is the utmost latitude left. If those who are in Congress please to put that construction upon it, the words of the Constitution will be satisfied by publishing those accounts once in one hundred years. They may publish or not, as they please. Is this like the present despised system, whereby the accounts are to be published monthly?

I come now to speak something of requisitions, which the honorable gentleman thought so truly contemptible and disgraceful. That incorrigible gentleman, being a child of the revolution, must recollect with gratitude the glorious effects of requisitions. It is an idea that must be grateful to every American. An English army was sent to compel us to pay money contrary to our consent — to force us, by arbitrary and tyrannical coercion, to satisfy their unbounded demands. We wished to pay with our own consent. Rather than pay against our consent, we engaged in that bloody contest which terminated so gloriously. By requisitions we pay with our own consent; by the means we have triumphed in the most arduous struggle that ever tried the virtue of man. {167} We fought then for what we are contending for now — to prevent an arbitrary deprivation of our property, contrary to our consent and inclination. I shall be told in this place that those who are to tax us are our representatives. To this I answer, that there is no real check to prevent their ruining us. There is no actual responsibility. The only semblance of a check is the negative power of not reëlecting them. This, sir, is but a feeble barrier, when their personal interest, their ambition and avarice, come to be put in contrast with the happiness of the people. All checks founded on any thing but self-love will not avail. The Constitution reflects in the most degrading and mortifying manner on the virtue, integrity, and wisdom of the state legislatures; it presupposes that the chosen few who go to Congress will have more upright hearts, and more enlightened minds, than those who are members of the individual legislatures. To suppose that ten gentlemen shall have more real, substantial merit than one hundred and seventy, is humiliating to the last degree. If, sir, the diminution of numbers be an augmentation of merit, perfection must centre in one. If you have the faculty of discerning spirits, it is better to point out at once the man who has the most illumined qualities. If ten men be better than one hundred and seventy, it follows of necessity that one is better than ten — the choice is more refined.

Such is the danger of the abuse of implied power, that it would be safer at once to have seven representatives, the number to which we are now entitled, than depend on the uncertain and ambiguous language of that paper. The number may be lessened, instead of being increased; and yet, by argumentative, constructive, implied power, the proportion of taxes may continue the same, or be increased. Nothing is more perilous than constructive power, which gentlemen are so willing to trust their happiness to.

If sheriffs prove now an overmatch for our legislature, if their ingenuity has eluded the vigilance of our laws, how will the matter be amended when they come clothed with federal authority? A strenuous argument offered by gentlemen is, that the same sheriffs may collect for the Continental and state treasuries. I have before shown that this must have an inevitable tendency to give a decided preference to the federal treasury in the actual collections, and to throw all deficiencies on the state. This imaginary remedy for the evil of { 168 } congressional taxation will have another oppressive operation. The sheriff comes to-day as a state collector. Next day he is federal. How are you to fix him? How will it be possible to discriminate oppressions committed in one capacity from those perpetrated in the other? Will not this ingenuity perplex the simple and honest planter? This will at least involve in difficulties those who are unacquainted with legal ingenuity. When you fix him, where are you to punish him? for I suppose they will not stay in our courts: they must go to the federal court; for, if I understand that paper right, all controversies arising under that Constitution, or under the laws made in pursuance thereof, are to be tried in that court. When gentlemen told us that this part deserved the least exception, I was in hopes they would prove that there was plausibility in their suggestions, and that oppression would probably not follow. Are we not told that it shall be treason to levy war against the United States? Suppose an insult offered to the federal laws at an immense distance from Philadelphia, — will this be deemed treason? And shall a man be dragged many hundred miles, to be tried as a criminal, for having, perhaps justifiably, resisted an unwarrantable attack upon his person or property? I am not well acquainted with federal jurisprudence; but it appears to me that these oppressions must result from this part of the plan. It is at least doubtful; and where there is even a possibility of such evils, they ought to be guarded against.

There are to be a number of places fitted out for arsenals and dockyards in the different states. Unless you sell to Congress such places as are proper for these, within your state, you will not be consistent after adoption: it results, therefore, clearly, that you are to give into their hands all such places as are fit for strongholds. When you have these fortifications and garrisons within your state, your legislature will have no power over them, though they see the most dangerous insults offered to the people daily. They are also to have magazines in each state. These depositories for arms, though within the state, will be free from the control of its legislature. Are we at last brought to such an humiliating and debasing degradation, that we cannot be trusted with arms for our own defence? Where is the difference between having our arms in our own possession and under our own direction, and having them under the management of Congress? { 169 } If our defence be the real object of having those arms, in whose hands can they be trusted with more propriety, or equal safety to us, as in our own hands? If our legislature be unworthy of legislating for every foot in this state, they are unworthy of saying another word.

The clause which says that Congress shall "provide for arming, organizing, and disciplining the militia, and for governing such part of them as may be employed in the service of the United

States, reserving to the states respectively the appointment of the officers," seemed to put the states in the power of Congress. I wished to be informed, if Congress neglected to discipline them, whether the states were not precluded from doing it. Not being favored with a particular answer, I am confirmed in my opinion, that the states have not the power of disciplining them, without recurring to the doctrine of constructive implied powers. If, by implication, the states may discipline them, by implication, also, Congress may officer them; because, in a partition of power, each has a right to come in for part; and because implication is to operate in favor of Congress on all occasions, where their object is the extension of power, as well as in favor of the states. We have not one fourth of the arms that would be sufficient to defend ourselves. The power of arming the militia, and the means of purchasing arms, are taken from the states by the paramount powers of Congress. If Congress will not arm them, they will not be armed at all.

There have been no instances shown of a voluntary cession of power, sufficient to induce me to grant the most dangerous power; a possibility of their future relinquishment will not persuade me to yield such powers.

Congress, by the power of taxation, by that of raising an army, and by their control over the militia, have the sword in one hand, and the purse in the other. Shall we be safe without either? Congress have an unlimited power over both: they are entirely given up by us. Let him candidly tell me, where and when did freedom exist, when the sword and purse were given up from the people? Unless a miracle in human affairs interposed, no nation ever retained its liberty after the loss of the sword and purse. Can you prove, by any argumentative deduction, that it is possible to be safe without retaining one of these? If you give them up, you are gone. Give us at least a plausible apology why {170} Congress should keep their proceedings in secret. They have the power of keeping them secret as long as they please, for the provision for a periodical publication is too inexplicit and ambiguous to avail any thing. The expression *from time to time*, as I have more than once observed, admits of any extension. They may carry on the most wicked and pernicious of schemes under the dark veil of secrecy. The liberties of a people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them. The most iniquitous plots may be carried on against their liberty and happiness. I am not an advocate for divulging indiscriminately all the operations of government, though the practice of our ancestors, in some degree, justifies it. Such transactions as relate to military operations or affairs of great consequence, the immediate promulgation of which might defeat the interests of the community, I would not wish to be published, till the end which required their secrecy should have been effected. But to cover with the veil of secrecy the common routine of business, is an abomination in the eyes of every intelligent man, and every friend to his country.

[Mr. Henry then, in a very animated manner, expatiated on the evil and pernicious tendency of keeping secret the common proceedings of government, and said that it was contrary to the practice of other free nations. The people of England, he asserted, had gained immortal honor by the manly boldness wherewith they divulged to all the world their political disquisitions and operations, and that such a conduct inspired other nations with respect. He illustrated his arguments by several quotations.]

He then continued: I appeal to this Convention if it would not be better for America to take off the veil of secrecy. *Look at us — hear our transactions!* If this had been the language of the federal Convention, what would have been the result? Such a constitution would not have come out to your utter astonishment, conceding such dangerous powers, and recommending secrecy in

the future transactions of government. I believe it would have given more general satisfaction, if the proceedings of that Convention had not been concealed from the public eye. This Constitution authorizes the same conduct. There is not an English feature in it. The transactions of Congress may be concealed a century from the public, consistently with the Constitution. This, sir, is a laudable imitation of the transactions of the {171} Spanish treaty. We have not forgotten with what a thick veil of secrecy those transactions were covered.

We are told that this government, collectively taken, is without an example; that it is national in this part, and federal in that part, &c. We may be amused, if we please, by a treatise of political anatomy. In the brain it is national; the stamina are federal; some limbs are federal, others national. The senators are voted for by the state legislatures; so far it is federal. Individuals choose the members of the first branch; here it is national. It is federal in conferring general powers, but national in retaining them. It is not to be supported by the states; the pockets of individuals are to be searched for its maintenance. What signifies it to me that you have the most curious anatomical description of it in its creation? To all the common purposes of legislation, it is a great consolidation of government.

You are not to have the right to legislate in any but trivial cases; you are not to touch private contracts; you are not to have the right of having arms in your own defence; you cannot be trusted with dealing out justice between man and man. What shall the states have to do? Take care of the poor, repair and make highways, erect bridges, and so on, and so on? Abolish the state legislatures at once. What purposes should they be continued for? Our legislature will indeed be a ludicrous spectacle — one hundred and eighty men marching in solemn, farcical procession, exhibiting a mournful proof of the lost liberty of their country, without the power of restoring it. But, sir, we have the consolation that it is a mixed government; that is, it may work sorely on your neck, but you will have some comfort by saying, that it was a federal government in its origin.

I beg gentlemen to consider: lay aside your prejudices. Is this a federal government? Is it not a consolidated government for almost every purpose? Is the government of Virginia a state government after this government is adopted? I grant that it is a republican government, but for what purposes? For such trivial domestic considerations as render it unworthy the name of a legislature. I shall take leave of this political anatomy, by observing that it is the most extraordinary that ever entered into the imagination of man. If our political diseases demand a cure, this is an unheard-of medicine. The honorable member, I am convinced, {172} wanted a name for it. Were your health in danger, would you take new medicine? I need not make use of these exclamations: for every member in this committee must be alarmed at making new and unusual experiments in government. Let us have national credit and a national treasury in case of war. You never can want national resources in time of war, if the war be a national one — if it be necessary, and this necessity be obvious to the meanest capacity. The utmost exertions will be used by the people of America in that case. A republic has this advantage over a monarchy, that its wars are generally founded on more just grounds. A republic can never enter into a war, unless it be a national war — unless it be approved of, or desired, by the whole community. Did ever a republic fail to use the utmost resources of the community when war was necessary? I call for an example. I call also for an example where a republic has been engaged in a war contrary to the wishes of its people. There are thousands of examples where the ambition of its prince has

precipitated a nation into the most destructive war. No nation ever withheld power when its object was just and right. I will hazard an observation: I find fault with the paper before you, because the same power that declares war has the power to carry it on. Is it so in England? The king declares war; the House of Commons gives the means of carrying it on. This is a strong check on the king. He will enter into no war that is unnecessary; for the commons, having the power of withholding the means, will exercise that power, unless the object of the war be for the interest of the nation. How is it here? The Congress can both declare war and carry it on, and levy your money, as long as you have a shilling to pay.

I shall now speak a little of the colonial confederacy which was proposed at Albany. Massachusetts did not give her consent to the project at Albany, so as to consolidate with the other colonies. Had there been a consolidation at Albany, where would have been their charter? Would that confederacy have preserved their charter from Britain? The strength and energy of the then designed government would have crushed American opposition.

The American revolution took its origin from the comparative weakness of the British government — not being concentrated in one point. A concentration of the strength and {173} interest of the British government, in one point, would have rendered opposition to its tyrannies fruitless. For want of that consolidation do we now enjoy liberty, and the privilege of debating at this moment. I am pleased with the colonial establishment. The example which the honorable member has produced, to persuade us to depart from our present confederacy, rivets me to my former opinion, and convinces me that consolidation must end in the destruction of our liberties.

The honorable gentleman has told us of our ingratitude to France. She does not intend to take payment by force. Ingratitude shall not be laid to my charge. I wish to see the friendship between this country and that magnanimous ally perpetuated. Requisitions will enable us to pay the debt we owe to France and other countries. She does not desire us to go from our beloved republican government. The change is inconsistent with our engagements with those nations. It is cried out that those in opposition wish disunion. This is not true. They are the most strenuous enemies to it. This government will clearly operate disunion. If it be heard, on the other side of the Atlantic, that you are going to disunite and dissolve the confederacy, what says France? Will she be indifferent to an event that will so radically affect her treaties with us? Our treaty with her is founded on the federation — we are bound to her as thirteen states confederated. What will become of the treaty? It is said that treaties will be on a better footing. How so? Will the President, Senate, and House of Representatives, be parties to them? I cannot conceive how the treaties can be as binding if the confederacy is dissolved as they are now. Those nations will not continue their friendship then; they will become our enemies. I look on the treaties as the greatest pillars of safety. If the house of Bourbon keeps us, we are safe. Dissolve that confederacy — who has you? The British. Federalism will not protect you from the British. Is a connection with that country more desirable? I was amazed when gentlemen forgot the friends of America. I hope that this dangerous change will not be effected. It is safe for the French and Spaniards that we should continue to be thirteen states; but it is not so that we should be consolidated into one government. They have settlements in America: will they like schemes of popular {174} ambition? Will they not have some serious reflections? You may tell them you have not changed your situation; but they will not believe you. If there be a real check intended to be left on Congress, it must be left in the state governments. There will be some check, as long as the

judges are incorrupt. As long as they are upright, you may preserve your liberty. But what will the judges determine when the state and federal authority come to be contrasted? Will your liberty then be secure, when the congressional laws are declared paramount to the laws of your state, and the judges are sworn to support them?

I am constrained to make a few remarks on the absurdity of adopting this system, and relying on the chance of getting it amended afterwards. When it is confessed to be replete with defects, is it not offering to insult your understandings to attempt to reason you out of the propriety of rejecting it till it be amended? Does it not insult your judgments to tell you, Adopt first, and then amend! Is your rage for novelty so great, that you are first to sign and seal, and then to retract? Is it possible to conceive a greater solecism? I am at a loss what to say. You agree to bind yourselves hand and foot — for the sake of what? Of being unbound. You go into a dungeon — for what? To get out. Is there no danger, when you go in, that the bolts of federal authority shall shut you in? Human nature never will part from power. Look for an example of a voluntary relinquishment of power, from one end of the globe to another: you will find none. Nine tenths of our fellowmen have been, and are now, depressed by the most intolerable slavery, in the different parts of the world, because the strong hand of power has bolted them in the dungeon of despotism.

Review the present situation of the nations of Europe, which is pretended to be the freest quarter of the globe. Cast your eyes on the countries called free there. Look at the country from which we are descended, I beseech you; and although we are separated by everlasting, insuperable partitions, yet there are some virtuous people there, who are friends to human nature and liberty. Look at Britain: see there the bolts and bars of power: see bribery and corruption defiling the fairest fabric that ever human nature reared! Can a gentleman who is an Englishman, or who is acquainted {175} with the English history, desire to prove these evils? See the efforts of a man descended from a friend of America — see the efforts of that man, assisted even by the king, to make reforms. But you find the faults too strong to be amended. Nothing but bloody war can alter them. See Ireland! That country groaned, from century to century, without getting their government amended. Previous adoption was the fashion there. They sent for amendments *from time to time*, but never obtained them, though pressed by the severest oppression, till eighty thousand volunteers demanded them, sword in hand — till the power of Britain was prostrate; when the American resistance was crowned with success. Shall we do so? If you judge by the experience of Ireland, you must obtain the amendments as early as possible. But, I ask you again, where is the example that a government was amended by those who instituted it? Where is the instance of the errors of a government rectified by those who adopted them?

I shall make a few observations to prove that the power over elections, which is given to Congress, is contrived by the federal government, that the people may be deprived of their proper influence in the government, by destroying the force and effect of their suffrages. Congress is to have a discretionary control over the time, place, and manner of elections. The representatives are to be elected, consequently, when and where they please. As to the time and place, gentlemen have attempted to obviate the objection by saying, that the time is to happen once in two years, and that the place is to be within a particular district, or in the respective counties. But how will they obviate the danger of referring the *manner* of election to Congress? Those illumined genii may see that this may not endanger the rights of the people; but in my

unenlightened understanding, it appears plain and clear that it will impair the popular weight in the government. Look at the Roman history. They had two ways of voting — the one by tribes, and the other by centuries. By the former, numbers prevailed; in the latter, riches preponderated. According to the mode prescribed, Congress may tell you that they have a right to make the vote of one gentleman go as far as the votes of a hundred poor men. The power over the manner admits of the most dangerous latitude. They may modify it as they {176} please. They may regulate the number of votes by the quantity of property, without involving any repugnancy to the Constitution. I should not have thought of this trick or contrivance, had I not seen how the public liberty of Rome was trifled with by the mode of voting by centuries, whereby one rich man had as many votes as a multitude of poor men. The plebeians were trampled on till they resisted. The patricians trampled on the liberties of the plebeians till the latter had the spirit to assert their right to freedom and equality. The result of the American mode of election may be similar. Perhaps I may be told that I have gone through the regions of fancy — that I deal in noisy exclamations and mighty professions of patriotism. Gentlemen may retain their opinions; but I look on that paper as the most fatal plan that could possibly be conceived to enslave a free people. If such be your rage for novelty, take it, and welcome; but you never shall have my consent. My sentiments may appear extravagant, but I can tell you that a number of my fellow-citizens have kindred sentiments; and I am anxious, if my country should come into the hands of tyranny, to exculpate myself from being in any degree the cause, and to exert my faculties to the utmost to extricate her. Whether I am gratified or not in my beloved form of government, I consider that the more she has plunged into distress, the more it is my duty to relieve her. Whatever may be the result, I shall wait with patience till the day may come when an opportunity shall offer to exert myself in her cause.

But I should be led to take that man for a lunatic, who should tell me to run into the adoption of a government avowedly defective, in hopes of having it amended afterwards. Were I about to give away the meanest particle of my own property, I should act with more prudence and discretion. My anxiety and fears are great lest America, by the adoption of this system, should be cast into a fathomless bottom. — Mr. Henry then concluded that, as he had not gone through all he intended to say, he hoped he would be indulged another time.

## **Mr. LEE, (of Westmoreland.)**

Mr. Chairman, when I spoke before, and called on the honorable gentleman (Mr. Henry) to come forward and give his reasons for his opposition in a systematic manner, I did it from love of order, {177} and respect for the character of the honorable gentleman; having no other motives but the good of my country. As he seemed so solicitous that the truth should be brought before the committee on this occasion, I thought I could not do more properly than to call on him for his reasons for standing forth the champion of opposition. I took the liberty to add, that the subject belonged to the judgments of the gentlemen of the committee, and not to their passions. I am obliged to him for his politeness in this committee; but as the honorable gentleman seems to have discarded, in a great measure, solid argument and strong reasoning, and has established a new system of throwing those bolts which he has so peculiar a dexterity at discharging, I trust I shall not incur the displeasure of the committee by answering the honorable gentleman in the desultory manner in which he has treated the subject. I shall touch a few of those *luminous* points which he has entertained us with. He told us, the other day, that the enemies of the Constitution

were firm supporters of liberty, and implied that its friends were not republicans. This may have been calculated to make impressions disadvantageous to those gentlemen who favor this new plan of government; and impressions of this kind are not easily eradicated. I conceive that I may say with truth that the friends of that paper are true republicans, and by no means less attached to liberty than those who oppose it. The verity of this does not depend on my assertion, but on the lives and well-known characters of different gentlemen in different parts of the continent. I trust the friends of that government will oppose the efforts of despotism as firmly as its opposers.

Much is said by gentlemen out of doors. They ought to urge all their objections here; I hope they will offer them here; I shall confine myself to what is said here. In all his rage for democracy, and zeal for the rights of the people, how often does he express his admiration of that king and Parliament over the Atlantic! But we republicans are contemned and despised. Here, sir, I conceive that *implication* might operate against himself.

## Militia

He tells us that he is a stanch republican, and that he adores liberty. I believe him; and when I do so, I wonder that he should say that a kingly government is superior to that system which we admire. He tells you that it cherishes {178} a standing army, and that militia alone ought to be depended upon for the defence of every free country. There is not a gentleman in this house, (not even the gentleman himself,) there is not man without these walls, who admires the militia more than I do. Without vanity, I may say I have had different experience of their service from that of the honorable gentleman. It was my fortune to be a soldier of my country. In the discharge of my duty, I knew the worth of militia. I have seen them perform feats that would do honor to the first veterans, and submitting to what would daunt German soldiers. I saw what the honorable gentleman did not see — our men fighting with the troops of that king whom he so much admires. I have seen proofs of the wisdom of that paper on your table. I have seen incontrovertible evidence that militia cannot always be relied upon. I could enumerate many instances, but one will suffice. Let the gentleman recollect the action of Guildford. The American regular troops behaved there with the most gallant intrepidity. What did the militia do? The greatest number of them fled. Their abandonment of the regulars occasioned the loss of the field. Had the line been supported that day, Cornwallis, instead of surrendering at Yorktown, would have laid down his arms at Guildford.

This plan provides for the public defence as it ought to do. Regulars are to be employed when necessary, and the service of the militia will always be made use of. This, sir, will promote agricultural industry and skill, and military discipline and science.

I cannot understand the implication of the honorable gentleman, that, because Congress may arm the militia, the states cannot do it: nor do I understand the reverse of the proposition. The states are, by no part of the plan before you, precluded from arming and disciplining the militia, should Congress neglect it. In the course of Saturday, and some previous harangues, from the terms in which some of the Northern States were spoken of, one would have thought that the love of an American was in some degree criminal, as being incompatible with a proper degree of affection for a Virginian. The people of America, sir, are one people. I love the people of the north, not because they have adopted the Constitution, but because I fought with them as my countrymen,

and because I consider them as such. Does it {179} follow from hence that I have forgotten my attachment to my native state? In all local matters I shall be a Virginian: in those of a general nature, I shall not forget that I am an American.

He has called on the house to expose the catalogue of evils which would justify this change of the government. I appeal to gentlemen's candor — has not a most mournful detail been unfolded here?

In the course of the debates, I have heard from those gentlemen who have advocated the new system, an enumeration which drew groans from my very soul, but which did not draw one sigh from the honorable gentleman over the way. Permit me to ask if there be an evil which can visit mankind so injurious and oppressive, in its consequence and operation, as a tender-law? If Pandora's box were on one side of me, and a tender-law on the other, I would rather submit to the box than to the tender-law. The principle, evil as it is, is not so base and pernicious as the application. It breaks down the moral character of your people, robs the widow of her maintenance, and defrauds the orphan of his food. The widow and orphan are reduced to misery, by receiving, in a depreciated value, money which the husband and father had lent out of friendship. This reverses the natural course of things. It robs the industrious of the fruits of their labor, and often enables the idle and rapacious to live in ease and comfort at the expense of the better part of the community.

Was there not another evil but the possibility of continuing such palpable injustice, I would object to the present system. But, sir, I will, out of many more, mention another. How are your domestic creditors situated? I will not go to the general creditors. I mean the military creditor — the man who, by the vices of your system, is urged to part with his money for a trivial consideration — the poor man, who has the paper in his pocket for which he can receive little or nothing. There is a greater number of these meritorious men than the honorable gentleman believes. These unfortunate men are compelled to receive paper instead of gold — paper which nominally represents something, but which in reality represents almost nothing. A proper government could do them justice, but the present one cannot do it. They are therefore forced to part from that paper which they {180} fought for, and get less than a dollar for twenty shillings. I would, for my part, and I hope every other gentleman here would, submit to the inconvenience; but when I consider that the widows of gallant heroes, with their numerous offspring, are laboring under the most distressing indigence, and that these poor, unhappy people will be relieved by the adoption of this Constitution, I am still more impressed with the necessity of this change.

But, says the honorable gentleman, we are in peace. Does he forget the insurrection in Massachusetts? Perhaps he did not extend his philanthropy to that quarter. I was then in Congress, and had a proper opportunity to know the circumstances of this event. Had *Shays* been possessed of abilities, he might have established that favorite system of the gentleman — king, lords, and commons. Nothing was wanting to bring about a revolution but a great man to head the insurgents; but, fortunately, he was a worthless captain. There were thirty thousand stand of arms, nearly, in his power, which were defended by a pensioner of this country. It would have been sufficient had he taken this deposit. He failed in it; but, even after that failure, it was in the power of a great man to have taken it. But he wanted design and knowledge. Will you trust to the

want of design and knowledge? Suppose another insurrection, headed by a different man: what will follow? Under a man of capacity, the favorite government of that gentleman might have been established in Massachusetts, and extended to Virginia.

But, sir, this is a consolidated government, he tells us; and most feelingly does he dwell on the imaginary dangers of this pretended consolidation. I did suppose that an honorable gentleman, whom I do not now see, (Mr. Madison,) had placed this in such a clear light that every man would have been satisfied with it.

If this were a consolidated government, ought it not to be ratified by a majority of the people as individuals, and not as states? Suppose Virginia, Connecticut, Massachusetts, and Pennsylvania, had ratified it; these four states, being a majority of the people of America, would be their adoption, have made it binding on all the states, had this been a consolidated government. But it is only the government of those seven states who have adopted it. If the honorable gentleman will attend to this, we shall hear no more of consolidation.

{181} Direct taxation is another objection on which the honorable gentleman expatiates. This has been answered by several able gentleman; but as honorable gentleman reverts to the subject, I hope I shall be excused in saying a little on it. If union be necessary, direct taxes are also necessary for its support. If it be an inconvenience, it results from the union; and we must take its disadvantages with it: besides, it will render it unnecessary to recur to the sanguinary method which some gentlemen are said to admire. Had the Amphictyonic council had the power contained in that paper, would they have sent armies to levy money? Will the honorable gentleman say that it is more eligible and humane to collect money by carrying fire and sword through the country, than by the peaceable mode of raising money of the people, through the medium of an officer of peace, when it is necessary?

But says he, "The President will enslave you; Congress will trample on your liberties; a few regiments will appear; Mr. Chief Justice must give way; our mace-bearer is no match for a regiment." It was inhuman to place an individual against a whole regiment. A *few* regiments will not avail; I trust the supporters of the government would get the better of *many* regiments. Were so made an attempt made, the people would assemble in thousands, and drive thirty times the number of their few regiments. We would then do as we have already done with the regiments of that king whom he so often tells us of.

The public liberty, says he, is designed to be destroyed. What does he mean? Does he mean that we, who are friends to that government, are not friends to liberty? No man dares to say so. Does he mean that he is a greater admirer of liberty than we are? Perhaps so. But I undertake to say that, when it will be necessary to struggle in the cause of freedom, he will find himself equalled by thousands of those who support this Constitution. The purse of the people of Virginia is not given up by that paper: they can take no more of our money than is necessary to pay our share of the public debts, and provide for the general welfare. Were it otherwise, no man would be louder against it than myself.

He has represented our situation as contradistinguished from the other states. What does he mean? I ask if it be {182} fair to attempt to influence gentlemen by particular applications to

local interests? I say, it is not fair. Am I to be told, when I come to deliberate on the interest of Virginia, that it obstructs the interest of the county of Westmoreland? Is this obstruction a sufficient reason to neglect the collective interests of Virginia? Were it of a local nature, it would be right to prefer it; but, being of a general nature, the local interest must give way. I trust, then, then, that gentlemen will consider that the object of their deliberations is of a general nature. I disregard the argument which insinuated the propriety of attending to localities; and I hope that the gentlemen to whom it was addressed regard too much the happiness of the community to be influenced by it.

But he tells you that the Mississippi is insecure unless you reject this system, and that the transactions relating to it were carried on under a veil of secrecy. His arguments on this subject are equally as defective as those I have just had under consideration. But I feel myself called on by the honorable gentleman to come forward and tell the truth about the transactions respecting the Mississippi. In every action of my life in which I have been concerned, whether as soldier or politician, the good of my country was my first wish. I have attended not only to the good of the United States, but also to that of particular districts. There are men of integrity and truth here who were also then in Congress. I call on them to put me right with respect to those transactions. As far as I could gather from what was then passing, I believe there was not a gentleman in that Congress who had an idea of surrendering the navigation of that river. They thought of the best mode of securing it: some thought one way, and some another way. I was one of those men who thought the mode which has been alluded to the best to secure it. I shall never deny that it was my opinion. I was one peculiarly interested. I had a fortune in that country, purchased, not by *paper money*, but by gold, to the amount of eight thousand pounds. But private interest could not have influenced me. The public welfare was my criterion in my opinion. I united private interest to public interest, not of the whole people of Virginia, but of the United States. I thought I was promoting the real interest of the people. But, says he, it was under the veil of secrecy. There was no peculiar or uncommon {183} desire manifested of concealing those transactions. They were carried on in the same manner with others of the same nature, and consonant to the principles of the Confederation. I saw no anxiety on the occasion. I wish he would send to the president to know their secrets. He would be gratified fully.

The honorable member, this day, among other things, gave us a statement of those states that have passed the new system, of those who have not, and of those who would probably not pass it. He called his assertions *facts*; but I expected he would show us something to prove their existence.

He tells us that New Hampshire and Rhode Island have refused it. Is that a *fact*? It is not a *fact*. New Hampshire has not refused it. That state postponed her ultimate decision till she could know what Massachusetts would do; and whatever the gentleman may say of borderers, the people of that state were very right in conducting themselves as they did. With respect to Rhode Island, I hardly know any thing. That small state has so rebelled against justice, and so knocked down the bulwarks of probity, rectitude, and truth, that nothing rational or just can be expected from her.

She has not, however, I believe, called a convention to deliberate on it, much less formally refused it. From her situation, it is evident that she must adopt it, unless she departs from the primary maxims of human nature, which are those of self-preservation. New York and North

Carolina are so high in opposition, he tells us, that they will certainly reject it. Here is another of his facts; and he says he has the highest authority. As he dislikes the veil of secrecy, I beg he would tell us that high authority from which he gets this fact. Has he official communications? Have the executives of those states informed him? Has our executive been apprized of it? I believe not. I hold his unsupported authority in contempt.

Pennsylvania, Delaware, and New Jersey, have adopted; but, says he, they were governed by local considerations. What are these local considerations? The honorable gentleman draws advantages from every source; but his arguments operate very often against himself. I admire the state of Pennsylvania; she deserves the attachment of every lover {184} of his country. Poor Pennsylvania, says he, has been tricked into it. What an insult! The honorable gentleman would not say so of an individual: I know his politeness too well. Will he insult the majority of a free country? Pennsylvania is a respectable state. Though not so extensive as Virginia, she did as much as any state, in proportion, during the war; and has done as much since the peace. She has done as much in every situation, and her citizens have been as remarkable for their virtue and science, as those of any state. The honorable gentleman has told you that Pennsylvania has been tricked into it; and in so saying has been insulted the majority of a free country, in a manner in which I would not dare to insult any private gentleman. The other adopting states have not been tricked into it, it seems. Why? The honorable gentleman cannot tell us why these have not been tricked into it, any more than he can tell why Pennsylvania has been tricked into it. Is it because of their superior power and respectability? or is it the consequence of their local situation? But the state of New York has too much virtue to be governed by local considerations. He insinuates this by his assertion that she will not regard the examples of the other states. How can he, without being inconsistent, and without perverting facts, pretend to say that New York is not governed by local considerations in her opposition? Is she not influenced by the local consideration of retaining that impost of which he says Connecticut and New Jersey wish to get a participation? What does he say of North Carolina? How will local considerations affect her? If the principle be uniform, she will be led by the local consideration of wishing to get a participation of the impost of the importing states. Is it to be supposed that she will be so blind to her own interest as to depart from this principle?

When he attempted to prove that you ought not to adopt that paper which I admire, he told you that it was untrodden ground. This objection goes to the adoption of any government. The British government ought to be proposed perhaps. It is trodden ground. I know not of any reason to operate against a system, because it is untrodden ground.

The honorable gentleman objects to the publication from time to time, as being ambiguous and uncertain. Does not *from time to time* signify convenient time? If it admits of {185} an extension of time, does it not equally admit of publishing the accounts at very short periods? For argument sake, say they may postpone the publications of the public accounts to the expiration of every ten year: will their constituents be satisfied with this conduct? Will they not discard them, and elect other men, who will publish the accounts as often as they ought? It is also in their power to publish every ten days. Is it not more probable that they will do their duty than that they will neglect it, especially as their interest is inseparably connected with their duty? He says they may conceal them for a century. Did you ever hear so trivial and so captious an argument? I *felt* when the great genius of the gentleman nodded on that occasion. Another objection of the honorable

gentleman (whom I cannot follow through all his windings and turnings) is, that those parts of the Constitution which are in favor of privileges, are not so clearly expressed as those parts which concede powers. I beg your attention, because this is a leading distinction. As long as the privilege of representation is well secured, our liberties cannot be easily endangered. I conceive this is secured in this country more fully than in any other. How are we, the people of America, as landholders, compared to the people of all the world besides? Vassalage is not known here. A small quantity of land entitles a man to a freehold: land is pretty equally divided, and the law of descents, in this country, will carry this division farther and farther — perhaps even to an extreme. This, of itself, secures this great privilege. Is it so in any other country? Is it so in England? We differ in this from all other countries. I admire this paper in this respect. It does not impair our right of suffrage. Whoever will have a right to vote for a representative to our legislature, will also have a right to vote for a federal representative. This will render that branch of Congress very democratic. We have a right to send a certain proportion. If we do not exert that right, it will be our folly.

It was necessary to provide against licentiousness, which is so natural to our climate. I dread more from the licentiousness of the people than from the bad government of rulers. Our privileges are not, however, in danger: they are better secured than any bill of rights could have secured them.

## Enumeration

I say that this new system shows, in stronger terms than words could declare, that the liberties of the people are secure. It goes on the principle that all power is in the people, and that rulers have no powers but what are enumerated in that paper. When a question arises with respect to the legality of any power, exercised or assumed by Congress, it is plain on the side of the governed: *Is it enumerated in the Constitution?* If it be, it is legal and just. It is otherwise arbitrary and unconstitutional. Candor must confess that it is infinitely more attentive to the liberties of the people than any state government.

## Note

[Mr. Lee then said, that, under the state governments, the people reserved to themselves certain enumerated rights, and that the rest were vested in their rulers; that, consequently, the powers reserved to the people were but an inconsiderable exception from what were given to their rulers; but that, in the federal government, the rulers of the people were vested with certain defined powers, and that what were not delegated to those rulers were retained by the people. The consequence of this, he said, was, that the limited powers were only an exception to those which rested in the people, and that they knew what they had given up, and could be in no danger. He exemplified the proposition in a familiar manner. He observed, that, if a man delegated certain powers to an agent, it would be an insult upon common sense to suppose that the agent could legally transact any business for his principal which was not contained in the commission whereby the powers were delegated; but that, if a man empowered his representative or agent to transact all his business except certain enumerated parts, the clear result was, that the agent could lawfully transact every possible part of his principal's business except the enumerated parts; and

added, that these plain propositions were sufficient to demonstrate the inutility and *folly* (were he permitted to use the expression) of bills of rights.]

He then continued: I am convinced that that paper secures the liberty of Virginia, and of the United States. I ask myself if there be a single power in it which is not necessary for the support of the Union; and, as far as my reasoning goes, I say that, if you deprive it of one single power contained in it, it will be "*vox et præterea nihil*." Those who are to go to Congress will be the servants of the people. They are created and deputed by us, and removable by us. Is there a greater security than this in our state government? To fortify this security, is there not a constitutional remedy in the government, to reform any errors which shall be found inconvenient? Although the honorable gentleman has dwelt so long upon it, he has not made it appear otherwise. The Confederation can neither render us happy at home nor respectable abroad. I conceive this system will {187} do both. The two gentlemen who have been in the grand Convention have proved, incontestably, that the fears arising from the powers of Congress are groundless. Having now gone through some of the principal parts of the gentleman's harangue, I shall take up but a few moments in replying to its conclusion.

I contend, for myself and the friends of the Constitution, that we are as great friends to liberty as he or any other person, and that we will not be behind in exertions in its defence when it is invaded. For my part, I trust that, young as I am, I shall be trusted, in the support of freedom, as far as the honorable gentleman. I feel that indignation and contempt, with respect to his previous amendments, which he expresses against posterior amendments. I can see no danger from a previous ratification. I see infinite dangers from previous amendments. I shall give my suffrage for the former, because I think the *happiness* of my country depends upon it. To maintain and secure that happiness is the first object of my wishes. I shall brave all storms and political dangers.

## Gov. RANDOLPH.

Having consumed heretofore so much of your time, I did not intend to trouble you again so soon. But now I call on this committee, by way of right, to permit me to answer some severe charges against the friends of the new Constitution. It is a right I am entitled to, and shall have. I have spoken twice in this committee. I have shown the principles which actuated the general Convention; and attempted to prove that, after the ratification of the proposed system by so many states, the preservation of the Union depended on its adoption by us. I find myself attacked in the most illiberal manner by the honorable gentleman, (Mr. Henry.) I disdain his aspersions and his insinuations. His asperity is warranted by no principle of parliamentary decency, nor compatible with the least shadow of friendship; and if our friendship must fall, *let it fall, like Lucifer, never to rise again!* Let him remember that it is not to answer him, but to satisfy his respectable audience, that I now get up. He has accused me of inconsistency in this very respectable assembly. Sir, if I do not stand on the bottom of integrity, and pure love for Virginia, as much as those who can be most clamorous, I wish to resign my existence. Consistency consists in actions, {188} and not in empty, specious words. Ever since the first entrance into that federal business, I have been inevitably governed by an invincible attachment to the happiness of the people of America. Federal measures had been before that time repudiated. The augmentation of congressional powers was dreaded. The imbecility of the Confederation was proved and

acknowledged. When I had the honor of being deputed to the federal Convention, to revise the existing system, I was impressed with the necessity of a more energetic government, and thoroughly persuaded that the salvation of the people of America depended on an intimate and firm union. The honorable gentlemen there can say, that, when I went thither, no man was a stronger friend to such a union than myself. I informed you why I refused to sign.

I understand not him who wishes to give a full scope to licentiousness and dissipation — who would advise me to reject the proposed plan, and plunge us into anarchy.

[Here his excellency, Governor Randolph, read the conclusion of his public letter, (wherein he says, that, notwithstanding his objections to the Constitution, he would adopt it rather than lose the Union,) and proceeded to prove the consistency of his present opinion with his former conduct; when Mr. Henry arose, and declared that he had no personal intention of offending any one; that he did his duty, but that he did not mean to wound the feelings of any gentleman; that he was sorry if he offended the honorable gentleman without intending it; and that every gentleman had a right to maintain his opinion. His excellency then said that he was relieved by what the honorable gentleman said; that, were it not for the concession of the gentleman, he would have made some men's hair stand on end, by the disclosure of certain facts. Mr. Henry then requested that, if he had any thing to say against him, he would disclose it. His excellency then continued, that as there were some gentlemen there who might not be satisfied by the recantation of the honorable gentleman, without being informed, he should give them some information on the subject; that his ambition had ever been to promote the Union; that he was no more attached to it now than he always had been; and that he could in some degree prove it by the paper which he held in his hand, which was his public letter. He then read a considerable part of his letter, wherein he expressed his friendship to the Union. He then informed the committee, that, on the day of election of delegates for the Convention, for the county of Henrico, it being incumbent upon him to give his opinion, he told the respectable freeholders of that county his sentiments — that he wished not to become a member of that Convention; that he had not attempted to create a belief that he would vote against the Constitution; that he did really unfold to them his actual opinion, which was perfectly reconcilable with the suffrage he was going to give in favor of the Constitution. He then read part of a letter which he {189} had written to his constituents on the subject, which was expressive of sentiments amicable to a union with other states. He then threw down the letter on the clerk's table, and declared that it might lie there for the *inspection of the curious and malicious*.]

He then proceeded thus: I am asked why I have thought proper to patronize this government. Not because I am one of those *illuminated*, but because the felicity of my country requires it. The highest honors have no allurements to charm me. If he be as little attached to public places as I am, he must be free from ambition. It is true that I am now in an elevated situation; but I consider it as a far less happy or eligible situation than that of an inconsiderable landholder. Give me peace — I ask no more. I ask no honor or gratification. Give me public peace, and I will carve the rest for myself. The happiness of my country is my first wish. I think it necessary for that happiness that this Constitution be now adopted; for, in spite of the representation of the honorable gentleman, I see a storm growling over Virginia. No man has more respect for Virginia, or a greater affection for her citizens, than I have; but I cannot flatter you with a kinder or more agreeable representation, while we are surrounded by so many dangers, and when there is so much rancor in the hearts of your citizens.

I beg the honorable gentleman to pardon me for reminding him that his historical references and quotations are not accurate. If he errs so much with respect to his *facts*, as he has done in *history*, we cannot depend on his information or assertions. He had, early in the debates, instanced Holland as a happy democracy, highly worthy of our imitation. From thence he went over the mountains to Switzerland, to find another democracy. He represented all those cantons as being of the democratic kind. I wish he had reflected a little more, and distinguished those that are

democratical from those which are aristocratical. He has already been reminded of his errors. I should not now put him right with respect to history, had he not continued his mistakes. Consult all writers — from Sir William Temple to those of modern times — they will inform you, that the republic of Holland is an aristocracy. He has inveighed against the stadtholder. I do not understand his application of this to the American President. It is well known that, but for the {190} stadtholder, the republic would have been ruined long ago. Holland, it seems, has no ten miles square. But she has the Hague, where the deputies of the states assemble. It has been found necessary to have a fixed place of meeting. But the influence which it has given the province of Holland to have the seat of the government within its territory, subject in some respects to its control, has been injurious to the other provinces. The wisdom of the Convention is therefore manifest in granting the Congress exclusive jurisdiction over the place of their session. I am going to correct a still greater error which he has committed, not in order to show any little knowledge of history I have, (for I am by no means satisfied with its extent,) but to endeavor to prevent any impressions from being made by improper and mistaken representations.

He said that Magna Charta destroyed all implication. This was not the object of Magna Charta, but to destroy the power of the king, and secure the liberty of the people. The bill of rights was intended to restore the government to its primitive principles.

We are harassed by quotations from Holland and Switzerland, which are inapplicable in themselves, and not founded in fact.

I am surprised at his proposition of previous amendments, and his assertion that subsequent ones will cause disunion. Shall we not lose our influence and weight in the government to bring about amendments, if we propose them previously? Will not the senators be chosen, and the electors of the President be appointed, and the government brought instantly into action, after the ratification of nine states? In this disunion, when will the effect proposed be produced? But no man here is willing to believe what the honorable gentleman says on this point. I was in hopes we should come to some degree of order. I fear that order is no more. I believe that we should confine ourselves to the particular clause under consideration, and to such other clauses as might be connected with it.

Why have we been told that maxims can alone save nations; that our maxims are our bill of rights; and that the liberty of the press, trial by jury, and religion, are destroyed? Give me leave to say, that the maxims of Virginia are union and justice.

{191} The honorable gentleman has passed by my observations with respect to British debts. He has thought proper to be silent on this subject. My observations must therefore have full force. Justice is, and ought to be, our maxim; and must be that of every temperate, moderate, and upright man. I should not say so much on this occasion, were it not that I perceive that the flowers of rhetoric are perverted, in order to make impressions unfavorable and inimical to an impartial and candid decision. What security can arise from a bill of rights? The predilection for it has arisen from a misconception of its principles. It cannot secure the liberties of this country. A bill of rights was used in England to limit the king's prerogative; he could trample on the liberties of the people in every case which was not within the restraint of the bill of rights.

Our situation is radically different from that of the people of England. What have we to do with bills of rights? Six or seven states have none. Massachusetts has declared her bill of rights as no part of her Constitution. Virginia has a bill of rights, but it is no part of her Constitution. By not saying whether it is paramount to the Constitution or not, it has left us in confusion. Is the bill of rights consistent with the Constitution? Why, then, is it not inserted in the Constitution? Does it add any thing to the Constitution? Why is it not in the Constitution? Does it except any thing from the Constitution? Why not put the exceptions in the Constitution? Does it oppose the Constitution? This will produce mischief. The judges will dispute which is paramount. Some will say, the bill of rights is paramount: others will say, that the Constitution, being subsequent in point of time, must be paramount. A bill of rights, therefore, accurately speaking, is quite useless, if not dangerous to a republic.

I had objections to this Constitution. I still have objections to it. [Here he read the objections which appeared in his public letter.] The gentleman asks, How comes it to pass that you are now willing to take it? I answer, that I see Virginia in such danger, that, were its defects greater, I would adopt it. These dangers, though not immediately present to our view, yet may not be far distant, if we disunite from the other states I will join any man in endeavoring {192} to get amendments, after the danger of disunion is removed by a previous adoption.

The honorable gentleman says that the federal spirit leads to disunion. The federal spirit is not superior to human nature, but it cannot be justly charged with having a tendency to disunion. If we were to take the gentleman's discrimination as our guide, the spirit of Virginia would be dictatorial. Virginia dictates to eight states. A single amendment, proposed as the condition of our accession, will operate total disunion. Where is the state that shall conceive itself obliged to aid Virginia? The honorable gentleman says there is no danger — great in imagination, but nothing in reality. What is the meaning of this? What would this state do, if opposed alone to the arms of France or Great Britain? Would there be no danger in such a case? Was not the assistance of France necessary to enable the United States to repel the attack of Great Britain? In the last war, by union and judicious concert of measures, we were triumphant. Can this be the case in a future war, if we be disunited from our sister states? What would have been the consequence, if, in the late war, we had reposed on our arms, and depended on Providence alone? Shall we ever be at peace, because we are so now? Is it unnecessary to provide against future events? His objection goes to prove that Virginia can stand by herself. The advice that would attempt to convince me of so pernicious an error I treat with disdain. Our negroes are numerous, and are daily becoming more so. When I reflect on their comparative number, and comparative condition, I am the more persuaded of the great fitness of becoming more formidable than ever.

It seems that republican borderers are peaceable. This is another *lapse* in history. Did he never know that a number of men were as much inspired with ambition as any individual? Had he consulted history, he would have known that the most destructive wars have been carried on, with the most implacable hatred, between neighboring republics. It is proved by his favorite Roman history, that republican borderers are as apt to have rancor in their hearts as any. The institutions of Lycurgus himself could not restrain republican borderers from hostility. He treats the {193} idea of commercial hostility as extravagant. History might inform him of its reality. Experience might give him some instruction on the subject.

Go to the Potomac, and mark what you see. I had the mortification to see vessels within a very little distance from the Virginian shore, belonging to Maryland, driven from our ports by the badness of our regulations. I take the liberty of a freeman in exposing what appears to me to deserve censure. I shall take that liberty in reprehending the wicked act which attainted Josiah Phillips. Because he was not a Socrates, is he to be attainted at pleasure? Is he to be attainted because he is not among the high of reputation? After the use the gentleman made of a word innocently used to express a crowd, I thought he would be careful himself. We are all equal in this country. I hope that, with respect to birth, there is no superiority. It gives me pleasure to reflect that, though a man cannot trace up his lineage, yet he is not to be despised. I shall always possess these sentiments and feelings. I shall never aspire at high offices. If my country should ever think my services worth any thing, it shall be in the humble capacity of a representative: higher than this I will not aspire.

He has expatiated on the turpitude of the character of Josiah Phillips. Has this any thing to do with the principle on which he was attainted? We all agree that he was an abandoned man. But if you can prepare a bill to attain a man, and pass it through both houses in an instant, I ask you, who is safe? There is no man on whom a cloud may not hang some time or other, if a demagogue should think proper to take advantage of it to his destruction. Phillips had a commission in his pocket at that time. He was, therefore, only a prisoner of war. This precedent may destroy the best man in the community, when he was arbitrarily attainted merely because he was not a Socrates.

He has perverted my meaning with respect to our government. I spoke of the Confederation. He took no notice of this. He reasoned of the Constitution of Virginia. I had said nothing of it on that occasion. Requisitions, however, he said, were safe and advisable, because they give time for deliberation. Will not taxation do this? Will not Congress, when laying a tax, bestow a thought upon it? But he means to say, that the state itself ought to say {194} whether she pleases to pay or not. Congress, by the Confederation, has power to make any requisitions. The states are constitutionally bound to pay them. We have seen their happy effects. When the requisitions are right, and duly portioned, it is in the power of any state to refuse to comply with them.

He says that he would give them the impost. I cannot understand him, as he says he has an hereditary hatred to custom-house officers. Why despise them? Why should the people hate them? I am afraid he has accidentally discovered a principle that will lead him to make greater opposition than can be justified by any thing in the Constitution. I would undertake to prove the fallacy of every Observation he made on that occasion; but it is too late now to add any more. At another opportunity I shall give a full refutation to all he has said.

---

**TUESDAY, *June 10, 1788.***

[The 1st and 2d sections still under consideration.]

## Gov. RANDOLPH.

Mr. Chairman, I was restrained yesterday, by the lateness of the day, from making those observations which I intended to make in answer to the honorable gentleman who had gone before me. I shall now resume that subject. I hope we shall come at last to a decision. I shall not forever wander from the point, or transgress the rules of this house; but, after making answer to him, shall go on in regular order.

He observed that the only question was, with respect to previous and subsequent amendments. Were this the only question, sir, I am sure this inconsiderable matter would not long retard a decision. I conceive the preservation of the Union to be a question of great magnitude. This must be a peculiar object of my attention, unless I depart from that rule which has regulated my conduct since the introduction of federal measures. Suppose, contrary to my expectation, this Convention should propose certain amendments previous to its ratification, — mild and pliant as those states may be who have received it unanimously; flexible as those may be who have adopted it by a majority; I had rather argue, from human nature, that they will not recede from their resolutions, to accommodate our caprice. Is there no jealousy existing between the states? They discover no superiority, { 195 } in any one state, of arrogating to itself a right to dictate what ought to be done. They would not see the reasons of such amendments, for some amendments in themselves are really dangerous. The same reasons could not be impressed on all the states. I shall mention one example: I shall suppose, for instance, that we shall propose, as an amendment, that the President shall have a council. I conceive a council to be injurious to the executive. The counsellors will either impede or clog the President; or, if he be a man of dexterity, they will be governed by him. They will also impair his responsibility. Is it probable that all the other states would think alike on the subject, or agree to such an alteration? As there is a mode in the Constitution itself to procure amendments, not by reference to the people, but by the interposition of the state legislatures, will the people of Virginia bind themselves not to enter into the Union till amendments shall have been obtained? I refer it to any gentleman here, whether this may not entirely exclude us from the Union.

The honorable gentleman then told us, that Maryland held out, and that there can be no danger from our holding out of the Union; that she refused to come into the Confederation until the year 1781, when she was pressed by the then Congress. Is this a proper comparison? The fear of the British army and navy kept the states together. This fear induced that state to come into the Union then, otherwise the Union would have been destroyed. We are also told that Vermont held out. His information is inaccurate. Pardon me for saying that it is not to be found in the history of those times. The right to that territory was long in dispute between New York and Connecticut. The inhabitants took that opportunity of erecting themselves into a state. They pressed Congress for admission into the Union. Their solicitations were continually opposed till the year 1781, when a kind of assent was given. Can it be said, from this, that the people of Vermont held out against the Confederation of twelve states? Were they sufficiently wealthy and numerous to do so? Virginia is said to be able to stand by herself. From her situation she has cause to fear. She has also cause to fear from her inability to raise an army, a navy, or money. I contend that she is not able to stand by herself. I am sure that every man who comes from the exposed { 196 } parts of this country is well convinced of this truth. As these have been enumerated, it would be useless to go over them again. He then told us that an error in government never can be removed.

I will acknowledge, with him, that there are governments in Europe, whereof the defects have a long time been unaltered, and are not easily changed.

We need not go farther than the war to find a willing relinquishment of power. Look at the Confederation: you will find there such a voluntary relinquishment. View the convention at Annapolis: the object of its delegation involved in its nature some relinquishment of power. It produced this effect — all the states, except Rhode Island, agreed to call a general Convention, to revise the Confederation, and invest Congress with more power. A general Convention has been called; it has proposed a system which concedes considerable powers to Congress. Eight states have already assented to this concession. After this, can we say that men will not voluntarily relinquish power? Contrast this country with Scotland, blessed with union. The circumstances of the two countries are not dissimilar. View Scotland: that country is greatly benefited by union. It would not be now in its present flourishing situation without the auspices of England. This observation brings us to the necessity of union.

Were we not to look to futurity, have we nothing to fear from the present state of Europe? We are exposed at sea. The honorable gentleman tells us we have no hostility to fear from that quarter; that our ambassador at Paris would have informed us if there were any combustibles preparing. If he has not done any such thing, it is no conclusive evidence of safety. Nations have passions like men. It is the disposition of nations to attack where there is a demonstrable weakness. Are you weak? Go to history; it will tell you, you will be insulted. One insult will produce another, till at last it produces a partition. So, when they tell us there is no storm gathering, they ought to support their allegations by some probable evidence. The honorable gentleman then told us that armies do not collect debts; but armies make reprisals. If the debts which we owe continue on the disgraceful footing they have been on hitherto, without even the payment of interest, we may well expect such reprisals. The seizure of our vessels in foreign ports must be {197} the certain consequence of the continuance of such a disgraceful conduct. He then informed us that no danger was to be apprehended from Spain — that she trembles for Mexico and Peru. That nation, sir, is a powerful nation, and has immense resources. What will she be when united with France and other nations who have cause of complaint against us? Mr. Chairman, Maryland seems, too, to be disregarded. The loss of the Union would not bring her arms upon our heads: — look at the Northern Neck! If the Union is dissolved, will it adhere to Virginia? Will the people of that place sacrifice their safety for us? How are we to retain them? By force of arms? Is this the happy way he proposes for leaving us out of the Union?

We are next informed that there is no danger from the borders of Maryland and Pennsylvania, and that my observations upon the frontiers of England and Scotland are inapplicable. He distinguishes republican from monarchical borderers, and ascribes pacific meekness to the former, and barbarous ferocity to the latter. There is as much danger, sir, from republican borderers as from any other. The danger results from the situation of borderers, and not from the nature of the government under which they live. History will show that as much barbarity and cruelty have been committed upon one another by republican borderers as by any other. We are borderers upon three states, two of which are ratifying states. I therefore repeat, sir, that we have danger to apprehend from this quarter.

As to the people's complaints of the government, the gentleman must either have misunderstood me, or went over very slightly what I said of the Confederation. He spoke of the Constitution of Virginia, concerning which I said nothing. The Confederation, sir, on which we are told we ought to trust our safety, is totally void of coercive power and energy. Of this the people of America have been long convinced; and this conviction has been sufficiently manifested to the world. Of this I spoke, and now I repeat, that if we trust to it, we shall be defenceless. The general government ought to be vested with powers competent to our safety, or else the necessary consequence must be, that we shall be defenceless.

The honorable gentleman tells us that, if the project at Albany for the colonial consolidation, as he terms it, had {198} been completed, it would have destroyed all union and happiness. What has that to do with this paper? It tells us what the present situation of America is. Can any man say he could draw a better picture of our situation than that paper? He says that, by the completion of that project, the king of Great Britain might have bound us so tight together, that resistance would have been ineffectual. Does it not tell us that union is necessary? Will not our united strength be more competent to our defence, against any assault, than the force of a part? If, in their judgment alone who could decide on it, it was judged sufficient to secure their happiness and prosperity, why say that that project would have destroyed us? But the honorable gentleman again recurs to his beloved requisitions, on which he advises us to trust our happiness. Can any thing be more imprudent than to put the general government on so humiliating and disgraceful a footing? What are they but supplications and entreaties to the states to do their duty? Shall we rely on a system of which every man knows the inefficacy? One cannot conceive any thing more contemptible than a government which is forced to make humble applications to other governments for the means of its common support — which is driven to apply for a little money to carry on its administration a few months. After the total incapacity of the Confederation to secure out, happiness has been fully experienced, what will be the consequence if we reject this Constitution? Shall we recur to separate confederacies? The honorable gentleman acknowledges them to be evils which ought not to be resorted to but on the last necessity — they are evils of the first magnitude.

Permit me to extract out of the confederation of Albany a fact of the highest authority, because drawn from human nature, which clearly demonstrates the fatal impolicy of separate confederacies. [Here he made a quotation to that effect.] If there is a gentleman here who harbors in his mind the idea of a separate confederacy, I beg him to consider the sequence. Where shall we find refuge in the day of calamity? The different confederacies will be rivals in power and commerce, and therefore will soon be implacable enemies of one another. I ask if there be any objection to this system, that will not come with redoubled energy against any other plan. See the defects in this Constitution, {199} and examine if they do not appear with tenfold force in separate confederacies. After having acknowledged the evil tendency of separate confederacies, he recurs to this — that this country is too extensive for the system. If there be an executive dependent for his election on the people, a judiciary which will administer the laws with justice, no extent of country will be too great for a republic.

Where is there a precedent to prove that this country is too extensive for a government of this kind? America cannot find a precedent to prove this. Theoretic writers have adopted a position that extensive territories will not admit of a republican government. These positions were laid

down before the science of government was as well understood as it is now. Where would America look for a precedent to warrant her adoption of that position? If you go to Europe, before arts and sciences had arrived at their present perfection, no example worthy of imitation can be found. The history of England, from the reign of Henry VII.; of Spain, since that of Charles V.; and of France, since that of Francis I., prove that they have greatly improved in the science, of politics since that time. Representation, the source of American liberty and English liberty, was a thing not understood in its full extent till very lately.

The position I have spoken of was founded upon an ignorance of the principles of representation. Its force must be now done away, as this principle is so well understood. If laws are to be made by the people themselves, in their individual capacities, it is evident that they cannot conveniently assemble together, for this purpose, but in a very limited sphere; but if the business of legislation be transacted by representatives, chosen periodically by the people, it is obvious that it may be done in any extent of country. The experience of this commonwealth, and of the United States, proves this assertion.

Mr. Chairman, I am astonished that the rule of the house to debate regularly has not been observed by gentlemen. Shall we never have order? I must transgress that rule now, not because I think the conduct of the gentleman deserves imitation, but because the honorable gentleman ought to be answered. In that list of facts with which he would touch our affections, he has produced a name (Mr. Jefferson) which will ever be remembered with gratitude by this commonwealth. {200} I hope that his life will be continued, to add, by his future actions, to the brilliancy of his character. Yet I trust that his name was not mentioned to influence any member of this house. Notwithstanding the celebrity of his character, his name cannot be used as authority against the Constitution. I know not his authority. I have had no letter from him. As far as my information goes, it is only a report circulated through the town, that he wished nine states to adopt, and the others to reject it, in order to get amendments. Which is the ninth state to introduce the government? That illustrious citizen tells you, that he wishes the government to be adopted by nine states, to prevent a schism in the Union. This, sir, is my wish. I will go heart and hand to obtain amendments, but I will never agree to the dissolution of the Union. But unless a ninth state will accede, this must inevitably happen. No doubt he wished Virginia to adopt. I wish not to be bound by any man's opinion; but, admitting the authority which the honorable gentleman has produced to be conclusive, it militates against himself. Is it right to adopt? He says, no; because there is a President. I wish he was eligible after a given number of years.

I wish also some other changes to be made in the Constitution. But am I therefore obliged to run the risk of losing the Union, by proposing amendments previously, when amendments without that risk can be obtained afterwards? Am I to indulge capricious opinions so far as to lose the Union? The friends of the Union will see how far we carry our attachment to it, and will therefore concur with our amendments. The honorable gentleman has told us, that Holland is ruined by a stadtholder and a stadtholder's wife. I believe this republic is much indebted to that execrated stadtholder for her power and wealth. Recur to the history of Holland, and you will find that country never could have resisted Spain, had it not been for the stadtholder. At those periods when they had no stadtholder, their government was weak and their public affairs deranged. Why has this been mentioned? Was it to bias our minds against the federal executive? Are we to have no executive at all, or are we to have eight or ten? An executive is as necessary,

for the security of liberty and happiness, as the two other branches of government. Every state in the Union has an executive.

{201} Let us consider whether the federal executive be wisely constructed. This is a point in which the constitution of every state differs widely as to the mode of electing their executives, and as to the time of continuing them in office. In some states the executive is perpetually eligible. In others he is rendered ineligible after a given period. They are generally elected by the legislature. It cannot be objected to the federal executive that the power is executed by one man. All the enlightened part of mankind agree that the superior despatch, secrecy, and energy, with which one man can act, render it more politic to vest the power of executing the laws in one man, than in any number of men. How is the President elected? By the people — on the same day throughout the United States — by those whom the people please. There can be no concert between the electors. The votes are sent sealed to Congress, What are his powers? To see the laws executed. Every executive in America has that power. He is also to command the army: this power also is enjoyed by the executives of the different states. He can handle no part of the public money except what is given him by law. At the end of four years, he may be turned out of his office. If he misbehaves he may be impeached, and in this case he will never be reëlected. I cannot conceive how his powers can be called formidable. Both houses are a check upon him. He can do no important act without the concurrence of the Senate. In England, the sword and purse are in different hands. The king has the power of the sword, and the purse is in the hands of the people alone. Take a comparison between this and the government of England.

It will prove in favor of the American principle. In England, the king declares war. In America, Congress must be consulted. In England, Parliament gives money. In America, Congress does it. There are consequently more powers in the hands of the people, and greater checks upon the executive here, than in England. Let him pardon me, when I say he is mistaken in passing a eulogium on the English government to the prejudice of this plan. Those checks which he says are to be found in, the English government, are also to be found here. Our government is founded upon real checks. He ought to show there are in it. Is this the case? Who are your representatives? {202} They are chosen by the people for two years. Who are your senators? They are chosen by the legislatures, and a third of them go out of the Senate at the end of every second year. They may also be impeached. There are no better checks upon earth. Are there better checks in the government of Virginia? There is not a check in the one that is not in the other. The difference consists in the length of time, and in the nature of the objects. Any man may be impeached here — so he may there. If the people of Virginia can remove their delegates for misbehavior, by electing other men at the end of the year, so, in like manner, the federal representatives may be removed at the end of two, and the senators at the end of six years.

The honorable gentleman has praised the Virginia government. We can prove that the federal Constitution is equally excellent. The legislature of Virginia may conceal their transactions as well as the general government. There is no clause in the Constitution of Virginia to oblige its legislature to publish its proceedings at any period. The clause in this Constitution which provides for a periodical publication, and which the honorable gentleman reprobates so much, renders the federal Constitution superior to that of Virginia in this respect. The expression, *from time to time*, renders us sufficiently secure: it will compel them to publish their proceedings as often as it can conveniently and safely be done; and must satisfy every mind, without an illiberal

perversion of its meaning. His bright ideas are very much obscured by torturing the explication of words. His interpretation of elections must be founded on a misapprehension. The Constitution says, that "the times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time, by law, make or alter such regulation, except as to the place of choosing senators." It says, in another place, "that the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature." Who would have conceived it possible to deduce, from these clauses, that the power of election was thrown into the hands of the rich? As the electors of the federal representatives are to have the same qualifications with those of the representatives of this state legislature, — or, in other words, as the electors of the one are {203} to be electors of the other, — this suggestion is unwarrantable, unless he carries his supposition farther, and says that Virginia will agree to her own suicide, by modifying elections in such manner as to throw them into the hands of the rich. The honorable gentleman has not given us a fair object to be attacked; he has not given us any thing substantial to be examined.

It is also objected that the trial by jury, the writ of *habeas corpus*, and the liberty of the press, are insecure. But I contend that the *habeas corpus* is at least on as secure and good a footing as it is in England. In that country, it depends on the will of the legislature. That privilege is secured here by the Constitution, and is only to be suspended in cases of extreme emergency. Is this not a fair footing? After agreeing that the government of England secures liberty, how do we distrust this government? Why distrust ourselves? The liberty of the press is supposed to be in danger. If this were the case, it would produce extreme repugnancy in my mind. If it ever will be suppressed in this country, the liberty of the people will not be far from being sacrificed. Where is the danger of it? He says that every power is given to the general government that is not reserved to the states. Pardon me if I say the reverse of the proposition is true. I defy any one to prove the contrary. Every power not given it by this system is left with the states. This being the principle, from what part of the Constitution can the liberty of the press be said to be in danger?

[Here his excellency read the 8th section of the 1st article, containing all the powers given to Congress.]

Go through these powers, examine every one, and tell me if the most exalted genius can prove that the liberty of the press is in danger. The trial by jury is supposed to be in danger also. It is secured in criminal cases, but supposed to be taken away in civil cases. It is not relinquished by the Constitution; it is only not provided for. Look at the interest of Congress to suppress it. Can it be in any manner advantageous for them to suppress it? In equitable cases, it ought not to prevail, nor with respect to admiralty causes; because there will be an undue leaning against those characters, of whose business courts of admiralty will have cognizance. I will rest myself secure under this reflection {204} — that it is impossible for the most suspicious or malignant mind to show that it is the interest of Congress to infringe on this trial by jury.

Freedom of religion is said to be in danger. I will candidly say, I once thought that it was, and felt great repugnance to the Constitution for that reason. I am willing to acknowledge my apprehensions removed; and I will inform you by what process of reasoning I did remove them. The Constitution provides that "the senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this

Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States." It has been said that, if the exclusion of the religious test were an exception from the general power of Congress, the power over religion would remain. I inform those who are of this opinion, that no power is given expressly to Congress over religion. The senators and representatives, members of the state legislatures, and executive and judicial officers, are bound, by oath or affirmation, to support this Constitution. This only binds them to support it in the exercise of the powers constitutionally given it. The exclusion of religious tests is an exception from this general provision, with respect to oaths or affirmations. Although officers, &c., are to swear that they will support this Constitution, yet they are not bound to support one mode of worship, or to adhere to one particular sect. It puts all sects on the same footing. A man of abilities and character, of any sect whatever, may be admitted to any office or public trust under the United States. I am a friend to a variety of sects, because they keep one another in order. How many different sects are we composed of throughout the United States! How many different sects will be in Congress! We cannot enumerate the sects that may be in Congress! And there are now so many in the United States, that they will prevent the establishment of any one sect, in prejudice to the rest, and will forever oppose all attempts to infringe religious liberty. If such an attempt be made, will not the alarm be sounded throughout America? If Congress should be as wicked as we are foretold they will be, they would not run the risk of {205} exciting the resentment of all, or most, of the religious sects in America.

The judiciary is drawn up in terror. Here I have an objection of a different nature. I object to the appellate jurisdiction as the greatest evil in it. But I look at the Union — the object which guides me. When I look at the Union, objects of less consideration vanish, and I hope that the inconvenience will be redressed, and that Congress will prohibit the appeal with respect to matters of fact. When it respects only matters of law, no danger can possibly arise from it. Can Congress have any interest in continuing appeals of fact? If Pennsylvania has an interest in continuing it, will not Georgia, North Carolina, South Carolina, Virginia, New York, and the Eastern States, have an interest in discontinuing it? What advantage will its continuance be to Maryland, New Jersey, or Delaware? Is there not unanimity against it in Congress almost? Kentucky will be equally opposed to it. Thus, sir, all these will be opposed to one state. If Congress wish to aggrandize themselves by oppressing the people, the judiciary must first be corrupted! No man says any thing against them; they are more independent than in England.

But they say that the adoption of this system will occasion an augmentation of taxes. To object to it on this ground, is as much as to say, No Union — stand by yourselves! An increase of taxes is a terror that no friend to the Union ought to be alarmed at. The impost must produce a great sum. The contrary cannot be supposed. I conceive the particular expense of particular states will be diminished, and that diminution will, to a certain extent, support the Union. Either disunion, or separate confederacies, will enhance the expense. A union of all the states will be, even on economical principles, more to the interest of the people of Virginia than either separate confederacies or disunion. Had the states complied with the obligations imposed upon them by the Confederation, this attempt would never have been made. The unequivocal experience we have had of their inefficacy renders this Change necessary. If union be necessary for our safety, we ought not to address the avarice of this house. I am confident that not a Single member of this committee would be moved by such unworthy considerations. We are told that the people do not understand {206} this government. I am persuaded that they do not — not for the want of more

time to understand it, but to correct the misrepresentations of it. When I meditated an opposition to previous amendments, I marked the number of what appeared to me to be errors, and which I wished to be subsequently removed. But its real errors have been exaggerated; it has not met with a fair decision. It must be candidly acknowledged that there are some evils in it which ought to be removed. But I am confident that such gross misrepresentations have been made of it, that, if carried before any intelligent men, they would wonder at such glaring attempts to mislead, or at such absolute misapprehension of the subject. Though it be not perfect, any government is better than the risk which gentlemen wish us to run.

Another construction he gives is, that it is exclusively in the power of Congress to arm the militia, and that the states could not do it if Congress thought proper to neglect it. I am astonished how this idea could enter into the gentleman's mind, whose acuteness no man doubts. How can this be fairly deduced from the following clause? — "To provide for the organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress." He complains much of implication; but in this case he has made use of it himself, for his construction of this clause cannot possibly be supported without it. It is clear and self-evident that the pretended danger cannot result from the clause. Should Congress neglect to arm or discipline the militia, the states are fully possessed of the power of doing it; for they are restrained from it by no part of the Constitution.

The sweeping clause, as it is called, is much dreaded. I find that I differ from several gentlemen on this point. This formidable clause does not in the least increase the powers of Congress. It is only inserted for greater cautions and to prevent the possibility of encroaching upon the powers of Congress. No sophistry will be permitted to be used to explain away any of those powers; nor can they possibly assume any other power, but what is contained in the Constitution, without absolute usurpation. Another security is {207} that, if they attempt such a usurpation, the influence of the state governments will nip it in the bud of hope. I know this government will be cautiously watched. The smallest assumption of power will be sounded in alarm to the people, and followed by bold and active opposition. I hope that my countrymen will keep guard against every arrogation of power. I shall take notice of what the honorable gentleman said with respect to the power to provide for the general welfare. The meaning of this clause has been perverted, to alarm our apprehensions. The whole clause has not been read together. It enables Congress "to lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States." The plain and obvious meaning of this is, that no more duties, taxes, imposts, and excises, shall be laid, than are sufficient to pay the debts, and provide for the common defence and general welfare, of the United States.

If you mean to have a general government at all, ought it not to be empowered to raise money to pay the debts, and advance the prosperity, of the United States, in the manner that Congress shall think most eligible? What is the consequence of the contrary? You give it power by one hand, and take it away from it by the other. If it be defective in some parts, yet we ought to give due credit to those parts which are acknowledged to be good. Does not the prohibition of paper money merit our approbation? I approve of it because it prohibits tender-laws, secures the widows and

orphans, and prevents the states from impairing contracts. I admire that part which forces Virginia to pay her debts. If we recur to the bill of rights, which the honorable gentleman speaks so much of, we shall find that it recommends justice. Had not this power been given, my affection for it would not have been so great. When it obliges us to tread in the path of virtue, when it takes away from the most influential man the power of directing our passions to his own emolument, and of trampling upon justice, I hope to be excused when I say, that, were it mote objectionable than it is, I should vote for the Union.

## **Mr. MONROE.**

Mr. Chairman, I cannot avoid expressing the great anxiety which I feel upon the present occasion {208} — an anxiety that proceeds not only from a high sense of the importance of the subject, but from a profound respect for this august and venerable assembly. When we contemplate the fate that has befallen other nations, whether we cast our eyes back into the remotest ages of antiquity, or derive instruction from those examples which modern times have presented to our view, and observe how prone all human institutions have been to decay; how subject the best-formed and most wisely organized governments have been to lose their checks and totally dissolve; how difficult it has been for mankind, in all ages and countries, to preserve their dearest rights and best privileges, impelled as it were by an irresistible fate of despotism; — if we look forward to those prospects that sooner or later await our country, unless we shall be exempted from the fate of other nations, even to a mind the most sanguine and benevolent some gloomy apprehensions must necessarily crowd upon it. This consideration is sufficient to teach us the limited capacity of the human mind — how subject the wisest men have been to error. For my own part, sir, I come forward here, not as the partisan of this or that side of the question, but to commend where the subject appears to me to deserve commendation; to suggest my doubts where I have any; to hear with candor the explanation of others; and, in the ultimate result, to act as shall appear for the best advantage of our common country.

The American states exhibit at present a new and interesting spectacle to the eyes of mankind. Modern Europe, for more than twelve centuries past, has presented to view one of a very different kind. In all the nations of that quarter of the globe, there hath been a constant effort, on the part of the people, to extricate themselves from the oppression of their rulers; but with us the object is of a very different nature — to establish the dominion of law over licentiousness — to increase the powers of the national government to such extent, and organize it in such manner, as to enable it to discharge its duties, and manage the affairs of the states, to the best advantage. There are two circumstances remarkable in our colonial settlement: — 1st, the exclusive monopoly of our trade; 2nd, that it was settled by the commons of England only. The revolution, in having emancipated us from the shackles of Great Britain, has put the entire government in the hands of one order of people only — {209} freemen; not of nobles and freemen. This is a peculiar trait in the character of this revolution. That this sacred deposit may be always retained there, is my most earnest wish and fervent prayer. That union is the first object for the security of our political happiness in the hands of gracious Providence, is well understood and universally admitted through all the United States. From New Hampshire to Georgia, (Rhode Island excepted,) the people have uniformly manifested a strong attachment to the Union. This attachment has resulted from a persuasion of its utility and necessity. In short, this is a point so well known, that it is needless to trespass on your patience any longer about it. A recurrence has

been had to history. Ancient and modern leagues have been mentioned, to make impressions. Will they admit of any analogy with our situation? The same principles will produce the same effects. Permit me to take a review of those leagues which the honorable gentleman has mentioned; which are, 1st, the Amphictyonic council; 2d, the Achæan league; 3d, the Germanic system; 4th, the Swiss Cantons; 5th, the United Netherlands; and 6th, the New England confederacy. Before I develop the principles of these leagues, permit me to speak of what must influence the happiness and duration of leagues. These principally depend on the following circumstances: 1st, the happy construction of the government of the members of the union; 2d, the security from foreign danger. For instance, monarchies united would separate soon; aristocracies would preserve their union longer; but democracies, unless separated by some extraordinary circumstance, would last forever. The causes of half the wars that have thinned the ranks of mankind, and depopulated nations, are caprice, folly, and ambition: these belong to the higher orders of governments, where the passions of one, or of a few individuals, direct the fate of the rest of the community. But it is otherwise with democracies, where there is an equality among the citizens, and a foreign and powerful enemy, especially a monarch, may crush weaker neighbors. Let us see how far these positions are supported by the history of these leagues, and how far they apply to us. The Amphictyonic council consisted of three members — Sparta, Thebes, and Athens. What was the construction of these states? Sparta was a monarchy more analogous to the constitution of England than any I {210} have heard of in modern times. Thebes was a democracy, but on different principles from modern democracies. Representation was not known then. This is the acquirement of modern times. Athens, like Thebes, was generally democratic, but sometimes changed. In these two states, the people transacted their business in person; consequently they could not be of any great extent. There was a perpetual variance between the members of this confederacy, and its ultimate dissolution was attributed to this defect. The weakest were obliged to call for foreign aid, and this precipitated the ruin of this confederacy. The Achæan league had more analogy to ours, and gives me great hopes that the apprehensions of gentlemen with respect to our confederacy are groundless. They were all democratic, and firmly united. What was the effect? The most perfect harmony and friendship subsisted between them, and they were very active in guarding their liberties. The history of that confederacy does not present us with those confusions and internal convulsions which gentlemen ascribe to all governments of a confederate kind. The most respectable historians prove this confederacy to have been exempt from those defects.

[Here Mr. Monroe read several passages in Polybius, tending to elucidate and prove the excellent structure of the Achæan league, and the consequent happy effects of this excellency.]

He then continued: This league was founded on democratical principles, and, from the wisdom of its structure, continued a far greater length of time than any other. Its members, like our states, by their confederation, retained their individual sovereignty, and enjoyed a perfect equality. What destroyed it? Not internal dissensions. They were surrounded by great and powerful nations — the Lacedæmonians, Macedonians, and Ætolians. The Ætolians and Lacedæmonians making war on them, they solicited the assistance of Macedon, who no sooner granted it than she became their oppressor. To free themselves from the tyranny of the Macedonians, they prayed succor from the Romans, who, after relieving them from their oppressors, soon totally enslaved them.

The Germanic body is a league of independent principalities. It has no analogy to our system. It is very injudiciously organized. Its members are kept together by the {211} fear of danger from one another, and from foreign powers, and by the influence of the emperor.

The Swiss cantons have been instanced, also, as a proof of the natural imbecility of federal governments. Their league has sustained a variety of changes; and, notwithstanding the many causes that tend to disunite them, they still stand firm. We have not the same causes of disunion or internal variance that they have. The individual cantons composing the league are chiefly aristocratic. What an opportunity does this offer to foreign powers to disturb them by bribing and corrupting their aristocrats! It is well known that their services have been frequently purchased by foreign nations. Their difference of religion has been a source of divisions and animosity between them, and tended to disunite them. This tendency has been considerably increased by the interference of foreign nations, the contiguity of their position to those nations rendering such interference easy. They have been kept together by the fear of those nations, and the nature of their association; the leading features of which are a principle of equality between the cantons, and the retention of individual sovereignty. The same reasoning applies nearly to the United Netherlands. The other confederacy which has been mentioned has no kind of analogy to our situation.

From a review of these leagues, we find the causes of the misfortunes of those which have been dissolved, to have been a dissimilarity of structure in the individual members, the facility of foreign interference, and recurrence to foreign aid. After this review of those leagues, if we consider our comparative situation, we shall find that nothing can be adduced, from any of them, to warrant a departure from a confederacy to a consolidation, on the principle of inefficacy in the former to secure our happiness. The causes which, with other nations, rendered leagues ineffectual and inadequate to the security and happiness of the people, do not exist here. What is the form of our state governments? They are all similar in their structure — perfectly democratic. The freedom of mankind has found an asylum here which it could find nowhere else. Freedom of conscience is enjoyed here in the fullest degree. Our states are not disturbed by a contrariety of religious opinions, and other causes of quarrels which other nations have. They have no causes of internal variance. Causes of war between the states have been represented {212} in all those terrors which splendid genius and brilliant imagination can so well depict. But, sir, I conceive they are imaginary — mere creatures of fancy. I will admit that there was a contrariety of sentiments — a contest in which I was a witness in some respects — a contest respecting the western unsettled lands. Every state, having a charter for the lands within its colonial limits, had its claims to such lands confirmed by the war. The other states contended that those lands belonged not to a part of the states, but to all; that it was highly reasonable and equitable that all should participate in what had been acquired by the efforts of all. The progress of this dispute gave uneasiness to the true friends of America; but territorial claims may now be said to be adjusted. Have not Virginia, North Carolina, and other states, ceded their claims to Congress? The disputes between Virginia and Maryland are also settled; nor is there an existing controversy between any of the states at present. Thus, sir, this great source of public calamity been terminated without the adoption of this government.

Have we any danger to fear from the European countries? Permit me to consider our relative situation with regard to them, and to answer what has been suggested on the subject. Our

situation is relatively the same to all foreign powers. View the distance between us and them: the wide Atlantic — an ocean three thousand miles across — lies between us. If there be any danger to these states to be apprehended from any of those countries, it must be Great Britain and Spain, whose colonies are contiguous to our country. Has there been any thing on the part of Great Britain, since the peace, that indicated a hostile intention towards us? Was there a complaint of a violation of treaty? She committed the first breach. Virginia instructed her delegation to demand a reparation for the negroes which had been carried away contrary to treaty. Being in Congress, I know the facts. The other states were willing to get some compensation for their losses, as well as Virginia. New York wished to get possession of the western posts situated within her territory. We wished to establish an amicable correspondence with that country, and to adjust all differences. The United States sent an ambassador for this purpose. The answer sent was, that a compliance with the treaty on our part must precede it on theirs. These transactions {213} are well known in every state, and need hardly be mentioned. Certain it is that Great Britain is desirous of peace, and that it is her true interest to be in friendship with us: it is also so with Spain. Another circumstance which has been dwelt upon is, the necessity of the protection of commerce. What does our commerce require? Does it want extension and protection? Will treaties answer these ends? Treaties, sir, will not extend your commerce. Our object is the regulation of commerce, and not treaties. Our treaties with Holland, Prussia, and other powers, are of no consequence. It is not to the advantage of the United States to make any compact with any nation with respect to trade. Our trade is engrossed by a country with which we have no commercial treaty. That country is Great Britain. That monopoly is the result of the want of a judicious regulation on our part. It is as valuable and advantageous to them, on its present footing, nay, more so, than it could be by any treaty. It is the interest of the United States to invite all nations to trade with them; to open their ports to all, and grant no exclusive privilege to any, in preference to others. I apprehend no treaty that could be made can be of any advantage to us. If those nations opened any of their ports to us in the East or West Indies, it would be of advantage to us; but there is no probability of this. France and Holland have been said to be threatening for the payment of the debts due to them. I understand that Holland has added to her favors to us by lending us other sums lately, This is a proof that she has no hostile intent against us, and that she is willing to indulge us. France has made no pressing demand. Our country has received from that kingdom the highest proof of favors which a magnanimous power can show: nor are there any grounds to suspect a diminution of its friendship. Having examined the analogy between the ancient leagues and our confederacy, and shown that we have no danger to apprehend from Europe, I conclude that we are in no danger of immediate disunion, but that we may calmly and dispassionately examine the defects of our government, and apply such remedies as we shall find necessary.

I proceed now to the examination of the Confederation, and to take a comparative view of this Constitution. In examining either, a division into two heads is proper, viz.: {214} 1st, the form, and, 2d, the powers, of the government. I consider the existing system defective in both respects. Is the Confederation a band of union sufficiently strong to bind the states together? Is it possessed of sufficient power to enable it to manage the affairs of the Union? Is it well organized, safe, and proper? I confess that, in all these instances, I consider it as defective; I consider it to be void of energy, and badly organized.

What are the powers which the federal government ought to have? I will draw the line between the powers necessary to be given to the federal, and those which ought to be left to the state governments. To the former I would give control over the national affairs; to the latter I would leave the care of local interests. Neither the Confederation, nor this Constitution, answers this discrimination. To make the first a proper federal government, I would add to it one great power — I would give it an absolute control over commerce. To render the system under consideration safe and proper, I would take from it one power only — I mean that of direct taxation. I conceive its other powers are sufficient without this. My objections to this power are, that I conceive it not necessary, impracticable under a democracy, (if exercised,) as tending to anarchy, or the subversion of liberty, and probably the latter. In the first place, it is unnecessary, because exigencies will not require it. The demands and necessities of government are now greater than they will be hereafter, because of the expenses of the war in which we were engaged, which cost us the blood of our best citizens, and which ended so gloriously.

There is no danger of war, as I have already said. Our necessities will therefore in a short time be greatly diminished. What are the resources of the United States? How are requisitions to be complied with? I know the government ought to be so organized as to be competent to discharge its engagements and secure the public happiness. To enable it to do these things, I would give it the power of laying an impost, which is amply sufficient with its other means. The impost, at an early period, was calculated at nearly a million of dollars. If this calculation was well founded, if it was so much at five per centum, what will it not amount to, when the absolute control of commerce will be in the hands of Congress? May we not suppose, when {215} the general government will lay what duties it may think proper, that the amount will be very considerable? There are other resources. The back lands have already been looked upon as a very important resource. When we view the western extensive territory, and contemplate the fertility of the soil, the noble rivers which penetrate it, and the excellent navigation which may be had there, may we not depend on this as a very substantial resource?

In the third place, we have the resource of loans. This is a resource which is necessary and proper, and has been recurred to by all nations. The credit of our other resources will enable us to procure, by loans, any sums we may want. We have also, in the fourth place, requisitions, which are so much despised. These, sir, have been often productive. As the demands on the states will be but for trivial sums, after Congress shall be possessed of its other great resources, is it to be presumed that its application will be despised? If the government be well administered, or possess any part of the confidence of the people, is it presumed that requisitions, for trivial sums will be refused? I conclude, sir, that they will be readily complied with; and that they, with the imposts, back lands, and loans, will be abundantly sufficient for all the exigencies of the Union. In the next place, it appears to me that the exercise of the power of direct taxation is impracticable in this country, under a democracy.

Consider the territory lying between the Atlantic Ocean and the Mississippi. Its extent far exceeds that of the German empire. It is larger than any territory that ever was under any one free government. It is too extensive to be governed but by a despotic monarchy. Taxes cannot be laid justly and equally in such a territory. What are the objects of direct taxation? Will the taxes be laid on land? One gentleman has said that the United States would select out a particular object, or objects, and leave the rest to the states. Suppose land to be the object selected by

Congress: examine its consequences. The landholder alone would suffer by such a selection. A very considerable part of the community would escape. Those who pursue commerce and arts would escape. It could not possibly be estimated equally. Will the taxes be laid on polls only? Would not the landholder escape in that case? How, then, {216} will it be laid? On all property? Consider the consequences. Is it possible to make a law that shall operate alike in all the states? Is it possible that there should be sufficient intelligence for the men of Georgia to know the Situation of the men of New Hampshire? Is there a precise similitude of situation in each state? Compare the situation of the citizens in different states.

Are there not a thousand circumstances showing clearly that there can be no law that can be uniform in its operation throughout the United States? Another gentleman said that information would be had from the state laws. Is not this reversing the principles of good policy? Can this substitution of one body to thirteen assemblies, in a matter that requires the most minute and extensive local information, be politic or just? They cannot know what taxes can be least oppressive to the people. The tax that may be convenient in one state may be oppressive in another. If they vary the objects of taxation in different states, the operation must be unequal and unjust. If Congress should fix the tax on some mischievous objects, what will be the tendency? It is to be presumed that all governments will, some time or other, exercise their powers, or else why should they possess them? Inquire into the badness of this government. What is the extent of the power of laying and collecting direct taxes? Does it not give to the United States all the resources of the individual states? Does it not give an absolute control over the resources of all the states? If you give the resources of the several states to the general government, in what situation are the states left? I therefore think the general government will preponderate.

Besides its possession of all the resources of the country, there are other circumstances that will enable it to triumph in the conflict with the states. Gentlemen of influence and character, men of distinguished talents, of eminent virtue, and great endowments, will compose the general government. In what a situation will the different states be, when all the talents and abilities of the country will be against them?

Another circumstance will operate in its favor, in case of a contest. The oath that is to be taken to support it will aid it most powerfully. The influence which the sanction {217} of oaths has on men is irresistible. The religious authority of divine revelation will be quoted to prove the propriety of adhering to it, and will have great influence in disposing men's minds to maintain it.

It will also be strongly supported by the last clause in the 8th section of the 1st article, which vests it with the power of making all laws necessary to carry its powers into effect. The correspondent judicial powers will be an additional aid. There is yet another circumstance which will throw the balance in the scale of the general government, A disposition in its favor has shown itself in all parts of the continent, and will certainly become more and more predominant. Is it not to be presumed that, if a contest between the state legislatures and the general government should arise, the latter would preponderate? The Confederation has been deservedly reprobated for its inadequacy to promote the public welfare. But this change is, in my opinion, very dangerous. It contemplates objects with which a federal government ought never to interfere. The concurrent interfering Power of laying taxes on the people will occasion a perpetual conflict between the general and individual governments; which, for the reasons I have

already mentioned, must terminate to the disadvantage, if not in the annihilation, of the latter. Can it be presumed that the people of America can patiently bear such a double oppression? Is it not to be presumed that they will endeavor to get rid of one of the oppressors? I fear, sir, that it will ultimately end in the establishment of a monarchical government. The people, in order to be delivered from one species of tyranny, may submit to another. I am strongly impressed with the necessity of having a firm national government; but I am decidedly against giving it the power of direct taxation, because I think it endangers our liberties. My attachment to the Union and an energetic government is such, that I would consent to give the general government every power contained in that plan, except that of taxation.

As it will operate on all states and individuals, powers given, it generally should be qualified. It may be attributed to the prejudice of my education, but I am a decided and warm friend to a bill of rights — the polar star and great support of American liberty; and I am clearly of opinion {218} that the general powers conceded by that plan, such as the impost, &c., should be guarded and checked by a bill of rights.

Permit me to examine the reasoning that admits that all powers not given up are reserved. Apply this. If you give to the United States the power of direct taxation, in making all laws necessary to give it operation, (which is a power given by the last clause in the 8th section of the 1st article,) suppose they should be of opinion that the right of the trial by jury was not one of the requisites to carry it into effect; there is no check in this Constitution to prevent the formal abolition of it. There is a general power given to them to make all laws that will enable them to carry their powers into effect. There are no limits pointed out. They are not restrained or controlled from making any law, however oppressive in its operation, which they may think necessary to carry their powers into effect. By this general, unqualified power, they may infringe not only on the trial by jury, but the liberty of the press, and every right that is not expressly secured or excepted from that general power. I conceive that such general powers are very dangerous. Our great unalienable rights ought to be secured from being destroyed by such unlimited powers, either by a bill of rights, or by an express provision in the body of the Constitution. It is immaterial in which of these two modes rights are secured.

I fear I have tired the patience of the committee; I beg, however, the indulgence of making a few more observations. There is a distinction between this government and ancient and modern ones. The division of power in ancient governments, or in any government at present in the world, was founded on different principles from those of this government. What was the object of the distribution of power in Rome? It will not be controverted, that there was a composition or mixture of aristocracy, democracy, and monarchy, each of which had a repellent quality which enabled it to preserve itself from being destroyed by the other two; so that the balance was continually maintained. This is the case in the English government, which has the most similitude to our own, There they have distinct orders in the government, which possess real, efficient repellent qualities. Let us illustrate it. If the commons prevail, may they not vote the king useless? If the king prevails, will not the commons {219} lose their liberties? Without the interposition of a check, without a balance, the one would destroy the other, The lords, the third branch, keep up this balance. The wisdom of the English constitution has given a share of legislation to each of the three branches, which enables it effectually to defend itself, and which preserves the liberty of the people of that country.

## NOTE

What is the object of the division of power in America? Why is the government divided into different branches? For a more faithful and regular administration. Where is there a check? We have more to apprehend from the union of these branches than from the subversion of any; and this union will destroy the rights of the people. There is nothing to prevent this coalition; but the contest which will probably subsist between the general government and the individual governments will tend to produce it. There is a division of sovereignty between the national and state governments. How far, then, will they coalesce together? Is it not to be supposed that there will be a conflict between them? If so, will not the members of the former combine together? Where, then, will be the check to prevent encroachments on the rights of the people? There is not a third essentially distinct branch, to preserve a just equilibrium, or to prevent such encroachments. In developing this plan of government, we ought to attend to the necessity of having checks. I can see no real checks in it.

Let us first inquire into the probability of harmony between the general and individual governments; and, in the next place, into the responsibility of the general government, either to the people at large or to the state legislatures. As to the harmony between the governments, communion of powers, legislative and judicial, forbids it.

I have never yet heard or read, in the history of mankind, of a concurrent exercise of power by two parties, without producing a struggle between them. Consult the human heart. Does it not prove that, where two parties, or bodies, seek the same object, there must be a struggle? Now, sir, as to the responsibility, Let us begin with the House of Representatives, which is the most democratic part; The representatives are elected by the people; but what is the responsibility? At the expiration of the time for which they are elected, the people may discontinue them: but if {220} they commit high crimes, how are they to be punished? I apprehend the general government cannot punish them, because it would be a subversion of the rights of the people. The state legislatures cannot punish them, because they have no control over them in any one instance. In the next, consider the responsibility of the senators. To whom are they amenable? I apprehend, to none. They are punishable neither by the general government nor by the state legislatures. The latter may call them to an account, but they have no power to punish them.

Let us now consider the responsibility of the President. He is elected for four years, and not excluded from reelection. Suppose he violates the laws and Constitution, or commits high crimes. By whom is he to be tried? — By his own council — by those who advise him to commit such violations and crimes? This subverts the principles of justice, as it secures him from punishment. He commands the army of the United States till he is condemned. Will not this be an inducement to foreign nations to use their arts and intrigues to corrupt his counsellors? If he and his counsellors can escape punishment with so much facility, what a delightful prospect must it be for a foreign nation, which may be desirous of gaining territorial or commercial advantages over us, to practise on them! The certainty of success would be equal to the impunity. How is he elected? By electors appointed according to the directions of the state legislatures. Does the plan of government contemplate any other mode? A combination between the electors might easily happen, which would fix on a man in every respect improper. Contemplate this in all its consequences. Is it not the object of foreign courts to have such a man possessed of this power as

would be inclined to promote their interests? What an advantageous prospect for France and Great Britain to secure the favor and attachment of the President, by exerting their power and influence to continue him in the office! Foreign nations may, by their intrigues, have great influence, in each state, in the election of the President; and I have no doubt but their efforts will be tried to the utmost. Will not the influence of the President himself have great weight in his reelection? The variety of the offices at his disposal will acquire him the favor and attachment of those who aspire after them, and of the officers and their friends. He will, have some {221} connection with the members of the different branches of government. They will esteem him, because they will be acquainted with him, live in the same town with him, and often dine with him. This familiar and frequent intercourse will secure him great influence. I presume that when once he is elected, he may be elected forever. Besides his influence in the town where he will reside, he will have very considerable weight in the different states. Those who are acquainted with the human mind, in all its operations, can clearly foresee this. Powerful men in different states will form a friendship with him. For these reasons, I conceive, the same President may always be continued, and be in fact elected by Congress, instead of independent and intelligent electors. It is a misfortune, more than once experienced; that the representatives of the states do not pursue the particular interest of their own state. When we take a more accurate view of the principles of the Senate, we shall have grounds to fear that the interest of our state may be totally neglected; nay, that our legislative influence will be as if we were actually expelled or banished out of Congress. The senators are amenable to, and appointed by, the states. They have a negative on all laws, may originate any except money bills, and direct the affairs of the executive. Seven states are a majority, and can in most cases bind the rest; from which reason, the interest of certain states alone will be consulted. Although the House of Representatives is calculated on national principles, and should they attend (contrary to my expectations) to the general interests of the Union, yet the dangerous exclusive powers given to the Senate will, in my opinion, counterbalance their exertions. Consider the connection of the Senate with the executive. Has it not an authority over all the acts of the executive? What are the acts which the President can do without them? What number is requisite to make treaties? A very small number. Two thirds of those who may *happen* to be present, may, with the President, make treaties that shall sacrifice the dearest interests of the Southern States — which may relinquish part of our territories — which may dismember the United States. There is no check to prevent this; there is no responsibility, or power to punish it. He is to nominate, and, by and with the advice and consent of the Senate, to appoint, ambassadors, other public ministers and consuls, {222} judges of the Supreme Court, and all other officers of the United States. The concurrence of a bare majority of those who may be present will enable him to do these important acts, It does not require the consent of two thirds even of those who may be present. Thus I conceive the government is put entirely into the hands of seven states; indeed, into the hands of two thirds of a majority. The executive branch is under their protection, and yet they are freed from a direct charge of combination.

Upon reviewing this government, I must say, under my present impression, I think it a dangerous government, and calculated to secure neither the interests nor the rights of our countrymen. Under such a one, I shall be averse to embark the best hopes and prospects of a free people. We have struggled long to bring about this revolution, by which we enjoy our present freedom and security. Why, then, this haste — this wild precipitation?

I have fatigued the committee; but, as I have not yet said all that I wish upon the subject, I trust I shall be indulged another day.

## Mr. JOHN MARSHALL.

### NOTE

Mr. Chairman, I conceive that the object of the discussion now before us is, whether democracy or despotism be most eligible, I am sure that those who framed the system submitted to our investigations, and those who now support it, intend the establishment and security of the former. The supporters of the Constitution claim the fide of being firm friends of the liberty and the rights of mankind. They say that they consider it as the best means of protecting liberty. We, sir, idolize democracy. Those who oppose it have bestowed eulogiums on monarchy. We prefer this system to any monarchy, because we are convinced that it has a greater tendency to secure our liberty and promote our happiness. We admire it, because we think it a well-regulated democracy. It is recommended to the good people of this country: they are, through us, to declare whether it be such a plan of government as will establish and secure their freedom.

Permit me to attend to what the honorable gentleman (Mr. Henry) has said. He has expatiated on the necessity of a due attention to certain maxims — to certain fundamental principles, from which a free people ought never to depart. I concur with him in the propriety of the observance {223} of such maxims. They are necessary in any government, but more essential to a democracy than to any other. What are the favorite maxims of democracy? A strict observance of justice and public faith, and a steady adherence to virtue. These, sir, are the principles of a good government. No mischief, no misfortune, ought to deter us from a strict observance of justice and public faith. Would to Heaven that these principles had been observed under the present government! Had this been the case, the friends of liberty would not be so willing now to part with it. Can we boast that our government is founded on these maxims? Can we pretend to the enjoyment of political freedom or security, when we are told that a man has been, by an act of Assembly, struck out of existence without a trial by jury, without examination, without being confronted with his accusers and witnesses, without the benefits of the law of the land? Where is our safety, when we are told that this act was justifiable because the person was not a Socrates? What has become of the worthy member's maxims? Is this one of them? Shall it be a maxim that a man shall be deprived of his life without the benefit of law? Shall, such a deprivation of life be justified by answering, that the man's life was not taken *secundum artem* because he was a bad man? Shall it be a maxim that government ought not to be empowered to protect virtue?

The honorable member, after/attempting to vindicate that tyrannical legislative act to which I have been alluding, proceeded to take a view of the dangers to which this country is exposed. He told us that the principal danger arose from a government which, if adopted, would give away the Mississippi. I intended to proceed regularly, by attending to the clause under debate; but I must reply to some observations which were dwelt upon to make impressions on our minds unfavorable to the plan upon the table. Have we no navigation in, or do we derive no benefit from, the Mississippi? How shall we retain it? By retaining that weak government which has hitherto kept it from us? Is it thus that we shall secure that navigation? Give the government the power of retaining it, and then we may hope to derive actual advantages from it. Till we do this,

we cannot expect that a government which hitherto has not been able to protect it, will have the power to do it hereafter. Have we {224} attended too long to consider whether this government would be able to protect us? Shall we wait for further proofs of its inefficacy? If, on mature consideration, the Constitution will be found to be perfectly right on the subject of treaties, and containing no danger of losing that navigation, will he still object? Will he object because eight states are unwilling to part with it? This is no good ground of objection.

He then stated the necessity and probability of obtaining amendments. This we ought to postpone until we come to that clause, and make up our minds whether there be any thing unsafe in this system. He conceived it impossible to obtain amendments after adopting it. If he was right, does not his own argument prove that, in his own conception, previous amendments cannot be had? for, sir, if subsequent amendments cannot be obtained, shall we get amendments before we ratify? The reasons against the latter do not apply against the former. There are in this state, and in every state in the Union, many who are decided enemies of the Union. Reflect on the probable conduct of such men. What will they do? They will bring amendments which are local in their nature, and which they know will not be accepted. What security have we that other states will not do the same? We are told that many in the states were violently opposed to it. They are more mindful of local interests. They will never propose such amendments as they think would be obtained. Disunion will be their object. This will be attained by the proposal of unreasonable amendments. This, sir, though a strong cause, is not the only one that will militate against previous amendments. Look at the comparative temper of this country now, and when the late federal Convention met. We had no idea then of any particular system. The formation of the most perfect plan was our object and wish, It was imagined that the states would accede to, and be pleased with, the proposition that would be made them. Consider the violence of opinions, the prejudices and animosities which have been since imbibed. Will not these operate greatly against mutual concessions, or a friendly concurrence? This will, however, be taken up more properly at another time. He says, we wish to have a strong, energetic, powerful government. We contend for a well-regulated democracy. He insinuates that the power of the government has been enlarged by the Convention, and {225} that we may apprehend it will be enlarged by others. The Convention did not, in fact, assume any power.

They have proposed to our consideration a scheme of government which they thought advisable. We are not bound to adopt it, if we disapprove of it. Had not every individual in this community a right to tender that scheme which he thought most conducive to the welfare of his country? Have not several gentlemen already demonstrated that the Convention did not exceed their powers? But the Congress have the power of making bad laws, it seems. The Senate, with the President, he informs us, may make a treaty which shall be disadvantageous to us; and that, if they be not good men, it will not be a good Constitution. I shall ask the worthy member only, if the people at large, and they alone, ought to make laws and treaties? Has any man this in contemplation? You cannot exercise the powers of government personally yourselves. You must trust to agents. If so, will you dispute giving them the power of acting for you, from an existing possibility that they may abuse it? As long as it is impossible for you to transact your business in person, if you repose no confidence in delegates, because there is possibility of their abusing it, you can have no government for the power of doing good is inseparable from that of doing some evil.

We may derive from Holland lessons very beneficial to ourselves. Happy that country which can avail itself of the misfortunes of others — which can gain knowledge from that source without fatal experience! What has produced the late disturbances in that country? The want of such a government as is on your table, and having, in some measure, such a one as you are about to part with. The want of proper powers in the government, the consequent deranged and relaxed administration, the violence of contending parties, and inviting foreign powers to interpose in their disputes, have subjected them to all the mischiefs which have interrupted their harmony. I cannot express my astonishment at his high-colored eulogium on such a government. Can any thing be more dissimilar than the relation between the British government and the colonies, and the relation between Congress and the states? We *were not* represented in Parliament. Here we are represented. Arguments {226} which prove the impropriety of being taxed by Britain, do not hold against the exercise of taxation by Congress.

Let me pay attention to the observation of the gentleman who was last up, that the power of taxation ought not to be given to Congress. This subject requires the undivided attention of this house. This power I think essentially necessary; for without it there will be no efficiency in the government. We have had a Sufficient demonstration of the vanity of depending on requisitions. How, then, can the general government exist without this power? The possibility of its being abused is urged as an argument against its expediency. To very little purpose did Virginia discover the defects in the old system; to little purpose, indeed, did she propose improvements; and to no purpose is this plan constructed for the promotion of our happiness, if we refuse it now, because it is possible that it may be abused. The Confederation has nominal powers, but no means to carry them into effect. If a system of government were devised by more than human intelligence, it would not be effectual if the means were not adequate to the power. All delegated powers are liable to be abused. Arguments drawn from this source go in direct opposition to the government, and in recommendation of anarchy. The friends of the Constitution are as tenacious of liberty as its enemies. They wish to give no power that will endanger it. They wish to give the government powers to secure and protect it. Our inquiry here must be, whether the power of taxation be necessary to perform the objects of the Constitution, and whether it be safe, and as well guarded as human wisdom can do it. What are the objects of the national government? To protect the United States, and to promote the general welfare. Protection, in time of war, is one of its principal objects, Until mankind shall cease to have ambition and avarice, wars will arise.

The prosperity and happiness of the people depend on the performance of these great and important duties of the general government. Can these duties be performed by one state? Can one state protect us, and promote our happiness? The honorable gentleman who has gone before me (Governor Randolph) has shown that Virginia cannot do these things. How, then, can they be done? By the national government only, Shall we refuse to give it power to do them? {227} We are answered, that the powers may be abused; that, though the Congress may promote our happiness, yet they may prostitute their powers to destroy our liberties. This goes to the destruction of all confidence in agents. Would you believe that men who had merited your highest confidence would deceive you? Would you trust them again after one deception? Why then hesitate to trust the general government? The object of our inquiry is, *Is the power necessary, and is it guarded?* There must be men and money to protect us. How are armies to be raised? Must we not have money for that purpose? But the honorable gentleman says that we need not be afraid of war. Look at history, which has been so often quoted. Look at the great

volume of human nature. They will foretell you that a defenceless country cannot be secure. The nature of man forbids us to conclude that we are in no danger from war, The passions of men stimulate them to avail themselves of the weakness of others. The powers of Europe are jealous of us. It is our interest to watch their conduct, and guard against them. They must be pleased with our disunion. If we invite them by our weakness to attack us, will they not do it? If we add debility to our present situation, a partition of America may take place.

It is, then, necessary to give the government that power, in time of peace, which the necessity of war will render indispensable, or else we shall be attacked unprepared. The experience of the world, a knowledge of human nature, and our own particular experience, will confirm this truth. When danger shall come upon us, may we not do what we were on the point of doing once already — that is, appoint a dictator? Were those who are now friends to this Constitution less active in the defence of liberty, on that trying occasion, than those who oppose it? When foreign dangers come, may not the fear of immediate destruction, by foreign enemies, impel us to take a most dangerous step? Where, then, will be our safety? We may now regulate and frame a plan that will enable us to repel attacks, and render a recurrence to dangerous expedients unnecessary. If we be prepared to defend ourselves, there will be little inducement to attack us. But if we defer giving the necessary power to the general government till the moment of danger arrives, we shall give it then, and with an *unsparing hand*. America, {228} like other nations, may be exposed to war. The propriety of giving this power will be proved by the history of the world, and particularly of modern republics. I defy you to produce a single instance where requisitions on several individual states, composing a confederacy, have been honestly complied with. Did gentlemen expect to see such punctuality complied with in America? If they did, our own experience shows the contrary.

We are told that the Confederation carried us through the war. Had not the enthusiasm of liberty inspired us with unanimity, that system would never have carried us through it. It would have been much sooner terminated had that government been possessed of due energy. The inability of Congress, and the failure of states to comply with the constitutional requisitions, rendered our resistance less efficient than it might have been. The weakness of that government caused troops to be against us which ought to have been on our side, and prevented all resources of the community from being called at once into action. The extreme readiness of the people to make their utmost exertions to ward off solely the pressing danger, supplied the place of requisitions. When they came solely to be depended on, their inutility was fully discovered. A bare sense of duty, or a regard to propriety, is too feeble to induce men to comply with obligations. We deceive ourselves if we expect any efficacy from these. If requisitions will not avail, the government must have the sinews of war some other way. Requisitions cannot be effectual. They will be productive of delay, and will ultimately be inefficient. By direct taxation, the necessities of the government will be supplied in a peaceable manner, without irritating the minds of the people. But requisitions cannot be rendered efficient without a civil war — without great expense of money, and the blood of our citizens. Are there any oilier means? Yes, that Congress shall apportion the respective quotas previously, and if not complied with by the states, that then this dreaded power shall be exercised. The operation of this has been described by the gentleman who opened the debate. He cannot be answered. This great objection to that system remains unanswered. Is there no other argument which ought to have weight with us on this subject? Delay is a strong and pointed objection to it.

{229} We are told by the gentleman who spoke last, that direct taxation is unnecessary, because we are not involved in war. This admits the propriety of recurring to direct taxation if we were engaged in war. It has not been proved that we have no dangers to apprehend on this point. What will be the consequence of the system proposed by the worthy gentleman? Suppose the states should refuse!

The worthy gentleman who is so pointedly opposed to the Constitution, proposes remonstrances. Is it a time for Congress to remonstrate, or compel a compliance with requisitions, when the whole wisdom of the Union, and the power of Congress, are opposed to a foreign enemy? Another alternative is, that, if the states shall appropriate certain funds for the use of Congress, Congress shall not lay direct taxes. Suppose the funds appropriated by the states for the use of Congress should be inadequate; it will not be determined whether they be insufficient till after the time at which the quota ought to have been paid; and then, after so long a delay, the means of procuring money, which ought to have been employed in the first instance, must be recurred to. May they not be amused by such ineffectual and temporizing alternatives from year to year, until America shall be enslaved? The failure in one state will authorize a failure in another. The calculation in some states that others will fail, will produce general failures. This will also be attended with all the expenses which we are anxious to avoid. What are the advantages to induce us to embrace this system? If they mean that requisitions should be complied with, it will be the same as if Congress had the power of direct taxation. The same amount will be paid by the people.

It is objected, that Congress will not know how to lay taxes so as to be easy and convenient for the people at large. Let us pay strict attention to this objection. If it appears to be totally without foundation, the necessity of levying direct taxes will obviate what the gentleman says; nor will there be any color for refusing to grant the power.

The objects of direct taxes are well understood: they are but few: what are they? Lands, slaves, stock of all kinds, and a few other articles of domestic property. Can you believe that ten men selected from all parts of the state, chosen because they know the situation of the people, will {230} be unable to determine so as to make the tax equal on, and convenient for, the people at large? Does any man believe that they would lay the tax without the aid of other information besides their own knowledge, when they know that the very object for which they are elected is to lay the taxes in a judicious and convenient manner? If they wish to retain the affections of the people at large, will they not inform themselves of every circumstance that can throw light on the subject? Have they but one source of information? Besides their own experience — their knowledge of what will suit their constituents — they will have the benefit of the knowledge and experience of the state legislature. They will see in what manner the legislature of Virginia collects its taxes. Will they be unable to follow their example? The gentlemen who shall be delegated to Congress will have every source of information that the legislatures of the states can have, and can lay the taxes as equally on the people, and with as little oppression, as they can. If, then, it be admitted that they can understand how to lay them equally and conveniently, are we to admit that they will not do it, but that, in violation of every principle that ought to govern men, they will lay them so as to oppress us? What benefit will they have by it? Will it be promotive of their reëlection? Will it be by wantonly imposing hardships and difficulties on the people at large, that they will promote their own interest, and secure their reëlection? To me it appears

incontrovertible that they will settle them in such a manner as to be easy for the people. Is the system so organized as to make taxation dangerous? I shall not go to the various checks of the government, but examine whether the immediate representation of the people be well constructed. I conceive its organization to be sufficiently satisfactory to the warmest friend of freedom. No tax can be laid without the consent of the House of Representatives. If there, be no impropriety in the mode of electing the representatives, can any danger be apprehended? They are elected by those who can elect representatives in the state legislature. How can the votes of the electors be influenced? By nothing but the character and conduct of the man they vote for. What object can influence them when about choosing him? They have nothing to direct them in the choice but their own good. Have you not as pointed and strong a security as you can possibly have? {231} It is a mode that secures an impossibility of being corrupted. If they are to be chosen for their wisdom, virtue, and integrity, what inducement have they to infringe on our freedom? We are told that they may abuse their power. Are there strong motives to prompt them to abuse it? Will not such abuse militate against their own interest? Will not they and their friends feel the effects of iniquitous measures? Does the representative remain in office for life? Does he transmit his title of representative to his son? Is he secured from the burden imposed on the community? To procure their reëlection, it will be necessary for them to confer with the people at large, and convince them that the taxes laid are for their good. If I am able to judge on the subject, the power of taxation now before us is wisely conceded, and the representatives are wisely elected.

The honorable gentleman said that a government should ever depend on the affections of the people. It must be so. It is the best support it can have. This government merits the confidence of the people, and, I make no doubt, will have it. Then he informed us again of the disposition of Spain with respect to the Mississippi, and the conduct of the government with regard to it. To the debility of the Confederation alone may justly be imputed every cause of complaint on this subject. Whenever gentlemen will bring forward their objections, I trust we can prove that no danger to the navigation of that river can arise from the adoption of this Constitution. I beg those gentlemen who may be affected by it, to suspend their judgment till they hear it discussed. Will, says he, the adoption of this Constitution pay our debts? It will compel the states to pay their quotas. Without this, Virginia will be unable to pay. Unless all the states pay, she cannot. Though the states will not coin money, (as we are told,) yet this government will bring forth and proportion all the strength of the Union. That economy and industry are essential to our happiness, will be denied by no man. But the present government will not add to our industry. It takes away the incitements to industry, by rendering property insecure and unprotected. It is the paper on your table that will promote and encourage industry. New Hampshire and Rhode Island have rejected it, he tells us. New Hampshire, if my information be right, will certainly adopt it. The report spread in this country, of {232} which I have heard, is, that the representatives of that state having, on meeting, found they were instructed to vote against it, returned to their constituents without determining the question, to convince them of their being mistaken, and of the propriety of adopting it.

The extent of the country is urged as another objection, as being too great for a republican government. This objection has been handed from author to author, and has been certainly misunderstood and misapplied. To what does it owe its source? To observations and criticisms on governments, where representation did not exist. As to the legislative power, was it ever

supposed inadequate to any extent? Extent of country may render it difficult to execute the laws, but not to legislate. Extent of country does not extend the power. What will be sufficiently energetic and operative in a small territory, will be feeble when extended over a wide-extended country. The gentleman tells us there are no checks in this plan. What has become of his enthusiastic eulogium on the American spirit? we should find a check and control, when oppressed, from that source. In this country, there is no exclusive personal stock of interest. The interest of the community is blended and inseparably connected with that of the individual. When he promotes his own, he promotes that of the community. When we consult the common good, we consult our own. When he desires such checks as these, he will find them abundantly here. They are the best checks. What has become of his eulogium on the Virginia Constitution? Do the checks in this plan appear less excellent than those of the Constitution of Virginia? If the checks in the Constitution be compared to the checks in the Virginia Constitution, he will find the best security in the former.

The temple of liberty was complete, said he, when the people of England said to their king, that he was their servant. What are we to learn from this? Shall we embrace such a system as that? Is not liberty secure with us, where the people hold all powers in their own hands, and delegate them cautiously, for short periods, to their servants, who are accountable for the smallest mal-administration? Where is the nation that can boast greater security than we do? We want only a system like the paper before you, to strengthen and perpetuate this security.

The honorable gentleman has asked if there be any safety {233} or freedom, when we give away the sword and the purse. Shall the people at large hold the sword and the purse without the interposition of their representatives? Can the whole aggregate community act personally? I apprehend that every gentleman will see the impossibility of this. Must they, then, not trust them to others? To whom are they to trust them but to their representatives, who are accountable for their conduct? He represents secrecy as unnecessary, and produces the British government as a proof of its inutility. Is there no secrecy there? When deliberating on the propriety of declaring war, or on military arrangements, do they deliberate in the open fields? No, sir. The British government affords secrecy when necessary, and so ought every government. In this plan, secrecy is only used when it would be fatal and pernicious to publish the schemes of government. We are threatened with the loss of our liberties by the possible abuse of power, notwithstanding the maxim, that those who give may take away. It is the people that give power, and can take it back. What shall restrain them? They are the masters who give it, and of whom their servants hold it.

He then argues against the system, because it does not resemble the British government in this — that the same power that declares war has not the means of carrying it on. Are the people of England more secure, if the Commons have no voice in declaring war? or are we less secure by having the Senate joined with the President? It is an absurdity, says the worthy member, that the same man should obey two masters — that the same collector should gather taxes for the general government and the state legislature. Are they not both the servants of the people? Are not Congress and the state legislatures the agents of the people, and are they not to consult the good of the people? May not this be effected by giving the same officer the collection of both taxes? He tells you that it is an absurdity to adopt before you amend. Is the object of your adoption to mend solely? The objects of your adoption are union, safety against foreign enemies, and

protection against faction — against what has been the destruction of all republics. These impel you to its adoption. If you adopt it, what shall restrain you from amending it, if, in trying it, amendments shall be found necessary? The government is not {234} supported by force, but depending on our free will. When experience shall show us any inconveniences, we can then correct it. But until we have experience on the subject, amendments, as well as the Constitution itself, are to try. Let us try it, and keep our hands free to change it when necessary. If it be necessary to change government, let us change that government which has been found to be defective. The difficult we find in amending the Confederation will not be found in amending this Constitution. Any amendments, in the system before you, will not go to a radical change; a plain way is pointed out for the purpose. All will be interested to change it, and therefore all exert themselves in getting the change. There is such a diversity of sentiment in human minds, that it is impossible we shall ever concur in one system till we try it. The power given to the general government over the time, place, and manner of election, is also strongly objected to. When we come to that clause, we can prove it is highly necessary, and not dangerous.

The worthy member has concluded his observations by many eulogiums on the British constitution. It matters not to us whether it be a wise one or not. I think that, for America at least, the government on your table is very much superior to it. I ask you if your House of Representatives would be better than it is, if a hundredth part of the people were to elect a majority of them. If your senators were for life, would they be more agreeable to you? If your President were not accountable to you for his conduct, — if it were a constitutional maxim, that he could do no wrong, — would you be safer than you are now? If you can answer, Yes, to these questions, then adopt the British constitution. If not, then, good as that government may be, this is better. The worthy gentleman who was last up, said the confederacies of ancient and modern times were not similar to ours, and that consequently reasons which applied against them could not be urged against it. Do they not hold out one lesson very useful to us? However unlike in other respects, they resemble it in its total inefficacy. They warn us to shun their calamities, and place in our government those necessary powers, the want of which destroyed them. I hope we shall avail ourselves of their misfortunes, without experiencing them. There was something {235} peculiar in one observation he made. He said that those who governed the cantons of Switzerland were purchased by foreign powers, which was the cause of their uneasiness and trouble.

How does this apply to us? If we adopt such a government as theirs, will it not be subject to the same inconvenience? Will not the same cause produce the same effect? What shall protect us from it? What is our security? He then proceeded to say, the causes of war are removed from us; that we are separated by the sea from the powers of Europe, and need not be alarmed. Sir, the sea makes them neighbors to us. Though an immense ocean divides us, we may speedily see them with us. What dangers may we not apprehend to our commerce! Does not our naval weakness invite an attack on our commerce? May not the Algerines seize our vessels? Cannot they, and every other predatory or maritime nation, pillage our ships and destroy our commerce, without subjecting themselves to any inconvenience? He would, he said, give the general government all necessary powers. If any thing be necessary, it must be so to call forth the strength of the Union when we may be attacked, or when the general purposes of America require it. The worthy gentleman then proceeded to show, that our present exigencies are greater than they will ever be again.

Who can penetrate into futurity? How can any man pretend to say that our future exigencies will be less than our present? The exigencies of nations have been generally commensurate to their resources. It would be the utmost impolicy to trust to a mere possibility of not being attacked, or obliged to exert the strength of the community. He then spoke of a selection of particular objects by Congress, which he says must necessarily be oppressive; that Congress, for instance, might select taxes, and that all but landholders would escape. Cannot Congress regulate the taxes so as to be equal on all parts of the community? Where is the absurdity of having thirteen revenues? Will they clash with, or injure, each other? If not, why cannot Congress make thirteen distinct laws, and impose the taxes on the general objects of taxation in each state, so as that all persons of the society shall pay equally, as they ought?

He then told you that your Continental governments will {236} call forth the virtue and talents of America. This being the case, will they encroach on the power of the state governments? Will our most virtuous and able citizens wantonly attempt to destroy the liberty of the people? Will the most virtuous act the most wickedly? I differ in opinion from the worthy gentleman. I think the virtue and talents of the members of the general government will tend to the security, instead of the destruction, of our liberty. I think that the power of direct taxation is essential to the existence of the general government, and that it is safe to grant it. If this power be not necessary, and as safe from abuse as any delegated power can possibly be, then I say that the plan before you is unnecessary; for it imports not what system we have, unless it have the power of protecting us in time of peace and war.

## **Mr. HARRISON**

then addressed the chair, but spoke so low that he could not be distinctly heard. He observed, that the accusation of the General Assembly, with respect to Josiah Phillips, was very unjust; that he was a man who, by the laws of nations, was entitled to no privilege of trial, &c.; that the Assembly had uniformly been lenient and moderate in their measures; and that, as the debates of this Convention would probably be published, he thought it very unwarrantable to utter expressions here which might induce the world to believe that the Assembly of Virginia had committed murder. He added some observations on the plan of government; that it certainly would operate an infringement of the rights and liberties of the people; that he was amazed that gentlemen should attempt to misrepresent facts to persuade the Convention to adopt such a system; and that he trusted they would not ratify it as it then stood.

## **Mr. GEORGE NICHOLAS,**

in reply to Mr. Harrison, observed, that the turpitude of a man's character was not a sufficient reason to deprive him of his life without a trial; that such a doctrine as that was a subversion of every shadow of freedom; that a fair trial was necessary to determine whether accusations against men's characters were well-founded or not; and that no person would be safe, were it once adopted as a maxim, that a man might be condemned without a trial. Mr. Nicholas then proceeded: Although we have sat eight days, so little has been done, that we have hardly begun to discuss the question regularly. The rule {237} of the house to proceed clause by clause has been violated. Instead of doing this, gentlemen alarm us by declamations without reason or

argument — by bold assertions that we are going to sacrifice our liberties. It is a fact known to many members within my hearing, that several members have tried their interest without doors to induce others to oppose this system. Every local interest that could affect their minds has been operated upon.

Can it be supposed that gentlemen elected, for their ability and integrity, to represent the people of Virginia in this Convention, to determine on this important question, whether or not we shall be connected with the other states in the Union — can it be thought, I say, that gentlemen in a situation like this will be influenced by motives like these? An answer which has been given is, that, if this Constitution be adopted, the western countries will be lost. It is better that a few countries should be lost, than all America. But, sir, no such consequence can follow from its adoption. They will be much more secure than they are at present. This Constitution, sir, will secure the equal liberty and happiness of all. It will do immortal honor to the gentlemen who formed it. I shall show the inconsistency of the gentleman who entertained us so long, (Mr. Henry.) He insisted that subsequent amendments would go to a dissolution of the Union; that Massachusetts was opposed to it in its present state. Massachusetts has absolutely ratified it, and has gone further, and said that such and such amendments shall be proposed by their representatives.

But such was the attachment of that respectable state to the Union, that, even at that early period, she ratified it unconditionally, and depended on the probability of obtaining amendments hereafter. Can this be a dissolution of the Union? Does this indicate an aversion to the Union on the part of that state? or can an imitation of her conduct injure us? He tells us that our present government is strong. How can that government be strong which depends on humble supplications for its support? Does a government which is dependent for its existence on others, and which is unable to afford protection to the people, deserve to be continued? But the honorable gentleman has no objections to see little storms in republics; they may be useful in the political as well as in the natural world. Every thing the great Creator {238} has ordained in the natural world is founded on consummate wisdom: but let him tell us what advantages convulsions, dissensions, and bloodshed, will produce in the political world. Can disunion be the means of securing the happiness of the people in this political hemisphere? The worthy member has enlarged on our bill of rights.

Let us see whether his encomiums on the bill of rights be consistent with his other arguments. Our declaration of rights says that all men are by nature equally free and independent. How comes the gentleman to reconcile himself to a government wherein there are an hereditary monarch and nobility? He objects to this change, although our present federal system is totally without energy. He objects to this system, because he says it will prostrate your bill of rights. Does not the bill of rights tell you that a majority of the community have an indubitable right to alter any government which shall be found inadequate to the security of the public happiness? Does it not say "that no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles"? Have not the inadequacy of the present system, and repeated flagrant violations of justice, and the other principles recommended by the bill of rights, been amply proved? As this plan of government will promote our happiness and establish justice, will not its adoption be justified by the very principles of your bill of rights?

But he has touched on a string which will have great effect. The western country is not safe if this plan be adopted. What do they stand in need of? Do they want protection from enemies? The present weak government cannot protect them. But the exercise of the congressional powers, proposed by this Constitution, will afford them ample security, because the general government can command the whole strength of the Union, to protect any particular part. There is another point wherein this government will set them right. I mean the western posts. This is a subject with which every gentleman here is acquainted. They have been withheld from us, since the peace, by the British. The violation of the treaty on our part authorizes this detention in some degree. The answer of the British minister to our demand of surrendering the posts was, that, as soon as {239} America should show a disposition to comply with the treaty on her part, Great Britain would do the same. By this Constitution, treaties will be the supreme law of the land. The adoption of it, therefore, is the only chance we have of getting the western posts.

As to the navigation of the Mississippi, it is one of the most unalienable rights of the people, and which ought to be relinquished on no consideration. The strength of the western people is not adequate to its retention and enjoyment. They can receive no aid from the Confederation. This navigation can only be secured by one of two ways — by force or by treaty. As to force, I apprehend that the new government will be much more likely to hold it than the old. It will be also more likely to retain it by means of treaties; because, as it will be more powerful and respectable, it will be more feared; and as they will have more power to injure Spain, Spain will be more inclined to do them justice, by yielding it, or by giving them an adequate compensation.

It was said that France and Spain would not be pleased to see the United States united in one great empire. Shall we remain feeble and contemptible to please them? Shall we reject our own interest to protect theirs? We shall be more able to discharge our engagements. This may be agreeable to them. There are many strong reasons to expect that the adoption of this system will be beneficial to the back country, and that their interest will be much better attended to under the new than under the old government. There are checks in this Constitution which will render the navigation of the Mississippi safer than it was under the Confederation. There is a clause which, in my opinion, will prohibit the general government from relinquishing that navigation. The 5th clause of the 9th section of the 1st article provides "that no preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another." If Congress be expressly prohibited to give preference to the ports of one state over those of another, there is a strong implication that they cannot give preference to the ports of any foreign nation over those of a state. This will render it unconstitutional to give Spain a preference to the western country in the navigation of that river. They may say that this is a constrained construction, but it appears to me rational. It would be a violation of true policy to give such a {240} preference. It would be a departure from natural construction to suppose that an advantage withheld from the states should be given to a foreign nation.

## **Common Law**

Under the Confederation, Congress cannot make a treaty without the consent of nine states. Congress, by the proposed plan, cannot make a treaty without the consent of two thirds of the senators present, and of the President. Two thirds will amount to nine states, if the senators from all the states be present. Can it be candidly and fairly supposed that they will not all, or nearly

all, be present when so Important a subject as a treaty is to be agitated? The consent of the President is a very great security. He is elected by the people at large. He will not have the local interests which the members of Congress may have. If he deviates from his duty, he is responsible to his constituents. He will be degraded, and will bring on his head the accusation of the representatives of the people — an accusation which has ever been, and always will be, very formidable. He will be absolutely disqualified to hold any place of profit, honor, or trust, and liable to further punishment if he has committed such high crimes as are punishable at common law. From the summit of honor and esteem he will be precipitated to the lowest infamy and disgrace. Although the representatives have no immediate agency in treaties, yet, from their influence in the government, they will direct every thing. They will be a considerable check on the Senate and President. Those from small states will be particularly attentive, to prevent a sacrifice of territory.

The people of New England have lately purchased great quantities of lands in the western country. Great numbers of them have moved thither. Every one has left his friends, relations, and acquaintances, behind him. This will prevent those states from adopting a measure that would so greatly tend to the injury of their friends. Has not Virginia, in the most explicit terms, asserted her right to that navigation? Can she ever enjoy it under so feeble a government as the present? This is one reason why she should assent to ratify this system. A strong argument offered by the gentleman last up, against the concession of direct taxation, is, that the back lands and impost will be sufficient for all the exigencies of government, and calculates the impost as a considerable amount. The impost will be affected by this business. The {241} navigation of that river will increase the impost. Are not the United States as much interested as the people of Kentucky to retain that navigation? Congress will have as much interest in it as any inhabitant of that country, and must exert themselves for it. Kentucky will have taxes to pay.

How can they pay them without navigation? It will be to their interest to have it in their power to navigate the Mississippi, and raise money by imposts. It will be to the interest of all the states, as it will increase the general resources of the united community, Considering Kentucky as an independent state, she will, under the present system, and without the navigation of that river, be furnished with the articles of her consumption through the medium of the importing states. She will, therefore, be taxed by every importing state. If the new Constitution takes place, the amounts of duties on imported articles will go into the general treasury, by which means Kentucky will participate an equal advantage with the importing states. It will, then, be clearly to the advantage of the inhabitants of that country that it should take place. He tells us that he prays for union. What kind of union? A union of the whole, I suppose, if it could be got on his terms. If on such terms, he will adopt it. If not, he will recur to partial confederacies. He will attempt amendments. If he cannot obtain them, then he will choose a partial confederacy. Now, I beg every gentleman in this committee, who would not sacrifice the union, to attend to the situation in which they are about to place themselves.

I beg gentlemen seriously to reflect on this important business. They say amendments may be previously obtained, but acknowledged to be difficult. Will you join in an opposition that so directly tends to disunion? Can any member here think of disunion, or a partial confederacy, without horror? Yet both are expressly preferred to union, unless this system be amended previously. But, says the worthy member, why should not previous amendments be obtained?

Will they not be agreed to, as the eight adopting states are friends to the union? But what follows? If they are so, they will agree to subsequent amendments. If you recommend alterations after ratifying, the friendship of the adopting states to the union, and the desires of several of them to have amendments, will lead them to gratify every {242} reasonable proposal. By this means you secure the government and union. But if you reject the Constitution, and say you must have alterations as the previous condition of adoption, you sacrifice the union, and all the valuable parts of it.

Can we trust, says he, our liberty to the President — to the Senate — to the House of Representatives? We do not trust our liberty to a particular branch: one branch has not the whole power. One branch is a check on the other. The representatives have a controlling power over the whole. He then told us that republican borderers are not disposed to quarrels. This controverts the uniform evidence of history. I refer the gentleman to the history of Greece. Were not the republics of that country, which bordered on one another, almost perpetually at war? Their confederated republics, as long as they were united, were continually torn by domestic factions. This was the case with the Amphictyons. They called to their assistance the Macedonian monarch, and were subjected themselves by that very prince. This was the fate of the other Grecian republics. Dissensions among themselves rendered it necessary for them to call for foreign aid, and this expedient ultimately ended in their own subjugation. This proves the absolute necessity of the union.

There is a country which affords strong examples, which maybe of great utility to us: I mean Great Britain. England, before it was united to Scotland, was almost constantly at war with that part of the island. The inhabitants of the north and south parts of the same island were more bitter enemies to one another than to the nations on the Continent. England and Scotland were more bitter enemies, before the union, than England and France have ever been, before or since. Their hatred and animosities were stimulated by the interference of other nations. Since the union, both countries have enjoyed domestic tranquillity, the greatest part of the time, and both countries have been greatly benefited by it. This is a convincing proof that union is necessary for America, and that partial confederacies would be productive of endless dissensions, and unceasing hostilities between the different parts.

The gentleman relies much on the force of requisitions. I shall mention two examples which will show their inutility. {243} They are fruitless without the coercion of arms. If large states refuse, a complete civil war, or dissolution of the confederacy, will result. If small states refuse, they will be destroyed, or Obliged to comply. From the history of the United Netherlands, the inutility of requisitions, without recurring to force, may be proved. The small provinces refused to comply, Holland, the most powerful, marched into their territories with an army, and compelled them to pay. The other example is from the New England confederacy. Massachusetts, the most wealthy and populous state, refused to contribute her share. The rest were unable to compel her, and the league was dissolved. Attend to a resolution of the Assembly of Virginia in the year 1784.

[Here Mr. Nicholas read a resolution of that year, to enable Congress to compel a compliance with requisitions.]

I am sure that the gentleman recognizes his child. Is not this a conclusive evidence of the utter inefficacy of requisitions? This expedient of coercion is a dreadful alternative. It confounds those

who are innocent, and willing to pay, with those who refuse. How are they to be discriminated, if a state is to be attacked for the refusal of its legislature? I am sure there is not a man in the committee who does not see the impolicy and danger of such an expedient.

We are next terrified with the thought of excises. In some countries excises are terrible. In others, they are not only harmless, but useful. In our sister states, they are excised without any inconvenience. They are a kind of tax on manufactures. Our manufactures are few in proportion to those of other states. We may be assured that Congress will make such regulations as shall make excises convenient and easy for the people.

## Direct Taxes

Another argument made use of is, that ours is the largest state, and must pay in proportion to the other states. How does that appear? The proportion of taxes are fixed by the number of inhabitants, and not regulated by the extent of territory, or fertility of soil. If we be wealthier, in proportion, than other states, it will fall lighter upon us than upon poorer states. They must fix the taxes so that the poorest states can pay; and Virginia, being richer, will bear it easier.

The, honorable gentleman says that the first collections are to go to Congress, and that the state legislatures must bear all deficiencies. How does this appear? Does he prove it? Nothing of it appears in the plan itself. The Congress and the state legislatures have concurrent jurisdictions in laying and collecting taxes. There is no rule that shows that Congress shall have the first collections. Each is independent of the other.

Another argument against this disingenuous, construction is drawn from that clause which regulates representation, which is conclusive from the words themselves: "Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers." Each state will know, from its population, its proportion of any general tax. As it was justly observed by the gentleman over the way, (Mr. Randolph,) they cannot possibly exceed that proportion: they are limited and restrained expressly to it. The state legislatures have no check of this kind. Their power is uncontrolled. This excludes the danger of interference. Each collects its own taxes, and bears its own deficiencies; and officers are accountable to each government for the different collections.

I deny, on my part, what he says with respect to the general welfare. He tells you that, under pretence of providing for the general welfare, they may lay the most enormous taxes. There is nothing in the clause which warrants this suggestion.

It provides "that Congress shall have the power to lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence and general welfare, of the United States." The debts of the Union ought to be paid. Ought not the common defence to be provided for? Is it not necessary to provide for the general welfare? It has been fully proved that this power could not be given to another body. The amounts to be raised are confined to these purposes solely. Will oppressive burdens be warranted by this clause? They are not to raise money for any other purpose. It is a power which is drawn from his favorite Confederation, the 8th article of which provides "that all charges of war, and all other expenses that shall be

incurred for the common defence or general welfare, and allowed by the United States, in Congress assembled, shall be defrayed out {245} of a common treasury, which shall be supplied by the several states, in proportion to the value of all lands, within each state, granted to or surveyed for any person, as such land, and the building and improvement thereon, shall be estimated, according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint.

## Taxes

"The taxes for paying that proportion shall be laid and levied, by the authority and direction of the legislatures of the several states, within the time agreed upon by the United States, in Congress assembled." Now, sir, by a comparison of this article with the clause in the Constitution, we shall find them to be nearly the same. The common defence and general welfare are the objects expressly mentioned to be provided for, in both systems. The power in the Confederation to secure and provide for those objects was constitutionally unlimited. The requisitions of Congress are binding on the states, though, from the imbecility of their nature, they cannot be enforced. The same power is intended by the Constitution. The only difference between them is, that Congress is, by this plan, to impose the taxes on the people, whereas, by the Confederation, they are laid by the states. The amount to be raised, and the power given to raise it, is the same in principle. The mode of raising only is different and this difference is founded on the necessity of giving the government that energy without which it cannot exist. The power has not been reprobated in the Confederation. It ought not to be blamed in the proposed plan of government.

## Necessary

The gentleman has adverted to what he calls the *sweeping clause*, &c., and represents it as replete with great dangers. This dreaded clause runs in the following words: "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers Vested by this Constitution in the government of the United States, or in any department or officer thereof." The committee will perceive that the Constitution had enumerated all the powers which the general government should have, but did not say how they were to be exercised. it therefore, in this clause, tells how they shall be exercised. Does this give any new power? I say not. Suppose it had been inserted, at the end of every power, that they should have power to make laws to carry that power into execution; would this have increased their powers? If, therefore, it {246} could not have increased their powers, if placed at the end of each power, it cannot increase them at the end of all. This clause only enables them to carry into execution the powers given to them, but gives them no additional power.

## Note

But it is objected to for want of a bill of rights. It is a principle universally agreed upon, that all powers not given are retained. Where, by the Constitution, the general government has general powers for any purpose, its powers are absolute. Where it has powers with some exceptions, they are absolute only as to those exceptions. In either case, the people retain what is not conferred on the general government, as it is by their positive grant that it has any of its powers. In England, in

all disputes between the king and people, recurrence is had to the enumerated rights of the people, to determine. Are the rights in dispute secured? Are they included in Magna Charta, Bill of Rights, &c.? If not, they are, generally speaking, within the king's prerogative, In disputes between Congress and the people, the reverse of the proposition holds. Is the disputed right enumerated? If not, Congress cannot meddle with it.

Which is the most safe? The people of America know what they have relinquished for certain purposes. They also know that they retain every thing else, and have a right to resume what they have given up, if it be perverted from its intended object. The king's prerogative is general, with certain exceptions. The people are, therefore, less secure than we are, Magna Charta, Bill of Rights, &c., secure their liberty. Our Constitution itself contains an English Bill of Rights. The English Bill of Rights declares that Parliaments shall be held frequently. Our Constitution says that Congress shall sit annually. The English Declaration of Rights provides that no laws shall be suspended. The Constitution provides that no laws shall be suspended, except one, and that in time of rebellion or invasion, which is the writ of *habeas corpus*. The Declaration of Rights says that there should be no army in time of peace without the consent of Parliament. Here we cannot have an army even in time of war, with the approbation of our representatives, for more than two years.

The liberty of the press is secured. What secures it in England? Is it secured by Magna Charta, the Declaration of Rights, or by any other express provision? It is not. They have no express security for the liberty of the press. {247} They have a reliance on Parliament for its protection and security. In the time of King William, there passed an act for licensing the press. That was repealed. Since that time, it has been looked upon as safe. The people have depended on their representatives. They will not consent to pass an act to infringe it, because such an act would irritate the nation. It is equally secure with us. As to the trial by jury, consider in what situation it is by the state Constitution. It is not on a better footing. It is by implication under the control of the legislature, because it has left particular cases to be decided by the legislature. Here it is secured in criminal cases, and left to the legislatures in civil cases. One instance will prove the evil tendency of fixing it in the Constitution. It will extend to all cases. Causes in chancery, which, strictly speaking, never are, nor can be, well tried by a jury, would then be tried by that mode, and could not be altered, though found to be inconvenient.

But taxes are to be increased, we are told. I think they will not. I am clearly of opinion that the deduction in the civil list of the states will be equal to the increase of that of the general government. Then the increase of custom-house officers is dreaded. The present custom-house officers will be sufficient in the hands of Congress; so that as much as economy will take place, so far the revenues will be increased, Mr. Nicholas concluded by making a few observations on the general structure of the government, and its probable happy operation. He said that it was a government calculated to suit almost any extent of territory. He then quoted the opinion of the celebrated Montesquieu, from vol. i., book 9, where that writer speaks of a confederate republic as the only safe means of extending the sphere of a republican government to any considerable degree.

---

**W**EDNESDAY, *June 11, 1788.*

[The 1st and 2d sections still under consideration.]

**Mr. MADISON.**

Mr. Chairman, it was my purpose to resume, before now, what I had left unfinished concerning the necessity of a radical change of our system. The intermission which has taken place discontinued the progress of the argument, and has given opportunity to others to advance arguments on different parts of the plan. I hope we shall {248} steer our course in a different manner from what we have hitherto done. I presume that vague discourses and mere sports of fancy, not relative to the subject at all, are very improper on this interesting occasion. I hope these will be no longer attempted, but that we shall come to the point. I trust we shall not go out of order, but confine ourselves to the clause under consideration. I beg gentlemen would observe this rule. I shall endeavor not to depart from it myself.

The subject of direct taxation is perhaps one of the most important that can possibly engage our attention, or that can be involved in the discussion of this question. If it be to be judged by the comments made upon it, by the opposers and favorers of the proposed system, it requires a most clear and critical investigation. The objections against the exercise of this power by the general government, as far as I am able to comprehend them, are founded upon the supposition of its being unnecessary, impracticable, unsafe, and accumulative of expense. I shall therefore consider, 1st, how far it may be necessary; 2d, how far it may be practicable; 3d, how far it may be safe, as well with respect to the public liberty at large, as to the state legislatures; and 4th, with respect to economy. First, then, is it necessary? I must acknowledge that I concur in opinion with those gentlemen who told you that this branch of revenue was essential to the salvation of the Union. It appears to me necessary, in order to secure that punctuality which is necessary in revenue matters, without punctuality, individuals will give it no confidence, without which it cannot get resources. I beg gentlemen to consider the situation of this country, if unhappily the government were to be deprived of this power. Let us suppose, for a moment, that one of those powers which may be unfriendly to us should take advantage of our weakness, which they will be more ready to do when they know the want of this resource in our government. Suppose it should attack us; what forces could we oppose to it? Could we find safety in such forces as we could call out? Could we call forth a sufficient number, either by draughts, or any other way, to repel a powerful enemy? The inability of the government to raise and support regular troops would compel us to depend on militia.

It would be then necessary to give this power to the government, {249} or run the risk of national annihilation. It is my firm belief that, if a hostile attack were made this moment on the United States, it would flash conviction on the minds of the citizens of the United States of the necessity of vesting the government with this power, which alone can enable it to protect the community. I do not wish to frighten the members into a concession of this power, but to bring to their minds those considerations which demonstrate its necessity. If we were secured from the possibility, or probability, of danger, it might be unnecessary. I shall not review that concourse of dangers which may probably arise at remote periods of futurity, nor all those which we have

immediately to apprehend, for this would lead me beyond the bounds which I prescribed myself. But I will mention one single consideration, drawn from fact itself. I hope to have your attention.

By the treaty between the United States and his most Christian majesty, among other things, it is stipulated that the great principle on which the armed neutrality in Europe was founded should prevail in case of future wars. The principle is this — that free ships shall make free goods, and that vessels and goods shall be both free from condemnation. Great Britain did not recognize it. While all Europe was against her, she held out without acting on it. It has been considered, for some time past, that the flames of war, already kindled, would spread, and that France and England were likely to draw those swords which were so recently put up. This is judged probable. We should not be surprised, in a short time, to consider ourselves as a neutral nation — France on one side, and Great Britain on the other. What is the situation of America? She is remote from Europe, and ought not to engage in her politics or wars. The American vessels, if they can do it with advantage, may carry on the commerce of the contending nations. It is a source of wealth which we ought not to deny to our citizens. But, sir, is there not infinite danger that, in despite of all our caution, we shall be drawn into the war? If American vessels have French property on board, Great Britain will seize them. By this means we shall be obliged to relinquish the advantage of a neutral nation, or be engaged in a war.

A neutral nation ought to be respectable, or else it will be insulted and attacked. America, in her present impotent situation, would run the risk of being drawn in as a party in {250} the war, and lose the advantage of being neutral. Should it happen that the British fleet should be superior, have we not reason to conclude, from the spirit displayed by that nation to us and to all the world, that we should be insulted in our own ports, and our vessels seized? But if we be in a respectable situation, if it be known that our government can command the whole resources of the Union, we shall be suffered to enjoy the great advantages of carrying on the commerce of the nations at war; for none of them would be willing to add us to the number of their enemies. I shall say no more on this point, there being others which merit your consideration.

The expedient proposed by the gentlemen opposed to this clause is, that requisitions shall be made, and, if not complied with in a certain time, that then taxation shall be recurred to. I am clearly convinced that, whenever requisitions shall be made, they will disappoint those who put their trust in them. One reason to prevent the concurrent exertions of all the states, will arise from the suspicion, in some states, of delinquency in others. States will be governed by the motives that actuate individuals.

When a tax is in operation in a particular state, every citizen, if he knows the energy of the laws to enforce payment, and that every other citizen is performing his duty, will cheerfully discharge his duty; but were it known that the citizens of one district were not performing their duty, and that it was left to the policy of the government to make them come up with it, the other districts would be very supine and careless in making provisions for payment. Our own experience makes the illustration more natural. If requisitions be made on thirteen different states, when one deliberates on the subject, she will know that all the rest will deliberate upon it also. This, sir, has been a principal cause of the inefficacy of requisitions heretofore, and will hereafter produce the same evil. If the legislatures are to deliberate on this subject, (and the honorable gentleman opposed to this clause thinks their deliberation necessary,) is it not presumable that they will

consider peculiar local circumstances? In the general council, on the contrary, the sense of all America would be drawn to a single point. The collective interest of the Union at large will be known and pursued. No local views will be permitted to operate against the general welfare. {251} But when propositions would come before a particular state, there is every reason to believe that qualifications of the requisitions would be proposed; compliance might be promised, and some instant remittances might be made. This will cause delays, which, in the first instance, will produce disappointment. This also will make failures everywhere else. This, I hope, will be considered with the attention it deserves. The public creditors will be disappointed, and more pressing. Requisitions will be made for purposes equally pervading all America; but the exertions to make compliances will probably be not uniform in the states. If requisitions be made for future occasions, for putting the states in a state of military defence, or to repel an invasion, will the exertions be uniform and equal in all the states? Some parts of the United States are more exposed than others. Will the least exposed states exert themselves equally? We know that the most exposed will be the more immediately interested, and will make less sacrifices in making exertions. I beg gentlemen to consider that this argument will apply with most effect to the states which are most defenceless and exposed. The Southern States are most exposed, whether we consider their situation, or the smallness of their population. And there are other circumstances which render them still more vulnerable, which do not apply to the Northern States. They are therefore more interested in giving the government a power to command the whole strength of the Union in cases of emergency. Do not gentlemen conceive this mode of obtaining supplies from the states will keep alive animosities between the general government and particular states? Where the chances of failures are so numerous as thirteen, by the thirteen states, disappointment in the first place, and consequent animosity, must inevitably take place.

Let us consider the alternatives proposed by gentlemen, instead of the power of laying direct taxes. After the states shall have refused to comply, weigh the consequences of the exercise of this power by Congress. When it comes in the form of a punishment, great clamors will be raised among the people against the government; hatred will be excited against it. It will be considered as an ignominious stigma on the state. It will be considered, at least, in this light by {252} the state where the failure is made, and these sentiments will no doubt be diffused through the other states. Now, let us consider the effect, if collectors are sent where the State governments refuse to comply with requisitions. It is too much the disposition of mankind not to stop at one violation of duty. I conceive that every requisition that will be made on my part of America will kindle a contention between the delinquent member and the general government. Is there no reason to suppose divisions in the government (for seldom does any thing pass with unanimity) on the subject of requisitions? The parts least exposed will oppose those measures which may be adopted for the defence of the weakest parts. Is there no reason to presume that the representatives from the delinquent state will be more likely to foster disobedience to the requisitions of the government than study to recommend them to the public?

There is, in my opinion, another point of view in which this alternative will produce great evil. I will suppose, what is very probable, that partial compliances will be made. A difficulty here arises which fully demonstrates its impolicy. If a part be paid, and the rest withheld, how is the general government to proceed? They are to impose a tax; but how shall it be done in this case? Are they to impose it, by way of punishment, on those who have paid, as well as those who have not? All these considerations taken into view (for they are not visionary or fanciful speculations)

will, perhaps, produce this consequence: The general government, to avoid those disappointments which I first described, and to avoid the contentions and embarrassments which I last described, will, in all probability, throw the public burdens on those branches of revenue which will be more in their power. They will be continually necessitated to augment the imposts. If we throw a disproportion of the burdens on that side, shall we not discourage commerce and suffer many political evils? Shall we not increase that disproportion on the Southern States, which for some time will operate against us? The Southern States, from having fewer manufactures, will import and consume more. They will therefore pay more of the imposts. The more commerce is burdened, the more the disproportion will operate against them. If direct taxation be mixed with other taxes, it will be in the power {253} of the general government to lessen that inequality. But this inequality will be increased to the utmost extent, if the general government have not this power.

There is another point of view in which this subject affords us instruction. The imports will decrease in time of war. The honorable gentleman who spoke yesterday said that the imposts would be so productive that there would be no occasion of laying taxes. I will submit two observations to him and the committee. First, in time of war, the imposts will be less; and as I hope we are considering a government for a perpetual duration, we ought to provide for, every future contingency. At present, our importations bear a full proportion to the full amount of our sales, and to the number of our inhabitants; but when we have inhabitants enough, our imposts will decrease, and as the national demands will increase with our population, our resources will increase as our wants increase. The other consideration which I will submit on this part of the subject is this: I believe that it will be found, in practice, that those who fix the public burdens will feel a greater degree of responsibility, when they are to impose them on the citizens immediately than if they were to say what sum should be paid by the states. If they exceed the limits of propriety, universal discontent and clamor will arise. Let us suppose they were to collect the taxes from the citizens of America; would they not consider their circumstances? Would they not attentively consider what could be done by the citizens at large? Were they to exceed, in their demands, what were reasonable burdens, the people would impute it to the right source, and look on the imposers as odious.

When I consider the nature of the various objections brought against this clause, I should be led to think that the difficulties were such that gentlemen would not be able to get over them, and that the power, as defined in the plan of the Convention, was impracticable. I shall trouble them with a few observations on that point.

It has been said that ten men deputed from this state, and others in proportion from other states, will not be able to adjust direct taxes, so as to accommodate the various citizens in thirteen states.

I confess I do not see the force of this observation. Could not ten intelligent men, chosen from ten districts from this {254} state, lay direct taxes on a few objects in the most judicious manner? It is to be conceived that they would be acquainted with the situation of different citizens of this country. Can any one divide this state into ten districts so as not to contain men of sufficient information? Could not one man of knowledge be found in a district? When thus selected, will they not be able to carry their knowledge into the general council? I may say, with great

propriety, that the experience of our own legislature demonstrates the competency of Congress to lay taxes wisely. Our Assembly consists of considerably more than a hundred; yet, from the nature of the business, it devolves on a much smaller number. It is, through their sanction, approved of by all the others. It will be found that there are seldom more than ten men who rise to high information on this subject. Our federal representatives, as has been said by the gentleman, (Mr. Marshall,) who entered into the subject with a great deal of ability, will get information from the state governments. They will be perfectly well informed of the circumstances of the people of the different states, and the mode of taxation that would be most convenient for them, from the laws of the states. In laying taxes, they may even refer to the state system of taxation. Let it not be forgotten that there is a probability that that ignorance which is complained of in some parts of America will be continually diminishing. Let us compare the degree of knowledge which the people had in time past to their present information. Does not our own experience teach us that the people are better informed than they were a few years ago? The citizen of Georgia knows more now of the affairs of New Hampshire, than he did, before the revolution, of those of South Carolina. When the representatives from the different states are collected together, to consider this subject, they will interchange their knowledge with one another, and will have the laws of each state on the table. Besides this, the intercourse of the states will be continually increasing. It is now much greater than before the revolution. My honorable friend over the way, (Mr. Monroe,) yesterday, seemed to conceive, as an insuperable objection, that, if land were made the particular object of taxation, it would be unjust, as it would exonerate the commercial part of the community; that, if it were laid on trade, it would {255} be unjust, in discharging the landholders; and that any exclusive selection would be unequal and unfair. If the general government were tied down to one object, I confess the objection would have some force in it. But if this be not the case, it can have no weight. If it should have a general power of taxation, they could select the most proper objects, and distribute the taxes in such a manner as that they should fall in a due degree on every member of the community. They will be limited to fix the proportion of each state, and they must raise it in the most convenient and satisfactory manner to the public.

The honorable member considered it as another insuperable objection, that uniform laws could not be made for thirteen states, and that dissonance would produce inconvenience and oppression. Perhaps it may not be found, on due inquiry, to be so impracticable as he supposes. But were it so, where is the evil for different states to raise money for the general government? Where is the evil of such laws? There are instances in other countries of different laws operating in different parts of the Country, without producing any kind of opposition. The revenue laws are different in England and Scotland in several respects. Their laws relating to customs, excises, and trade, are similar; but those respecting direct taxation are dissimilar. There is a land tax in England, and a land tax in Scotland; but the laws concerning them are not the same. It is much heavier, in proportion, in the former than in the latter. The mode of collection is different; yet this is not productive of any national inconvenience. Were we to conclude, from the objections, against the proposed plan, this dissimilarity, in that point alone, would have involved those kingdoms in difficulties, In England itself, there is a variety of different laws operating differently in different places.

I will make another observation on the objection of my honorable friend. He seemed to conclude that concurrent collections under different authorities were not reducible to practice. I agree that,

were they independent of the people, the argument would be good. But they must serve one common master. They must act in concert, or the defaulting party must bring on itself the resentment of the people. If the general government be so constructed that it will not dare to impose such burdens as will distress the people, where {256} is the evil of its having a power of taxation concurrent with the states? The people would not support it, were it to impose oppressive burdens. Let me make one more comparison of the state governments to this plan. Do not the states impose taxes for local purposes? Does the concurrent collection of taxes, imposed by the legislatures for general purposes, and of levies laid by the counties for parochial and county purposes, produce any inconvenience or oppression? The collection of these taxes is perfectly practicable, and consistent with the views of both parties. The people at large are the common superior of the state governments and the general government. It is reasonable to conclude that they will avoid interferences, for two causes — to avoid public oppression, and to render the collections more productive. I conceive they will be more likely to produce disputes, in rendering it convenient for the people, than to run into interfering regulations.

In the third place, I shall consider whether the power of taxation to be given the general government be safe; and first, whether it be safe as to the public liberty in general. It would be sufficient to remark that it is, because I conceive the point has been clearly established by more than one gentleman who has spoken on the same side of the question. In the decision of this question, it is of importance to examine whether elections of representatives by great districts of freeholders be favorable to fidelity in representatives. The greatest degree of treachery in representatives is to be apprehended where they are chosen by the least number of electors; because there is a greater facility of using undue influence, and because the electors must be less independent. This position is verified, in the most unanswerable manner, in that country to which appeals are so often made, and sometimes instructively.

Who are the most corrupt members in Parliament? Are they not the inhabitants of small towns and districts? The supporters of liberty are from the great counties. Have we not seen that the representatives of the city of London, who are chosen by such thousands of voters, have continually studied and supported the liberties of the people, and opposed the corruption of the crown? We have seen continually that most of the members in the ministerial majority are drawn from small, circumscribed districts. We may therefore {257} conclude, that our representatives, being chosen by such extensive districts, will be upright and independent. In proportion as we have security against corruption in representatives, we have security against corruption from every other quarter whatsoever.

## **NOTE**

I shall take a view of certain subjects, which will lead to some reflections to quiet the minds of those gentlemen who think that the individual governments will be swallowed up by the general government. In order to effect this, it is proper to compare the state governments with the general government, with respect to reciprocal dependence, and with respect to the means they have of supporting themselves, or of encroaching on one another. At the first comparison, we must be struck with these remarkable facts. The general government has not the appointment of a single branch of the individual governments, or of any officers within the states, to execute their laws. Are not the states integral parts of the general government? Is not the President chosen under the

influence of the state legislatures? May we not suppose that he will be complaisant to those from whom he has his appointment, and from whom he must have his reappointment? The senators are appointed altogether by the legislatures.

My honorable friend apprehended a coalition between the President, Senate, and House of Representatives, against the states. This could be supposed only from a similarity of the component parts.

A coalition is not likely to take place, because its component parts are heterogeneous in their nature. The House of Representatives is not chosen by the state governments, but under the influence of those who compose the state legislatures. Let us suppose ten men appointed to carry the government into effect; there is every degree of certainty that they would be indebted for their reelection to the members of the legislatures. If they derive their appointment from them, will they not execute their duty to them? Besides this, will not the people (whose predominant interest will ultimately prevail) feel great attachment to the state legislatures? They have the care of all local interests — those familiar domestic objects, for which men have the strongest predilection. The general government, on the contrary, has the preservation of the aggregate interest of {258} the Union — objects which, being less familiar, and more remote from men's notice, have a less powerful influence on their minds, Do we not see great and natural attachments arising from local considerations? This will be the Case in a much stronger degree in the state governments than in the general government. The people will be attached to their state legislatures from a thousand causes; and into whatever scale the people at large will throw themselves, that scale will preponderate.

Did we not perceive, in the early stages of the war, when Congress was the idol of America, and when in pursuit of the object most dear to America, that they were attached to their states? Afterwards, the whole current of their affection was to the states; and such would be still the case, were it not for the alarming situation of America.

At one period of the congressional history, they had the power to trample on the states. When they had that fund of paper money in their hands, and could carry on all their measures without any dependence on the states, was there any disposition to debase the state governments? All that municipal authority which was necessary to carry on the administration of the government, they still retained unimpaired. There was no attempt to diminish it.

I am led, by what fell from my honorable friend yesterday, to take this supposed combination in another view. Is it supposed that the influence of the general government will facilitate a combination between the members? Is it supposed that it will preponderate against that of the state governments? The means of influence consist in having the disposal of gifts and emoluments, and in the number of persons employed by and dependent upon a government. Will any gentleman compare the number of persons which will be employed in the general government with the number of those which will be in the state governments? The number of dependants upon the state governments will be infinitely greater than those on the general government. I may say, with truth, that there never was a more economical government in any age or country, nor Which will require fewer hands, or give less influence.

Let us compare the members composing the legislative, executive, and judicial powers, in the general government, with these in the states, and let us take into view the vast {259} number of persons employed in the states: from the chief officers to the lowest, we shall find the scale preponderating so much in favor of the states, that, while so many persons are attached to them, it will be impossible to turn the balance against them. There will be an irresistible bias towards the state governments.

Consider the number of militia officers, the number of justices of the peace, the number of the members of the legislatures, and all the various officers for districts, towns, and corporations — all intermixing with, and residing among, the people at large. While this part of the community retain their affection to the state governments, I conceive that the fact will be, that the state governments, and not the general government, will preponderate. It cannot be contradicted that they have more extensive means of influence. I have my fears as well as the honorable gentleman; but my fears are on the other side. Experience, I think, will prove (though there be no infallible proof of it here) that the powerful and prevailing influence, of the states will produce such attention to local considerations as will be inconsistent with the advancement of the interest of the Union. But I choose rather to indulge my hopes than fears, because I flatter myself, if inconveniences should result from it, that the clause which provides amendments will remedy them, The combination of powers vested in those persons would seem conclusive in favor of the states.

The powers of the general government relate to external objects, and are but few. But the powers in the states relate to those great objects which immediately concern the prosperity of the people. Let us observe, also, that the powers in the general government are those which will be exercised mostly in time of war, while those of the state governments will be exercised in time of peace. But I hope the time of war will be little, compared to that of peace. I should not complete the view which ought to be taken of this subject, without making this additional remark, — that the powers vested in the proposed government are not so much an augmentation of powers in the general government, as a change rendered necessary for the purpose of giving efficacy to those which were vested in it before. It cannot escape any gentleman that this power, in theory, exists in the Confederation as fully as in this Constitution. {260} The only difference is this — that now they tax states, and by this plan they will tax individuals. There is no theoretic difference between the two. But in practice there will be an infinite difference between them. The one is an ineffectual power; the other is adequate to the purpose for which it is given. This change was necessary for the public safety.

Let us suppose, for a moment, that the acts of Congress requiring money from the states had been as effectual as the paper on the table; suppose all the laws of Congress had complete compliance; will any gentleman say that, as far as we can judge from past experience, the state governments would have been debased, and all consolidated and incorporated in one system? My imagination cannot reach it. I conceive that, had those acts that effect which all laws ought to have, the states would have retained their sovereignty.

It seems to be supposed that it will introduce new expenses and burdens on the people. I believe it is not necessary here to make a comparison between the expenses of the present and of the proposed government. All agree that the general government ought to have power for the

regulation of commerce. I will venture to say that very great improvements, and very economical regulations, will be made. It will be a principal object to guard against smuggling, and such other attacks on the revenue as other nations are subject to. We are now obliged to defend against those lawless attempts; but, from the interfering regulations of different states, with little success. There are regulations in different states which are unfavorable to the inhabitants of other states, and which militate against the revenue. New York levies money from New Jersey by her imposts. In New Jersey, instead of coöperating with New York, the legislature favors violations on her regulations. This will not be the case when uniform regulations will be made.

Requisitions, though ineffectual, are unfriendly to economy. When requisitions are submitted to the states, there are near two thousand five hundred or three thousand persons deliberating on the mode of payment. All these, during their deliberation, receive public pay. A great proportion of every session, in every state, is employed to {261} consider whether they will pay at all, and in what mode, Let us suppose fifteen hundred persons are deliberating on this subject. Let any one make a calculation: it will be found that a very few days of their deliberation will consume more of the public money than one year of that general legislature. This is not all, Mr. Chairman. When general powers will be vested in the general government, there will be less of that mutability which is seen in the legislation of the states. The consequence will be a great saving of expense and time. There is another great advantage, which I will but barely mention. The greatest calamity to which the United States can be subject is a vicissitude of laws, and continual shifting and changing from one object to another — which must expose the people to various inconveniences. This has a certain effect, of which sagacious men always have made, and always will make, an advantage. From whom is advantage made? From the industrious farmers and tradesmen who are ignorant of the means of making such advantages. The people will not be exposed to these inconveniences under a uniform and steady course of legislation. But they have been so heretofore. The history of taxation in this country is so fully and well known to every member of this committee, that I shall say no more of it.

We have hitherto discussed the subject very irregularly. I dare not dictate to any gentleman, but I hope we shall pursue that mode of going through the business which the house resolved. With respect to a great variety of arguments made use of, I mean to take notice of them when we come to those parts of the Constitution to which they apply. If we exchange this mode for the regular way of proceeding, we can finish it better in one week than one month.

[A desultory conversation arose concerning the mode of discussion.]

## **Mr. HENRY**

declared it as his opinions, that the best mode was to discuss it at large; that the gentlemen on the other side had done so, as well as those of his side; and he hoped that every gentleman would consider himself at liberty to go into the subject fully, because he thought it is the best way to elucidate it.

## **Mr. MADISON**

wished not to exclude any light that could be cast on the subject. He declared that he would be the last man that would object to the fullest investigation; {262} but, at the same time, he thought it would be more elucidated by a regular progressive discussion, than by that unconnected, irregular method which they had hitherto pursued.

## **Mr. GEORGE MASON.**

Mr. Chairman, gentlemen will be pleased to consider that, on so important a subject as this, it is impossible, in the nature of things, to avoid arguing more at large than is usual. You will allow that I have not taken up a great part of your time. But as gentlemen have indulged themselves in entering at large into the subject, I hope to be permitted to follow them, and answer their observations.

The worthy member, (Mr. Nicholas,) at a very early day, gave us an accurate detail of the representation of the people in Britain, and of the rights of the king of Britain; and illustrated his observations by a quotation from Dr. Price. Gentlemen will please to take notice that those arguments relate to a single government, and that they are not applicable to this case. However applicable they may be to such a government as that of Great Britain, it will be entirely inapplicable to such a government as ours. The gentleman, in drawing a comparison between the representation of the people in the House of Commons, in England, and the representation in the government now proposed to us, has been pleased to express his approbation in favor of the American government. Let us examine. I think that there are about 550 members in the English House of Commons. The people of Britain have a representation in Parliament of 550 members, who intimately mingle with all classes of the people, feeling and knowing their circumstances. In the proposed American government — in a country perhaps ten times more extensive — we are to have a representation of sixty-five, who, from the nature of the government, cannot possibly be mingled with the different classes of the people, nor have a fellow-feeling for them.

They must form an aristocracy, and will not regard the interest of the people. Experience tells us that men pay most regard to those whose rank and situation are similar to their own. In the course of the investigation, the gentleman mentioned the bribery and corruption of Parliament, and drew a conclusion the very reverse of what I should have formed on the subject. He said, if I recollect rightly, that the American representation is more secured against {263} bribery and corruption, than the English Parliament. Are sixty-five better than five hundred and fifty? Bribery and corruption, in my opinion, will be practised in America more than in England, in proportion as five hundred and fifty exceed sixty-five; and there will be less integrity and probity in proportion as sixty-five is less than five hundred and fifty. From what source is the bribery practised in the British Parliament derived? I think the principal source is the distribution of places, offices, and posts. Will any gentleman deny this? Give me leave, on this occasion, to recur to that clause of the Constitution which speaks of restraint, and has the appearance of restraining from corruption, &c., but which, when examined, will be found to be no restraint at all. The clause runs thus: "No senator or representative shall, during the time for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during

his continuance in office." This appears to me to be no restraint at all. It is to be observed that this restraint only extends to civil offices.

But I will not examine whether it be a proper distinction or not. What is the restraint as to civil offices? Only that they shall not be appointed to offices which shall have been created, or the emoluments whereof shall have been increased, during the time for which they shall have been elected. They may be appointed to existing offices, if the emoluments be not increased during the time for which they were elected.

[Here Mr. Mason spoke too low to be heard.]

Thus, after the government is set in motion, the restraint will be gone. They may appoint what number of officers they please. They may send ambassadors to every part of Europe. Here is, sir, I think, as wide a door for corruption as in any government in Europe. There is the same inducement for corruption, there is the same room for it, in this government, which they have in the British government; and in proportion as the number is smaller, corruption will be greater.

That unconditional power of taxation which is given to that government cannot but oppress the people. If, instead of this, a conditional power of taxation be given, in case of {264} refusal to comply with requisitions, the same end will be answered with convenience to the people. This will not lessen the power of Congress; we do not want to lessen the power of Congress unnecessarily. This will produce moderation in the demand, and will prevent the ruinous exercise of that power by those who know not our situation. We shall then have that mode of taxation which is the most easy, and least oppressive to the people, because it will be exercised by those who are acquainted with their condition and circumstances. This, sir, is the great object we wish to secure — that our people should be taxed by those who have a fellow-feeling for them. I think I can venture to assert that the general government will lay such taxes as are the easiest and the most productive in the collection. This is natural and probable.

For example, they may lay a poll tax. This is simply and easily collected, but is of all taxes the most grievous. Why the most grievous? Because it falls light on the rich, and heavy, on the poor. It is most oppressive: for if the rich man is taxed, he can only retrench his superfluities; but the consequence to the poor man is, that it increases his miseries. That they will lay the most simple taxes, and such as are easiest to collect, is highly probable, nay, almost absolutely certain. I shall take the liberty, on this occasion, to read you a letter, which will show, at least as far as opinion goes, what sort of taxes will be most probably laid on us, if we adopt this Constitution. It was the opinion of a gentleman of information. It will in some degree establish the fallacy of those reports which have been circulated through the country, and which induced a great many poor, ignorant people to believe that the taxes were to be lessened by the adoption of the proposed government.

[Here Mr. Mason read a letter from Mr. Robert Morris, financier of the United States, to Congress, wherein he spoke of the propriety of laying the following taxes for the use of the United States; viz., six shillings on every hundred acres of land, six shillings per poll, and ninepence per gallon on all spirituous liquors distilled in the country. Mr. Mason declared that he did not mean to make the smallest reflection on Mr. Morris, but introduced his letter to show what taxes would probably be laid.]

He then continued: This will at least show that such taxes were in agitation, and were strongly advocated by a considerable part of Congress. I have read this letter to show that they will lay taxes most easy to be collected. {265} without any regard to our convenience; so that, instead of amusing ourselves with a diminution of our taxes, we may, rest assured that they will be increased. But my principal reason for introducing it was, to show that taxes would be laid by those who are not acquainted with our Situation, and that the agents of the collection may be consulted upon the most productive and simple mode of taxation. The gentleman who wrote this letter had more information on this subject than we have; but this will show gentlemen that we are not to be eased of taxes. Any of those taxes which have been pointed out by this financier as the most eligible, will be ruinous and unequal, and will be particularly oppressive on the poorest part of the people.

As to a poll tax, I have already spoken of its iniquitous operation, and need not say much of it, because it is so generally disliked in this state, that we were obliged to abolish it last year. As to a land tax, it will operate most unequally. The man who has one hundred acres of the richest land will pay as little as a man who has one hundred acres of the poorest land. Near Philadelphia, or Boston, an acre of land is worth one hundred pounds; yet the possessor of it will pay no more than the man with us whose land is hardly worth twenty shillings an acre. Some landholders in this state will have to pay twenty times as much as will be paid for all the land on which Philadelphia stands; and as to excise, this will carry the exciseman to every farmers house, who distils a little brandy, where he may search and ransack as he pleases. These I mention as specimens of the kind of tax which is to be laid upon us by those who have no information of our situation, and by a government where the wealthy only are represented. It is urged that no new power is given up to the general government, and that the Confederation had those powers before. That system derived its power from the state governments. When the people of Virginia formed their government, they reserved certain great powers in the bill of rights. They would not trust their own citizens, who had a similarity of interest with themselves, and who had frequent and intimate communication with them. They would not trust their own fellow-citizens, I say, with the exercise of those great powers reserved in the bill of rights. Do we not, by this system, give up a great part of the rights, reserved by the bill of {266} rights, to those who have no fellow-feeling for the people — to a government where the representatives will have no communication with the people? I say, then, there are great and important powers, which were not transferred to the state government, given up to the general government by this Constitution.

Let us advert to the 6th article. It expressly declares, that "this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which Shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby; any thing in the Constitution or laws of any state to the contrary notwithstanding." Now, sir, if the laws and Constitution of the general government, as expressly said, be paramount to those of any state, are not those rights with which we were afraid to trust our own citizens annulled and given up to the general government? The bill of rights is a part of our own Constitution. The judges are obliged to take notice of the laws of the general government; consequently, the rights secured by our bill of rights are given up. If they are not given up, where are they secured? By implication! Let gentlemen show that they are secured in a plain, direct, unequivocal manner. It is not in their power. Then where is the security? Where is the barrier drawn between the government and the rights of the citizens, as

secured in our own state government? These rights are given up in that paper; but I trust that this Convention will never give them up; but will take pains to secure them to the latest posterity. If a check be necessary in our own state government, it is much more so in a government where our representatives are to be at the distance of a thousand miles from us, without any responsibility.

I said, the other day, that they could not have sufficient information. I was asked how the legislature of Virginia got their information. The answer is easy and obvious. They get it from one hundred and sixty representatives, dispersed through all parts of the country. In this government how do they get it? Instead of one hundred and sixty, there are but ten — chosen, if not wholly, yet mostly, from the higher order of the people — from the great, the wealthy — the *well-born* — the *well-born*, Mr. Chairman, that aristocratic {267} idol — that flattering idea — that *exotic* plant which has been lately imported from the ports of Great Britain, and planted in the luxurious soil of this country.

In the course of the investigation, much praise has been lavished upon the article which fixes the number of representatives. It only says that the proportion *shall not exceed* one for every thirty thousand.

The worthy gentleman says that the number must be increased, because representation and taxation are in proportion, and that one cannot be increased without increasing the other, nor decreased without decreasing the other. Let us examine the weight of this argument. If the proportion of each state equally and ratably diminishes, the words of the Constitution will be as much satisfied as if it had been increased in the same manner, without any reduction of the taxes. Let us illustrate it familiarly. Virginia has ten representatives; Maryland has six. Virginia will have to pay a sum in proportion, greater than Maryland, as ten to six. Suppose Virginia reduced to five, and Maryland to three. The relative proportion of money, paid by each, will be the same as before; and yet the honorable gentleman said, that, if this did not convince us, he would give up. I am one of those unhappy men who cannot be amused with assertions; A man from the dead might frighten me; but I am sure that he could not convince me without using better arguments than I have yet heard.

The same gentleman showed us that, though the Northern States had a most decided majority against us, yet the increase of population among us would, in the course of years, change it in our favor. A very sound argument indeed, that we should cheerfully burn ourselves to death in hopes of a joyful and happy resurrection!

The very worthy gentleman who presides was pleased to tell us that there was no interference between the legislation of the general government and that of the state legislatures. Pardon me if I show the contrary. In the important instance of taxation there is a palpable interference. Suppose a poll tax: the general government can lay a poll tax; the state legislatures can do the same — can lay it on the same man, and at the same time; and yet it is said there can be no interference.

My honorable colleague in the late federal Convention, in {268} answer to another gentleman, who had said that the annals of mankind could afford no instance of rulers giving up power, has told us that eight states had adopted the Constitution, and that this was a relinquishment of

power. Ought this, example to have any weight with us? If that relinquishment was imprudent, shall we imitate it? I will venture to assert that, out of a thousand instances where the people precipitately and unguardedly relinquished their power, there has not been one instance of a voluntary surrender of it back by rulers. He afterwards said, that freedom at home and respectability abroad would be the consequence of the adoption of this government, and that we cannot exist without its adoption. Highly as I esteem that gentleman, highly as I esteem his historical knowledge, I am obliged to deny his assertions.

If this government will endanger our liberties in its present state, its adoption will not promote our happiness at home. The people of this country are as independent, happy, and respectable, as those of any country. France is the most powerful and respectable nation on earth. Would the planters of this country change their shoes for the wooden shoes of the peasants of France? Perhaps Russia is the next greatest power in Europe. Would we change situation with the people of Russia? We have heard a great deal of Holland. Some have called its government a democracy; others have called it an aristocracy. It is well known to be a republic. It has arisen to uncommon power and wealth. Compared to its neighboring countries, its fortune has been surprising.

[Here Mr. Mason made a quotation, showing the comparative flourishing condition of the inhabitants of Holland, even a few years after they had shaken off the Spanish yoke; that plenty, and contentment were to be every where seen, the peasants well clothed, provisions plenty, their furniture and domestic utensils in abundance, and their lands well stocked; — that, on the contrary, the people of Spain were in a poor and miserable condition, in want of every thing of which the people of Holland enjoyed the greatest abundance.]

Mr. Mason then continued: As this was within a few years after the Spanish revolution, this striking contrast could be owing to no other cause than the liberty which they enjoyed under their government. Here behold the difference between a powerful, great consolidation, and a confederacy. They tell us that, if we be powerful and respectable {269} abroad, we shall have liberty and happiness at home. Let us secure that liberty, that happiness, first, and we shall then be respectable.

I have some acquaintance with a great many characters who favor this government, their connections, their conduct, their political principles, and a number of other circumstances. There are a great many wise and good men among them. But when I look round the number of my acquaintance in Virginia, the country wherein I was born, and have lived so many years, and observe who are the warmest and the most zealous friends to this new government, it makes me think of the story of the cat transformed into a fine lady: forgetting her transformation, and happening to see a rat, she could not restrain herself, but sprang upon it out of the chair.

He (Governor Randolph) dwelt largely on the necessity of the union. A great many others have enlarged on this subject. Foreigners would suppose from the declamation about union, that there was a great dislike in America to any general American government. I have never, in my whole life, heard one single man deny the necessity and propriety of the union. This necessity is deeply impressed on every American mind. There can be no danger of any object being lost when the mind of every man in the country is strongly attached to it. But I hope that it is not to the name, but to the blessings of union, that we are attached. Those gentlemen who are loudest in their praises of the name, are not more attached to the reality than I am. The security of our liberty and

happiness is the object we ought to have in view in wishing to establish the union. If, instead of securing these, we endanger them, the name of union will be but a trivial consolation. If the objections be removed, if those parts which are deadly subversive of our rights be altered, no man will go farther than I will to advance the union. We are told, in strong language, of dangers to which we will be exposed unless we adopt this Constitution. Among the rest, domestic safety is said to be in danger. This government does not intend our domestic safety. It authorizes the importation of slaves for twenty-odd years, and thus continues upon us that nefarious trade. Instead of securing and protecting us, the continuation of this detestable trade adds daily to our weakness. Though this evil is {270} increasing, there is no clause in the Constitution that will prevent the Northern and Eastern States from meddling with our whole property of that kind. There is a clause to prohibit the importation of slaves after twenty years; but there is no provision made for securing to the Southern States those they now possess. It is far from being a desirable property; but it will involve us in great difficulties and infelicity to be now deprived of them. There ought to be a clause in the Constitution to secure us that property, which we have acquired under our former laws, and the loss of which would bring ruin on a great many people.

Maryland and the Potomac have been mentioned. I have had some little means of being acquainted with that subject, having been one of the commissioners who made the compact with Maryland. There is no cause of fear on that ground. Maryland, says the gentleman, has a right to the navigation of the Potomac. This is a right which she never exercised. Maryland was pleased with what she had in return for a right which she never exercised. Every ship which comes within the state of Maryland, except some small boats, must come within our country. Maryland was very glad to get what she got by this compact, for she considered it as next to getting it without any compensation on her part. She considered it, at least, as next to a *quid pro quo*.

The back land, he says, is another source of danger. Another day will show that, if that Constitution is adopted without amendments, there are twenty thousand families of good citizens in the north-west district, between the Alleghany Mountains and the Blue Ridge, who will run the risk of being driven from their lands. They will be ousted from them by the Indiana Company — by the survivors — although their right and titles have been confirmed by the Assembly of our own state. I will pursue it no farther now, but take an opportunity to consider it another time.

The alarming magnitude of our debts is urged as a reason for our adoption. And shall we, because involved in debts, take less care of our rights and liberties? Shall we abandon them because we owe money which we cannot immediately pay? Will this system enable us to pay our debts and lessen our difficulties? Perhaps the new government possesses some secret, some powerful means of turning every {271} thing to gold. It has been called by one gentleman the philosopher's stone. The comparison was a pointed one, at least in this, that, on the subject of producing gold, they will be both equally delusive and fallacious. The one will be as inapplicable as the other. The dissolution of the Union, the dangers of separate confederacies, and the quarrels of borders, have been enlarged upon to persuade us to embrace this government.

My honorable colleague (Governor Randolph) in the late Convention seems to raise phantoms, and to show a singular skill in exorcisms, to terrify and compel us to take the new government, with all its sins and dangers. I know that he once saw as great danger in it as I do. What has happened since to alter his opinion? If any thing, I know it not. But the Virginia legislature has

occasioned it, by postponing the matter. The Convention had met in June, instead of March or April. The liberty or misery of millions yet unborn are deeply concerned in our decision. When this is the case, I cannot imagine that the short period between the last of September and first of June ought to make any difference. The union between England and Scotland has been strongly instanced by the honorable gentleman to prove the necessity of our acceding to this new government. He must know that the act of union secured the rights of the Scotch nation. The rights and privileges of the people of Scotland are expressly secured. We wish only our rights to be secured. We must have such amendments as will secure the liberties and happiness of the people on a plain, simple construction, not on a doubtful ground. We wish to give the government sufficient energy, on real republican principles; but we wish to withhold such powers as are not absolutely necessary in themselves, but are extremely dangerous. We wish to shut the door against corruption in that place where it is most dangerous — to secure against the corruption of our own representatives. We ask such amendments as will point out what powers are reserved to the state governments, and clearly discriminate between them and those which are given to the general government, so as to prevent future disputes and clashing of interests. Grant us amendments like these, and we will cheerfully, with our hands and hearts, unite with those who advocate it, and we will do every thing we can to support and carry it into execution. But in its present {272} form we never can accede to it. Our duty to God and to our posterity forbids it. We acknowledge the defects of the Confederation, and the necessity of a reform. We ardently wish for a union with our sister states, on terms of security, This I am bold to declare is the desire of most the people. On these terms we will most cheerfully join with the warmest friends of this Constitution. On another occasion I shall point out the great dangers of this Constitution, and the amendments which are necessary. I will likewise endeavor to show that amendments after ratification are delusive and fallacious — perhaps utterly impracticable.

## **Mr. LEE (of Westmoreland)**

strongly urged the propriety of adhering to the resolution of the house, of debating the subject regularly; that the irregular and disorderly manner in which gentlemen had hitherto proceeded was unfriendly to a rational and just decision, tended to protract time unnecessarily, and interfered with the private concerns of gentlemen.

He then proceeded: I waited some time in hopes that some gentleman on the same side of the question would rise. I hope that I may take the liberty of making a few remarks on what fell from the honorable gentleman last up. He has endeavored to draw our attention from the merits of the question by jocose observations and satirical allusions. He ought to know that ridicule is not the test of truth. Does he imagine that he who can raise the loudest laugh is the soundest reasoner? Sir, the judgments, and not the risibility, of gentlemen, are to be consulted. Had the gentleman followed that rule which he himself proposed, he would not have shown the letter of a private gentleman, who, in times of difficulty, had offered his opinion respecting the mode in which it would be most expedient to raise the public funds. Does it follow, since a private individual proposed such a scheme of taxation, that the new government will adopt it? But the same principle has also governed the gentleman when he mentions the expressions of another private gentleman — *the well-born*; that our federal representatives are to be chosen from the higher orders of the people — from *the well-born*. Is there a single expression like this in the Constitution? Every man who is entitled to vote for a member of our own state legislature, will

have a right to vote for a member in the House of Representatives {273} in the general government. In both cases the confidence of the people alone can procure an election. This insinuation is totally unwarrantable. Is it proper that the Constitution should be thus attacked with the opinions of every private gentleman? I hope we shall hear no more of such groundless aspersions. Raising a laugh, sir, will not prove the merits, nor expose the defects, of this system.

The honorable gentleman abominates it, because it does not prohibit the importation of slaves, and because it does not secure the continuance of the existing slavery! Is it not obviously inconsistent to criminate it for two contradictory reasons? I submit it to the consideration of the gentlemen, whether, if it be reprehensible in the one case, it can be censurable in the other. Mr. Lee then concluded by earnestly recommending to the committee to proceed regularly.

## **Mr. GRAYSON.**

Mr. Chairman, I must make a few observations on this subject; and, if my arguments are desultory, I hope I shall stand justified by the bad example which has been set me, and the necessity I am under of following my opponents through all their various recesses. I do not in the smallest degree blame the conduct of the gentlemen who represented this state in the general Convention, I believe that they endeavored to do all the good to this commonwealth which was in their power, and that all the members who formed that Convention did every thing within the compass of their abilities to procure the best terms for their particular states. That they did not do more for the general good of America, is perhaps a misfortune. They are entitled, however, to our thanks and those of the people. Although I do not approve of the result of their deliberations, I do not criminate or suspect the principles on which they acted. I desire that what I may say may not be improperly applied. I make no allusions to any gentleman whatever.

I do not pretend to say that the present Confederation is not defective. Its defects have been actually experienced. But I am afraid that they cannot be removed. It has defects arising from reasons which are inseparable from the nature of such governments, and which cannot be removed but by death. All such governments, that ever existed, have uniformly produced this consequence — that particular interests have been consulted, and the general good, to which all {274} wishes ought to be directed, has been neglected. But the particular disorders of Virginia ought not to be attributed to the Confederation. I was concerned to hear the local affairs of Virginia mentioned. If these make impressions on the minds of the gentlemen, why did not the Convention provide for the removing the evils of the government of Virginia? If I am right, the states, with respect to their internal affairs, are left precisely as before, except in a few instances. Of course, the judiciary, should this government be adopted, would not be improved; the state government would be in this respect nearly the same; and the Assembly may, without judge or jury, hang as many men as they may think proper to sacrifice to the good of the public. Our judiciary has been certainly improved in some respects since the revolution. The proceedings of our courts are not, at least, as rapid as they were under the royal government.

[Here Mr. Grayson mentioned a particular cause which had been thirty-one years on the docket.]

The adoption of this government will not meliorate our own particular system. I beg leave to consider the circumstances of the Union antecedent to the meeting of the Convention at

Philadelphia. We have been, told of phantoms and ideal dangers to lead us into measures which will, in my opinion, be the ruin of our country. If the existence of those dangers cannot be proved, if there be no apprehension of wars, if there be no rumors of wars, it will place the subject in a different light, and plainly evince to the world that there cannot be any reason for adopting measures which we apprehend to be ruinous and destructive. When this state proposed that the general government should be improved, Massachusetts was just recovered from a rebellion which had brought the republic to the brink of destruction — from a rebellion which was crushed by that federal government which is now so much contemned and abhorred: a vote of that august body for fifteen hundred men, aided by the exertions of the state, silenced all opposition, and shortly restored the public tranquillity. Massachusetts was satisfied that these internal commotions were so happily settled, and was unwilling to risk any similar distresses by theoretic experiments. Were the Eastern States willing to enter into this measure? Were they willing to accede to the proposal {275} of Virginia? In what manner was it received? Connecticut revolted at the idea. The Eastern States, sir, were unwilling to recommend a meeting of a convention. They were well aware of the dangers of revolutions and changes. Why was every effort used, and such uncommon pains taken, to bring it about? This would have been unnecessary, had it been approved of by the people. Was Pennsylvania disposed for the reception of this project of reformation? No, sir. She was even unwilling to amend her revenue laws, so as to make the five per centum operative. She was satisfied with things as they were. There was no complaint, that ever I heard of, from any other part of the Union, except Virginia. This being the case among ourselves what dangers were there to be apprehended from foreign nations? It will be easily shown that dangers from that quarter were absolutely imaginary. Was not France friendly? Unequivocally so. She was devising new regulations of commerce for our advantage. Did she harass us with applications for her money? Is it likely that France will quarrel with us? Is it not reasonable to suppose that she will be more desirous than ever to cling, after, losing the Dutch republic, to her best ally? How are the Dutch? We owe them money, it is true; and are they not wilting that we should owe them more? Mr. Adams applied to them for a new loan to the poor, despised Confederation. They readily granted it. The Dutch have a fellow-feeling for us. They were in the same situation with ourselves.

I believe that the money which the Dutch borrowed of Henry IV. is not yet paid. How did they pass Queen Elizabeth's loan? At a very considerable discount. They took advantage of the weakness and necessities of James I., and made their own terms with that contemptible monarch. Loans from nations are not like loans from private men. Nations lend money, and grant assistance, to one another, from views of national interest. France was willing to pluck the fairest feather out of the British crown. This was her object in aiding us. She will not quarrel with us on pecuniary considerations. Congress considered it in this point of view; for when a proposition was made to make it a debt of private persons, it was rejected without hesitation. That respectable body wisely considered, that, while we remained {276} their debtors in so considerable a degree, they would not be inattentive to our interest.

With respect to Spain, she is friendly in a high degree. I wish to know by whose interposition was the treaty with Morocco made. Was it not by that of the king of Spain? Several predatory nations disturbed us, on going into the Mediterranean: the influence of Charles III. at the Barbary court, and four thousand pounds, procured as good a treaty with Morocco as could be expected. But I acknowledge it is not of any consequence, since the Algerines and people of Tunis have not

entered into similar measures. We have nothing to fear from Spain; and, were she hostile, she could never be formidable to this country. Her strength is so scattered, that she never can be dangerous to us either in peace or war.

As to Portugal, we have a treaty with her, which may be very advantageous, though it be not yet ratified.

The domestic debt is diminished by considerable sales of western lands to Cutler, Sergeant, and Company; to Simms; and to Royal, Flint, and Company. The board of treasury is authorized to soil in Europe, or any where else, the residue of those lands.

An act of Congress has passed, to adjust the public debts between the individual states and the United States.

Was our trade in a despicable situation? I shall say nothing of what did not come under my own observation. When I was in Congress, sixteen vessels had had sea letters in the East India trade, and two hundred vessels entered and cleared out, in the French West India Islands, in one year.

I must confess that public credit has suffered, and that our public creditors have been ill used. This was owing to a fault at the head-quarters, — to Congress themselves, — in not apportioning the debts on the different states, and in not selling the western lands at an earlier period. If requisitions have not been complied with, it must be owing to Congress, who might have put the unpopular debts on the back lands. Commutation is abhorrent to New England ideas. Speculation is abhorrent to the Eastern States. Those inconveniences have resulted from the bad policy of Congress.

There are certain modes of governing the people which {277} will succeed. There are others which will not. The idea of consolidation is abhorrent to the people of this country. How were the sentiments of the people before the meeting of the Convention at Philadelphia? They had only one object in view. Their ideas reached no farther than to give the general government the five per centum impost, and the regulation of trade. When it was agitated in Congress, in a committee of the whole, this was all that was asked, or was deemed necessary. Since that period, their views have extended much farther. Horrors have been greatly magnified since the rising of the Convention.

We are now told by the honorable gentleman (Governor Randolph) that we shall have wars and rumors of wars, that every calamity is to attend us, and that we shall be ruined and disunited forever, unless we adopt this Constitution. Pennsylvania and Maryland are to fall upon us from the north, like the Goths and Vandals of old; the Algerines, whose flat-sided vessels never came farther than Madeira, are to fill the Chesapeake with mighty fleets, and to attack us on our front; the Indians are to invade us with numerous armies on our rear, in order to convert our cleared lands into hunting-grounds; and the Carolinians, from the south, (mounted on alligators, I presume,) are to come and destroy our cornfields, and eat up our little children! These, sir, are the mighty dangers which await us if we reject — dangers which are merely imaginary, and ludicrous in the extreme! Are we to be destroyed by Maryland and Pennsylvania? What will democratic states make war for, and how long since have they imbibed a hostile spirit?

But the generality are to attack us. Will they attack us after violating their faith in the first Union? Will they not violate their faith if they do not take us into their confederacy? Have they not agreed, by the old Confederation, that the Union shall be perpetual, and that no alteration should take place without the consent of Congress, and the confirmation of the legislatures of every state? I cannot think that there is such depravity in mankind as that, after violating public faith so flagrantly, they should make war upon us, also, for not following their example.

The large states have divided the back lands among them, selves, and have given as much as they thought proper to the generality. For the fear of disunion, we are told that {278} we ought to take measures which we otherwise should not. Disunion is impossible. The Eastern States hold the fisheries, which are their cornfields, by a hair. They have a dispute with the British government about their limits at this moment. Is not a general and strong government necessary for their interest? If ever nations had inducements to peace, the Eastern States now have. New York and Pennsylvania anxiously look forward for the fur trade. How can they obtain it but by union? Can the western posts be got or retained without union? How are the little states inclined? They are not likely to disunite. Their weakness will prevent them from quarrelling. Little men are seldom fond of quarrelling among giants. Is there not a strong inducement to union, while the British are on one side and the Spaniards on the other? Thank Heaven, we have a Carthage of our own!

But we are told that, if we do not embrace the present moment, we are lost forever. Is there no difference between productive states and carrying states? If we hold out, will not the tobacco trade enable us to make terms with the carrying states? Is there nothing in a similarity of laws, religion, language, and manners? Do not these, and the intercourse and intermarriage between the people of the different states, invite them in the strongest manner to union?

But what would I do on the present occasion to remedy the existing, defects of the present Confederation? There are two opinions prevailing in the world — the one, that mankind can only be governed by force; the other, that they are capable of freedom and a good government. Under a supposition that mankind can govern themselves, I would recommend that the present Confederation should be amended. Give Congress the regulation of commerce, Infuse new strength and spirit into the state governments; for, when the component parts are strong, it will give energy to the government, although it be otherwise weak. This may be proved by the union of Utrecht.

Apportion the public debts in such a manner as to throw the unpopular ones on the back lands. Call only for requisitions for the foreign interest, and aid them by loans. Keep on so till the American Character be marked with some certain features. We are yet too young to know what we are fit for. The continual migration of people from Europe, {279} and the settlement of new countries on our western frontiers, are strong arguments against making new experiments now in government. When these things are removed, we can, with greater prospect of success, devise changes. We ought to consider, as Montesquieu says, whether the construction of the government be suitable to the genius and disposition of the people, as well as a variety of other circumstances.

But if this position be not true, and men can only be governed by force, then be as gentle as possible. What, then, would I do? I would not take the British monarchy for my model. We have

not materials for such a government in this country, although I will be bold to say, that it is one of the governments in the world by which liberty and property are best secured. But I would adopt the following government. I would have a President for life, choosing his successor at the same time; a Senate for life, with the powers of the House of Lords; and a triennial House of Representatives, with the powers of the House of Commons in England.

By having such a President, we should have more independence and energy in the executive, and not be encumbered with the expense, &c., of a court and an hereditary prince and family. By such a Senate, we should have more stability in the laws, without having an odious hereditary aristocracy. By the other branch, we should be fully and fairly represented. If, sir, we are to be consolidated at all, we ought to be fully represented, and governed with sufficient energy, according to numbers, in both houses.

I admit that coercion is necessary in every government in some degree; that it is manifestly wanting in our present government, and that the want of it has ruined many nations. But I should be glad to know what great degree of coercion is in this Constitution, more than in the old government, if the states will refuse to comply with requisitions, and they can only be compelled by means of an army. Suppose the people will not pay the taxes; is not the sword to be then employed? The difference is this — that, by this Constitution, the sword is employed against individuals; by the other, it is employed against the states, which is more honorable. Suppose a general resistance to pay taxes in such a state as Massachusetts; will it not be precisely the same thing as a non-compliance with requisitions?

{280} Will this Constitution remedy the fatal inconveniences of the clashing state interests? Will not every member that goes kern Virginia be actuated by state influence? So they will, also from every other state. Will the liberty and property of this country be secure under such a government? What, sir, is the present Constitution? A republican government founded on the principles of monarchy, with the three estates. Is it like the model of Tacitus or Montesquieu? Are there checks in it, as in the British monarchy? There is an executive fetter in some parts, and as unlimited in others as a Roman dictator. A democratic branch marked with the strong features of aristocracy, and an aristocratic branch with all the impurities and imperfections of the British House of Commons, arising from the inequality of representation and want of responsibility. There will be plenty of Old Sarums, if the new Constitution should be adopted. Do we love the British so well as to imitate their imperfections? We could not effect it more than in that particular instance. Are not all defects and corruption founded on an inequality of representation and want of responsibility? How is the executive? Contrary to the opinion of all the best writers, blended with the legislative. We have asked for bread, and they have given us a stone. I am willing to give the government the regulation of trade. It will be serviceable in regulating the trade among the states. But I believe that it will not be attended with the advantages generally expected.

## **NOTE TWO SOVEREIGNS**

As to direct taxation — give up this, and you give up every thing, as it is the highest act of sovereignty: surrender up this inestimable jewel, and you throw away a pearl richer than all your tribe. But it has been said by an honorable gentleman, (Mr. Pendleton,) as well as I recollect, that

there could be no such thing as an interference between the two legislatures, either in point of direct taxation, or in any other case whatsoever. An honorable gentleman (Mr. Mason) has replied that they might interfere in the case of a poll tax. I will go farther, and say, that the case may happen in the judiciary. Suppose a state execution and a federal execution issued against the same man, and the state officer and federal officer seize him at the same moment; would they divide the man in two, as Solomon directed the child to be divided who was claimed by two {281} women? I suppose the general government, as being paramount, would prevail. How are two legislatures to coincide, with powers transcendent, supreme, and omnipotent? for such is the definition of a legislature. There must be an external interference, not only in the collection of taxes, but in the judiciary. Was there ever such a thing in any country before? Great Britain never went so far in the stamp act. Poyning's law — the abhorrence of the Irish — never went so far. I never heard of two supreme coördinate powers in one and the same country before. I cannot conceive how it can happen. It surpasses every thing that I have read of concerning other governments, or that I can conceive by the utmost exertion of my faculties.

But, sir, as a cure for every thing, the democratic branch is elected by the people. What security is there in that? as has already been demanded. Their number is too small. Is not a small number more easy to be corrupted than a large one? Were not the tribunes at Rome the choice of the people? Were not the *decemviri* chosen by them? Was not Cæsar himself the choice of the people? Did this secure them from oppression and slavery? Did this render these agents so chosen by the people upright? If five hundred and sixty members are corrupted in the British House of Commons, will it not be easier to corrupt ninety-one members of the new Constitution? But the British House of Commons are corrupted from the same cause that our representatives will be: I mean, *from the Old Sarums* among them — from the inequality of the representation. How many are legislating in this country yearly? It is thought necessary to have fifteen hundred representatives, for the great purposes of legislation, throughout the Union, exclusive of one hundred and sixty senators, which form a proportion of about one for every fifteen hundred persons. By the present Constitution, these extensive powers are to be exercised by the small number of ninety-one persons — a proportion almost twenty times less than the other. It must be degrading indeed to think that so small a number should be equal to so many! Such a preferential distinction must presuppose the happiest selection. They must have something divine in their composition, to merit such a preëminence. But my greatest objection is, that it will, in its operation, be found unequal, grievous, and oppressive. If it have any {282} efficacy at all, it must be by a faction — a faction of one part of the Union against the other. I think that it has a great natural imbecility within itself, too weak for a consolidated and too strong for a confederate government. But if it be called into action by a combination of seven states, it will be terrible indeed. We need be at no loss to determine how this combination will be formed. There is a great difference of circumstances between the states. The interest of the carrying states is strikingly different from that of the productive states. I mean not to give offence to any part of America, but mankind are governed by interest. The carrying states will assuredly unite, and our situation will be then wretched indeed. Our commodities will be transported on their own terms, and every measure will have for its object their particular interest. Let ill-fated Ireland be ever present to our new. We ought to be wise enough to guard against the abuse of such a government. Republics, in fact, oppress more than monarchies. If we advert to the page of history, we shall find this disposition too often manifested in republican governments. The Romans, in ancient, and the Dutch, in modern times, oppressed their provinces in a remarkable degree.

I hope that my fears are groundless; but I believe it as I do my creed, that this government will operate as a faction of seven states to oppress the rest of the union. But it may be said that we are represented, and cannot therefore be injured. A poor representation it will be! The British would have been glad to take America into the union, like the Scotch, by giving us a small representation. The Irish might be indulged with the same favor by asking for it. Will that lessen our misfortunes? A small representation gives a pretence to injure and destroy. But, sir, the Scotch union is introduced by an honorable gentleman as an argument in favor of adoption. Would he wish his country to be on the same foundation as Scotland? They have but forty-five members in the House of Commons, and sixteen in the House of Lords.

These go up regularly in order to be bribed. The smallness of their number puts it out of their power to carry any measure. And this unhappy nation exhibits the only instance, perhaps, in the world, where corruption becomes a virtue. I devoutly pray that this description of Scotland {283} may not be picturesque of the Southern States, in three years from this time! The committee being tired, as well as myself, I will take another time to give my opinion more fully on this great and important subject.

Mr. Monroe, seconded by Mr. Henry, moved that the committee should rise, that Mr. Grayson might have an opportunity of continuing his argument next day. Mr. Madison insisted on going through the business regularly, according to the resolution of the house.

---

## **T**<sub>HURSDAY</sub>, *June 12, 1788.*

[The 1st and 2d sections still under consideration.]

### **Mr. GRAYSON.**

Mr. Chairman, I asserted yesterday that there were two opinions in the world — the one that mankind were capable of governing themselves, the other that it required actual force to govern them. On the principle that the first position was true, and which is consonant to the rights of humanity, the house will recollect that it was my opinion to amend the present Confederation, and infuse a new portion of health and strength into the state governments; to apportion the public debts in such a manner as to throw the unpopular ones on the back lands; to divide the rest of the domestic debt among the different states; and to call for requisitions only for the interest of the foreign debt. If, contrary to this maxim, force is necessary to govern men, I then did propose, as an alternative, not a monarchy like that of Great Britain, but a milder government, one which, under the idea of a general corruption of manners, and the consequent necessity of force, should be as gentle as possible. I showed, in as strong a manner as I could, some of the principal defects in the Constitution. The greatest defect is the opposition of the component parts to the interests of the whole; for, let gentlemen ascribe its defects to as many causes as their imagination may suggest, this is the principal and radical one. I urged that, to remedy the evils which must result from this government, a more equal representation in the legislature, and proper checks against

abuse, were indispensably necessary. I do not pretend to propose for your adoption the plan of government which I mentioned as an alternative to a monarchy, in case mankind were incapable of governing themselves. I only meant, if it were once established that force was necessary to govern men, that such {284} a plan would be more eligible for a free people than the introduction of crowned heads and nobles. Having premised this much, to obviate misconstruction, I shall proceed to the clause before us with this observation — that I prefer a completer consolidation to a partial one, but a federal government to either. In my opinion, the states which give up the power of taxation have nothing more to give. The people of that state which suffers any power but her own immediate government to interfere with the sovereign right of taxation are gone forever. Giving the right of taxation is giving a right to increase the miseries of the people. Is it not a political absurdity to suppose that there can be two concurrent legislatures, each possessing the supreme power of direct taxation? If two powers come in contact, must not the one prevail over the other? Must it not strike every man's mind, that two unlimited, coëqual, coördinate authorities, over the same objects, cannot exist together? But we are told that there is one instance of coëxisting powers, in cases of petty corporations, as well here as in other parts of the world. The case of petty corporations does not prove the propriety or possibility of two coëqual, transcendent powers over the same object. Although these have the power of taxation, it only extends to certain degrees and for certain purposes. The powers of corporations are defined, and operate on limited objects. Their power originates by the authority of the legislature, and can be destroyed by the same authority. Persons carrying on the powers of a petty corporation may be punished for interfering with the power of the legislature. Their acts are entirely nugatory, if they contravene those of the legislature.

Scotland is also introduced to show that two different bodies may, with convenience, exercise power of taxation in the same country. How is the land tax there? There is a fixed apportionment. When England pays four shillings in the pound, Scotland only pays forty-five thousand pounds. This proportion cannot be departed from, whatever augmentation may take place. There are stannary courts, and a variety of other inferior private courts, in England. But when they pass the bounds of their jurisdiction, the supreme courts in Westminster Hall may, on appeal, correct the abuse of their power. Is there any connection between the federal courts and state courts? What power is there to keep them {285} in order? Where is there any authority to terminate disputes between these two contending powers? An observation came from an honorable gentleman, (Mr. Mason,) when speaking of the propriety of the general government's exercising this power, that, according to the rules and doctrine of representation, the thing was entirely impracticable. I agreed with him in sentiment. I waited to hear the answer from the admirers of the new Constitution. What was the answer? Gentlemen were obliged to give up the point with respect to general, uniform taxes. They have the candor to acknowledge that taxes on slaves would not affect the Eastern States, and that taxes on fish or potash would not affect the Southern States. They are then reduced to thin dilemma. In order to support this part of the system, they are obliged to controvert the first maxims of representation. The best writers on this subject lay it down as a fundamental principle, that he who lays a tax should bear his proportion of paying it. A tax that might with propriety be laid, and with ease collected, in Delaware, might be highly improper in Virginia. The taxes cannot be uniform throughout the states without being oppressive to some. If they be not uniform, some of the members will lay taxes, in the payment of which they will bear no proportion. The members of Delaware will assist in laying a tax on our slaves, of which they will pay no part whatever. The members of Delaware do not return to

Virginia, to give an account of their conduct. This total want of responsibility and fellow-feeling will destroy the benefits of representation. In order to obviate this objection, the gentleman has said that the same evil exists, in some degree, in the present Confederation: — to which I answer, that the present Confederation has nothing to do but to say how much money is necessary, and to fix the proportion to be paid by each state. They cannot say in what manner the money shall be raised. This is left to the state legislatures.

But, says the honorable gentleman, (Mr. Madison,) if we were in danger, we should be convinced of the necessity of the clause. Are we to be terrified into a belief of its necessity? It is proposed by the opposition to amend it in the following manner — that requisitions shall be first made, and if not paid, that direct taxes shall be laid by way of punishment. If this ultimate right be in Congress, will it {286} not be in their power to raise money on any emergency? Will not their credit be competent to procure any sum they may want? Gentlemen agree that it would be proper to imitate the conduct of other countries, and Great Britain particularly, in borrowing money, and establishing funds for the payment of the interest on the loans; that, when the government is properly organized, and its competency to raise money made known, public and private confidence will be the result, and men will readily lend it any sums it may stand in need of. If this should be a fact, and the reasoning well founded, it will clearly follow that it will be practicable to borrow money in cases of great difficulty and danger, on the principles contended for by the opposition; and this observation must supersede the necessity of granting them the powers of direct taxation in the first instance, provided the right is secured in the second.

As to the idea of making extensive loans for extinguishing the present domestic debt, it is what I have not by any means in contemplation. I think it would be unnecessary, unjust, and impolitic. This country is differently situated and circumstanced from all other countries in the world. It is now thinly inhabited, but daily increasing in numbers. It would not be politic to lay grievous taxes and burdens at present. If our numbers double in twenty-five years, as is generally believed, we ought to spare the present race, because there will be double the number of persons to pay in that period of time; so that, were our matters so arranged that the interest could be paid regularly, and that any one might get his money when he thought proper, as is the case now in England, it would be all that public faith would require. Place the subject, however, in every point of view — whether as it relates to raising money for the immediate exigencies of the state, or for the extinction of the foreign or the domestic debt — still it must be obvious, if a proper confidence is placed in the acknowledgment of the right of taxation in the second instance, that every purpose can be answered.

However, sir, if the states are not blameless, why has not the Congress used that coercion which is vested in their government? It is an unquestionable fact that the Belgic republic, on a similar occasion, by an actual exertion of force, bought a delinquent province to a proper sense of justice. The gentleman said that, in case of a partial compliance {287} with requisitions, the alternative proposed will operate unequally, by taxing those who may have already paid, as well as those who have not, and involving the innocent in the crimes of the guilty. Suppose the new government fully vested with authority to raise taxes; it will also operate unequally. To make up antecedent deficiencies, they will lay more taxes the next succeeding year. By this means, those persons from whom a full proportion shall have been extracted will be saddled with a share of

the deficiencies, as well as those who shall not have discharged their full portion. This mode, then, will have precisely the same unequal and unjust operation as the other.

I said, yesterday, that there were one thousand five hundred representatives, and one hundred and sixty senators, who transacted the affairs of the different states. But we are told that this great number is unnecessary, and that in the multitude of counsellors there is folly instead of wisdom; that they are a dead weight on the public business, which is said in all public assemblies to devolve on a few. This may in some degree be true, but it will not apply in the great latitude as mentioned by the gentleman. If ten men in our Assembly do the public business, may not the same observation extend to Congress? May not five men do the public business of the Union? But there is a great difference between the objects of legislation in Congress and those of the state legislatures. If the former be more complicated, there is a greater necessity of a full and adequate representation. It must be confessed that it is highly improper to trust our liberty and property in the hands of so few persons, if they were any thing less than divine. But it seems that, in this contest of power, the state governments have the advantage. I am of opinion that it will be directly the reverse. What influence can the state governments be supposed to have, after the loss of their most important rights? Will not the diminution of their power and influence be an augmentation of those of the general government? Will not the officers of the general government receive higher compensation for their services than those of the state governments? Will not the most influential men be employed by Congress? I think the state governments, will be contemned and despised as soon as they give up the power of direct taxation; {288} and a state, says Montesquieu, should lose her existence sooner than her importance.

But, sir, we are told that, if we do not give up this power to Congress, the impost will be stretched to the utmost extent. I do suppose this might follow, if the thing did not correct itself. But we know that it is the nature of this kind of taxation, that a small duty will bring more real money than a large one. The experience of the English nation proves the truth of this assertion. There has been much said of the necessity of the five per cent. impost. I have been ever of opinion, that two and a half per cent. would produce more real money into the treasury. But we need not be alarmed on this account, because, when smugglers will be induced, by heavy imposts, to elude the laws, the general government will find it their interest again to reduce them within reasonable and moderate limits. But it is suggested that, if direct taxation be inflicted by way of punishment, it will create great disturbances in the country. This is an assertion without argument. If man is a reasonable being, he will submit to punishment, and acquiesce in the justice of its infliction, when he knows he deserves it. The states will comply with the requisitions of Congress more readily when they know that this power may be ultimately used; and if they do not comply, they will have no reasons to complain of its exercise.

We are then told of the armed neutrality of the empress of Russia, the opposition to it by Great Britain, and the acquiescence of other powers. We are told that, in order to become the carriers of contending nations, it will be necessary to be formidable at sea — that we must have a fleet in case of a war between Great Britain and France. I think that the powers who formed that treaty will be able to support it. But if we were certain that this would not be the case, still I think that the profits that might arise from such a transient commerce could not compensate for the expenses of rendering ourselves formidable at sea, or the dangers that would probably result from the attempt. To have a fleet, in the present limited population of America, is, in my opinion,

impracticable and inexpedient. Is America in a situation to have a fleet? I take it to be a rule founded on common sense, that manufacturers, as well as sailors, proceed from a redundancy of inhabitants. Our numbers, compared to our territory, are {289} very small indeed. I think, therefore, that all attempts to have a fleet, till our western lands are fully settled, are nugatory and vain. How will you induce your people to go to sea? Is it not more agreeable to follow agriculture than to encounter the dangers and hardships of the ocean? The same reasoning will apply in a greater degree to manufacturers. Both are the result of necessity. It would, besides, be dangerous to have a fleet in our present weak, dispersed, and defenceless situation. The powers of Europe, who have West India possessions, would be alarmed at any extraordinary maritime exertions, and, knowing the danger of our arrival at manhood, would crush us in our infancy. In my opinion, the great objects most necessary to be promoted and attended to, in America, are agriculture and population. First take care that you are sufficiently strong, by land, to guard against European partition; secure your own house before you attack that of other people. I think that the sailors who would be prevailed on to go to sea would be a real loss to the community: neglect of agriculture and loss of labor would be the certain consequence of such irregular policy.

I hope that, when these objections are thoroughly considered, all ideas of having a fleet, in our infant situation, will be given over. When the American character is better known, and the government established on permanent principles, — when we shall be sufficiently populous, and our situation secure, — then come forward with a fleet; not with a small one, but with one sufficient to meet any of the maritime powers.

The honorable gentleman (Mr. Madison) said that the imposts will be less productive hereafter, on account of the increase of population. I shall not controvert this principle. When all the lands are settled, and we have manufactures sufficient, this may be the case. But I believe that for a very long time this cannot possibly happen. In islands and thick-settled countries, where they have manufactures, the principle will hold good, but will not apply in any degree to our country. I apprehend that, among us, as the people in the lower country find themselves straitened, they will move to the frontiers, which, for a considerable period, will prevent the lower country from being very populous, or having recourse to manufactures. I cannot, therefore, but {290} conclude that the amount of the imposts will continue to crease, at least for a great number of years.

Holland, we are informed, is not happy, because she has not constitution like this. This is but an unsupported assertion. Do we not know the cause of her misfortunes? The evil is coeval with her existence — there are always opposite parties in that republic. There are now two parties — the aristocratic party, supporting the Prince of Orange, and the Lovestein party, supporting the rights of the people. France foments the one, and Great Britain the other. Is it known, if Holland had begun with such a government as this, that the violence of faction would not produce the same evils which they experience at this present moment? It is said that all our evils result from requisitions on the states. I did not expect to hear of complaints for noncompliance during the war. Do not gentlemen recollect our situation during the war? Our ports were Blocked up, and all means of getting money destroyed, and almost every article taken from the farmer for the public service — so as, in many instances, not to leave him enough to support his own family with tolerable decency and comfort. It cannot be forgot that another resort of government was applied to, and that press-warrants were made to answer for noncompliance of requisitions. Every person

must recollect our miserable situation during the arduous contest; therefore, I shall make no further apology for the states, during the existence of the war. Since the peace, there have been various causes for not furnishing the necessary quotas to the general government. In some of the flourishing states, the requisitions have been attended to; in others, their non-compliance is to be attributed more to the inability of the people than to their unwillingness to advance the general interests. Massachusetts attempted to correct the nature of things by extracting more from the people than they were able to part With. What did it produce? A revolution which shook that state to its centre.

Paper money has been introduced. What did we do a few years ago? Struck off many millions, and by the charms of magic made the value of the emissions diminish by forty-fold ratio. However unjust or unreasonable this might be, I suppose it was warranted by the inevitable laws of necessity. But, sir, there is no disposition now of having {291} paper money; this engine of iniquity is universally reprobated. But conventions give power, and conventions can take it away. This observation does not appear to me Well founded. It is not so easy to dissolve a government like this. Its dissolution may be prevented by a trifling minority of the people of America. The consent of so many states is necessary to introduce amendments, that I fear they will with great difficulty be obtained. It is said that a strong government will increase our population by the addition of immigrants. From what quarter is immigration to proceed? From the arbitrary monarchies of Europe? I fear this kind of population would not add much to our happiness or improvement. It is supposed that, from the prevalence of the orange faction, numbers will come hither from Holland, although it is not imagined the strength of the government will form the inducement. The exclusive power of legislation over the ten miles square is introduced by many gentlemen. I would not deny the utility of vesting the general government with a power of this kind, were it properly guarded. Perhaps I am mistaken, but it occurs to me that Congress may give exclusive privileges to merchants residing within the tea miles square, and that the same exclusive power of legislation will enable them to grant similar privileges to merchants in the strongholds within the states. I wish to know if there be any thing in the Constitution to prevent it. If there be, I have not been able to discover it. I may, perhaps, not thoroughly comprehend this part of the Constitution; but it strikes my mind that there is a possibility that, in process of time, and from the simple operation of effects from causes, the whole commerce of the United States may be exclusively carried on by merchants residing within the seat of government, and those places of arms which may be purchased of the state legislatures. How detrimental and injurious to the community, and how repugnant to the equal rights of mankind, such exclusive emoluments would be, I submit to the consideration of the committee. Things of a similar nature have happened in other countries; or else from whence have issued the Hanse Towns, Cinque Ports, and other places in Europe, which have peculiar privileges in commerce as well as in other matters? I do not offer this sentiment as an opinion, but a conjecture, and, in this doubtful agitation of mind on {292} a point of such infinite magnitude, only ask for information from the framers of the Constitution, whose superior opportunities must have furnished them with more ample lights on the subject than I am possessed of. Something is said on the other side with respect to the Mississippi. An honorable gentleman has mentioned, that he was satisfied that no member of Congress had any idea of giving up that river. Sir, am not at liberty, from my situation, to enter into any investigation on the subject. I am free, however, to acknowledge that I have frequently heard the honorable member declare, that he conceived the object then in

contemplation was the only method by which the right of that river could be ultimately secured. I have heard similar declarations from other members.

I must beg leave to observe, at the same time, that I most decidedly differed with them in sentiment. With respect to the citizens of the Eastern and some of the Middle States, perhaps the best and surest means of discovering their general dispositions may be by having recourse to their interests. This seems to be the pole-star to which the policy of nations is directed. If this supposition should be well founded, I think they must have reasons of considerable magnitude for wishing the exclusion of that river. If the Mississippi was yielded to Spain, the migration to the western country would be stopped, and the Northern States would not only retain their inhabitants, but preserve their superiority and influence over those of the South. If matters go on in their present direction, there will be a number of new states to the westward — population may become greater in the Southern States — the ten miles square may approach us! This they must naturally wish to prevent. I think gentlemen may know the disposition of the different states, from the geography of the country, and from the reason and nature of things. Is it not highly imprudent to vest a power in the generality, which will enable those states to relinquish that river? There are but feeble restrictions at present to prevent it. By the old Confederation, nine states are necessary to form any treaty. By this Constitution, the President, with two thirds of the members present in the Senate, can make any treaty. Ten members are two thirds of a quorum. Ten members are the representatives of five states. The Northern States may then easily make a treaty relinquishing {293} this river. In my opinion, the power of making treaties, by which the territorial rights of any of the states may be essentially affected, ought to be guarded against every possibility of abuse; and the precarious situation to which those rights will be exposed is one reason, with me, among a number of others, for voting against its adoption.

## **Mr. PENDLETON.**

Mr. Chairman, When I spoke formerly, I endeavored to account for the uneasiness of the public mind, that it arose from objections to government drawn from mistaken sources. I stated the general governments of the world to have been either dictated by a conqueror at the point of his sword, or the offspring of confusion — when a great popular leader, seizing the occasion, if he did not produce it, restored order at the expense of liberty, and became the tyrant. In either case, the interest and ambition of the despot, and not the good of society, give the tone to the government, and establish contending interests. A war is commenced, and kept up, where there ought to be union; and the friends of liberty have sounded the alarm to the people, to regain that liberty which circumstances have thus deprived them of. Those alarms, misrepresented and improperly applied to this government, have produced uneasiness in the public mind.

I said, *improperly applied*, because the people, by us, are peaceably assembled, to contemplate, in the calm lights of mild philosophy, what government is best calculated to promote their happiness and secure their liberty. This I am sure we shall effect, if we do not lose sight of them by too much attachment to pictures of beauty, or horror, in our researches into antiquity, our travels for examples into remote regions, or severe criticisms upon our unfriendly applications of expressions which may drop in the effusions of honest zeal. The term *herd* was thus produced — meaning to express a multitude. It was capable of an odious application — that of placing the citizens in a degrading character. I wish it had not been used, and I wish the gentleman on the

other side had thought himself at liberty to let it pass, without pointing out its odious meaning. However, claim no right to prescribe to him. It is done, and it must rest with the candor of the attending citizens, whom it concerns, to give it the innocent meaning which, I am sure, the honorable gentleman intended.

{294} On the subject, of government, the worthy member (Mr. Henry) and I differ at the threshold. I think government necessary to protect liberty. He supposes the American spirit all sufficient for the purpose. What say the most respectable writers — Montesquieu, Locke, Sidney, Harrington, &c.? They have presented us with no such idea. They properly discard from their system all the severity of cruel punishment, such as tortures, inquisitions, and the like — shocking to human nature, and only calculated to coerce the dominion of tyrants over slaves. But they recommend making the ligaments of government firm, and a rigid execution of the laws, as more necessary, than in a monarchy, to preserve that virtue which they all declare to be the pillar on which the government, and liberty, its object, must stand. They are not so visionary as to suppose there ever did, or ever will, exist a society, however large their aggregate fund of virtue may be, but hath among them persons of a turbulent nature, restless in themselves and disturbing the peace of others — sons of rapine and violence, who, unwilling to labor themselves, are watching every opportunity to snatch from the industrious peasant the fruits of his honest labor. Was I not, then, correct in my inference, that such a government and liberty were friends and allies, and that their common enemies were turbulence, faction, and violence? It is those, therefore, that will be offended by good government; and for those I suppose no gentleman will profess himself an advocate.

The writers just mentioned point out licentiousness as the natural offspring of liberty, and that, therefore, all free governments Should endeavor to suppress it, or else it will ultimately overthrow that liberty of which it is the result. Is this speculation only? Alas! reason and experience too fatally prove its truth in all instances. A republican government is the nursery of science. It turns the bent of it to eloquence, as a qualification for the representative character, which is, as it ought to be, the road to our public offices. I have pleasure in beholding these characters already produced in our councils — and a rising fund equal to a constant supply. May Heaven prosper their endeavors, and direct their eloquence to the real good of their country! I am unfortunate enough to differ from the worthy member in another circumstance. He professes himself an advocate for {295} the middling and lower classes of men. I profess to be a friend to the equal liberty of all men, from the palace to the cottage, without any other distinction than that between good and bad men. I appeal to my public life and private behavior, to decide whether I have departed from this role. Since distinctions have been brought forth and communicated to the audience, and will be therefore disseminated, I beg gentlemen to take with them this observation — that distinctions have been produced by the opposition. From the friends of the new government they have heard none. None such are to be found in the organization of the paper before you.

Why bring into the debate the whims of writers — introducing the distinction of *well-born* from others? I consider every man *well-born* who comes into the world with an intelligent mind, and with all his parts perfect. I am an advocate for fixing our government on true republican principles, giving to the poor man free liberty in his person and property.

Whether a man, be great or small he is equally dear to me. I wish, sir, for a regular government, in order to secure and protect those honest citizens who have been distinguished — I mean the industrious farmer and planter. I wish them to be protected in the enjoyment of their honestly and industriously acquired property. I wish commerce to be fully protected and encouraged, that the people may have an opportunity of disposing of their crops at market, and of procuring such supplies as they may be in want of. I presume that there can be no political happiness, unless industry be cherished and protected, and properly secured. Suppose a poor man becomes rich by honest labor, and increases the public stock of wealth: shall his reward be the loss of that liberty he set out with? Will you take away every stimulus to industry, by declaring that he shall not retain the fruits of it? The idea of the poor becoming rich by assiduity is not mere fancy. I am old enough, and have had sufficient experience, to know the effects of it. I have often known persons, commencing in life without any other stock but industry and economy, by the mere efforts before, rise to opulence and wealth. This could not have been the case without a government to protect their industry. In my mind the true principle of republicanism, and the greatest {296} security of liberty, is regular government. Perhaps I may not be a republican, but this is my idea. In reviewing the history of the world, shall we find an instance where any Society retained its liberty without government? As I before hinted, the smallest society in extent, to the greatest empire, can only be preserved by a regular government, to suppress that faction and turbulence so natural to many of our species. What do men do with those passions when they come into society? Do they leave them? No; they bring them with them. These passions, which they thus bring into society, will produce disturbances, which, without any check, will overturn it.

A distinction has been made, which surprised me, between the *illuminated* mind and the *ignorant*. I have heard with pleasure, in other places, that worthy gentleman expatiate on the advantages of learning — among other things, as friendly to liberty. I have seen, in our code of laws, the *public* purse applied to cherish *private* seminaries. This is not strictly just; but with me the end sanctified the means, and I was satisfied. But did we thus encourage learning, to set up those who attained its benefits as butts of invidious distinction? Surely the worthy member, on reflection, will disavow the idea. He learns to little purpose, indeed, who vainly supposes himself become, from the circumstance, of an order of beings superior to the honest citizens — peasants if you please to term them so — who, in their labor, produce great good to the community. But those illuminated minds who apply their knowledge to promote and cherish liberty — equal liberty to all, the peasant as well as others — give to society the real blessings of learning.

I have seen learning used both ways; but have had pleasure in observing, that lately the latter fruits only have generally appeared, which I attribute to the influence of republican principles, and a regard for true liberty. Am I still suspected of want of attachment for my worthy fellow citizens, whom the gentleman calls peasants and cottagers? Let me add one more observation. I cannot leave them in the state in which he has placed them — in the parallel between them and those of Switzerland, the United Netherlands, and Great Britain. The peasants of the Swiss cantons trade in war. Trained in arms, they become the mercenaries of the best bidder, to carry on the destruction of {297} mankind, as an occupation, where they have not even resentment. Are these a fit people for a comparison with our worthy planters and farmers, in their drawing food and raiment, and even wealth, by honest labor, from the bowels of the earth, where an inexhaustible store is placed by a bountiful Creator?

The citizens of the United Netherlands have no right of suffrage. There, they lost that distinguished badge of freedom. Their representation to their state assemblies is of towns and cities, and not of the people at large.

The people of Britain have the right of suffrage, but sell it for a mess of pottage.

The happiness of the people is the object of this government, and the people are therefore made the fountain of all power. They cannot act personally, and must delegate powers. Here the worthy gentleman who spoke last, and I travelling not together indeed, but in sight, are placed at an immeasurable distance — as far as the poles asunder. He recommends a government more energetic and strong than this, abundantly too strong ever to receive my approbation, — a first magistrate borrowed from Britain, to whom you are to make a surrender of your liberty; and you give him a separate interest from yours. You intrench that interest by powers and prerogatives undefined — implant in him self-love, from the influence of which he is to do, what — to promote your interest in opposition to his own? An operation of self-love which is new! Having done this, you accept from him a charter of the rights you have parted with; present him a bill of rights, telling him, Thus far shall you oppress us, and no farther.

It still depends on him whether he will give you that charter, or allow the operation of the bill of rights. He will do it as long as he cannot do otherwise, but no longer. Did ever any free people in the world, not dictated to by the sword of a conqueror, or by circumstances into which licentiousness may have plunged them, place themselves in so degrading a situation, or make so disgraceful a sacrifice of their liberty? If they did, sure I am that the example will not be followed by this Convention. This is not all: we are to look somewhere for the chosen few to go into the ten miles square, with extensive powers for life, and thereby destroy every degree of true responsibility. Is there no medium, {298} or shall we recur to extremes? As a republican, sir, I think that the security of the liberty and happiness of the people, from the highest to the lowest, being the object of government, the people are consequently the fountain of all power.

They must, however, delegate it to agents, because, from their number, dispersed situation, and many other circumstances, they cannot exercise it in person. They must therefore, by frequent and certain elections, choose representatives to whom they trust it.

Is there any distinction in the exercise of this delegation of power? The man who possesses twenty-five acres of land has an equal right of voting for a representative with the man who has twenty-five thousand acres. This equality of suffrage secures the people in their property. While we are in pursuit of checks, and balances, and proper security in the delegation of power, we ought never to lose sight of the representative character. By this we preserve the great principle of the primary right of power in the people; and should deviations happen from our interest, the spirit of liberty, in future elections, will correct it — a security I esteem far superior to paper bills of rights.

When the bands of our former society were dissolved, and we were under the necessity of forming a new government, we established a constitution founded on the principle of representation, preserving therein frequency of elections, and guarding against inequality of suffrage. I am one of those who are pleased with that Constitution, because it is built on that

foundation. I believe that, if the Confederation had the principles and efficacy of that Constitution, we should have found that peace and happiness which we are all in search of. In this state Constitution, to the executive you commit the sword; to the legislative you commit the purse, and every thing else, without any limitation. In both cases, the representative character is in full effect, and thereby responsibility is secured. The judiciary is separate and distinct from both the other branches, has nothing to do with either the purse or sword, and, for obvious reasons, the judges hold their offices during good behavior.

## Common Law

There will be deviations even in our state legislatures thus constituted. I say (and I hope to give no offence when I do) there have been some. I believe every gentleman will see that it is unconstitutional to condemn any man without {299} a fair trial. Such a condemnation is repugnant to the principles of justice. It is contrary to the Constitution, and the spirit of the **common law**. Look at the bill of rights. You find there that no man shall be condemned without being confronted with his accusers and witnesses; that every man has a right to call for evidence in his favor, and, above all, to a speedy trial by an impartial jury of the vicinage, without whose unanimous consent he cannot be found guilty. These principles have not been attended to; an instance has been mentioned already, where they have been in some degree violated.

[Here Mr. Pendleton spoke so very low that he could not be heard.]

My brethren in that department [*the judicial*] felt great uneasiness in their minds to violate the Constitution by such a law. They have prevented the operation of some unconstitutional acts. Notwithstanding those violations, I rely upon the principles of the government — that it will produce its own reform, by the responsibility resulting from frequent elections. We are finally safe while we preserve the representative character. I made these observations as introductory to the consideration of the paper on your table. I conceive that, in those respects where our state Constitution has not been disapproved of, objections will not apply against that on our table. When we were forming our state Constitution, we were confined to local circumstances. In forming a government for the Union, we must consider our situation as connected with our neighboring states. We have seen the advantages and blessings of the Union. Every intelligent and patriotic mind must be convinced that it is essential to our happiness. God grant we may never see the disadvantages of disunion!

To come to the great object of direct taxation, more immediately under consideration: — If we find it our interest to be intimately connected with the other twelve states, to establish one common government, and bind in one ligament the strength of thirteen states, we shall find it necessary to delegate powers proportionate to that end; for the delegation of adequate powers in this government is no less necessary than in our state government. To whom do we delegate these powers? To our own representatives. Why should we fear so much greater dangers from our representatives {300} there, than from those we have here? Why make so great a distinction between our representatives here, and in the federal government, where every branch is formed on the same principle — preserving throughout the representative, responsible character? We have trusted our lives, and every thing, to our state representatives. We have particularly committed our purse to them, with unlimited confidence. I never heard any objection to it; I am

sure I make none. We ought to contribute our share of fixing the principles of the government. Here the representative character is still preserved. We are to have an equal share in the representation of the general government, should we ratify this Constitution. We have hitherto paid more than our share of taxes for the support of the government, &c. But by this system we are to pay our equal, ratable share only. Where is the danger of confiding in our federal representatives? We must choose those in whom we can put the greatest confidence. They are only to remain two years in office. Will they in that time lose all regard for the principles of honor, and their character, and become abandoned prostitutes of our rights? I have no such fear. When power is in the hands of my representatives, I care not whether they meet here or a hundred miles off.

## Direct Taxes

A gentleman (Mr. Monroe) has said that the power of direct taxation was unnecessary, because the imposts and back lands would be abundantly sufficient to answer all federal purposes. If so, what are we disputing about? I ask the gentleman who made the observation, and this committee, if they believe that Congress will ever lay direct taxes if the other funds are sufficient. It will then remain a harmless power upon paper, and do no injury. If it should be necessary, will gentlemen run the risk of the Union by withholding it? I was sorry to hear the Subjects of requisitions and taxation misinterpreted. The latter has been compared to taxation by Great Britain without our own consent. The two cases are by no means similar. The king of Great Britain has not the purse, though he holds the sword. He has no means of using the sword but by requisitions on those who hold the purse. He applied to the British Parliament; and they were pleased to trust him with our money. We declared, as we had a right, that we ought to be taxed by our own representatives, and that therefore their disposing {301} of our money without our consent was unjust. Here requisitions are to be made by one body of our representatives to another. Why should this be the case, when they are both possessed of our equal confidence — both chosen in the same manner, and equally responsible to us?

But we are told that there will be a war between the two bodies equally our representatives, and that the state government will be destroyed, and consolidated into the general government. I stated before, that this could not be so. The two governments act in different manners, and for different purposes — the general government in great national concerns, in which we are interested in common with other members of the Union; the state legislature in our mere local concerns. Is it true, or merely imaginary, that the state legislatures will be confined to the care of bridges and roads? I think that they are still possessed of the highest powers. Our dearest rights, — life, liberty, and property, — as Virginians, are still in the hands of our state legislature. If they prove too feeble to protect us, we resort to the aid of the general government for security. The true distinction is, that the two governments are established for different purposes, and act on different objects; so that, notwithstanding what the worthy gentleman said, I believe I am still correct, and insist that, if each power is confined within its proper bounds, and to its proper objects, an interference can never happen. Being for two different purposes, as long as they are limited to the different objects, they can no more clash than two parallel lines can meet. Both lay taxes, but for different purposes. The same officers may be used by both governments, which will prevent a number of inconveniences. **If an invasion, or insurrection, or other misfortune,**

should make it necessary for the general government to interpose, this will be for the general purposes of the Union, and for the manifest interest of the states.

I mentioned formerly that it would never be the interest of the general government to destroy the state governments. From these it will derive great strength: for if *they* be possessed of power, they will assist *it*; if they become feeble, or decay, the general government must likewise become weak, or moulder away.

But we are alarmed on account of Kentucky. We are told that the Mississippi is taken away. When gentlemen say {302} that seven states are now disposed to give it up, and that it *will* be given up by the operation of this government, are they correct? It must be supposed that, on occasions of great moment, the senators from all the states will attend. If they do, there will be no difference between this Constitution and the Confederation in this point. When they are all present, two thirds of them will consist of the senators from nine states, which is the number required by the existing system to form treaties. The consent of the President, who is the representative of the Union, is also necessary. The right to that river must be settled by the sword, or negotiation. I understood that the purpose of that negotiation which has been on foot, was, that Spain should have the navigation of that river for twenty-five years, after which we were peaceably to retain it forever. This, I was told, was all that Spain required. If so, the gentleman who differed in opinion from others, in wishing to gratify Spain, must have been actuated by a conviction that it would be better to have the right fixed in that manner than trust to uncertainty. I think the inhabitants of that country, as well as of every other part of the Union, will be better protected by an efficient, firm government, than by the present feeble one. We shall have also a much better chance for a favorable negotiation, if our government be respectable, than we have now. It is also suggested that the citizens of the western district run the risk of losing their lands if this Constitution be adopted. I am not acquainted with the circumstances of the title set up to those lands. But this I know, that it is founded, not upon any claim commenced during the revolution, but on some latent claim that existed before that period. It was brought before our Assembly, and rejected — I suppose because they thought it would, at this late period, involve the just and unjust, indiscriminately, in distress. I am bold to say that no assistance can be given by the Constitution to the claimants. The federal legislature is not authorized to pass any law affecting claims that existed before. If the claim is brought forth, it must be before the court of the state, on the ground on which it now stands, and must depend on the same principles on which it now depends. Whether this Constitution be adopted or not, will not affect the parties in this case. It will make no difference as to the principles on which the decision will be made, {303} whether it will come before the state court or the federal court. They will be both equally independent, and ready to decide in strict conformity to justice. I believe the federal courts will be as independent as the state courts. I should no more hesitate to trust my liberty and property to the one than the other. Whenever, in any country in the world, the judges are independent, property is secure. The existence of Great Britain depends on that purity with which justice is administered. When gentlemen will therefore find that the federal legislature cannot affect preexisting claims by their legislation, and the federal courts are on the same ground with the state courts, I hope there will be no ground of alarm.

Permit me to deliver a few sentiments on the great and important subject of previous and subsequent amendments. When I sat down to read that paper, I did not read it with an

expectation that it was perfect, and that no man would object to it. I had learned, sir, that an expectation of such perfection in any institute devised by man, was as vain as the search for the philosopher's stone. I discovered objections — I thought I saw there some sown seeds of disunion — not in the immediate operation of the government, but which might happen in some future time. I wish amendments to remove these. But these remote possible errors may be eradicated by the amendatory clause in the Constitution. I see no danger in making the experiment, since the system itself points out an easy mode of removing any errors which shall have been experienced. In this view, then, I think we may safely trust in the government. With respect to the eight states who have already acceded to it, do gentlemen believe that, should we propose amendments as the *sine qua non* of our adoption, they would listen to our proposals? I conceive, sir, that they would not retract. They would tell us — *No, gentlemen, we cannot accept of your conditions. You put yourselves upon the ground of opposition. Your amendments are dictated by local considerations. We, in our adoption, have been influenced by considerations of general utility to the Union. We cannot abandon principles, like these, to gratify you.* Thus, sir, by previous amendments, we present a hostile countenance. If, on the contrary, we imitate the conduct of those states, our language will be conciliatory and friendly. Gentlemen, we put ourselves on the same ground that you are on. We are not actuated by local consideration, {304} but by such as affect the people of America in general. This conduct will give our amendments full weight.

I was surprised when I heard introduced the opinion of a gentleman (Mr. Jefferson) whom I highly respect. I know the great abilities of that gentleman. Providence has, for the good of mankind, accompanied those extensive abilities with a disposition to make use of them for the good of his fellow-beings; and I wish, with all my heart, that he was here to assist us on this interesting occasion. As to his letter, impressed as I am with the force of his authority, I think it was improper to introduce it on this occasion. The opinion of a private individual, however enlightened, ought not to influence our decision. But, admitting that this opinion ought to be conclusive with us, it strikes me in a different manner from the honorable gentleman. I have seen the letter in which this gentleman has written his opinion upon this subject. It appears that he is possessed of that Constitution, and has in his mind the idea of amending it — he has in his mind the very question, of subsequent or previous amendments, which is now under consideration. His sentiments on this subject are as follows: "I wish, with all my soul, that the nine first conventions may accept the new Constitution, because it will secure to us the good it contains, which I think great and important. I wish the four latest, whichever they be, may refuse to accede to it till amendments are secured." He then enumerates the amendments which he wishes to be secured, and adds, "We must take care, however, that neither this nor any other objection to the form, produce a schism in our Union. That would be an incurable evil; because friends falling out never cordially reunite." Are these sentiments in favor of those who wish to prevent its adoption by previous amendments? He wishes the first nine states to adopt it. What are his reasons? Because he thinks it will secure to us the good it contains, which he thinks *great and important*; and he wishes the other four may refuse it, because he thinks it may tend to obtain necessary amendments. But he would not wish that a schism should take place in the Union on any consideration. If, then, we are to be influenced by his opinion at all, we shall ratify it, and secure thereby the good it contains. The Constitution points out a plain and ordinary method of reform, without any disturbance or convulsions {305} whatever. I therefore think that we ought to ratify

it, in order to secure the Union, and trust to this method for removing those inconveniences which experience shall point out.

[Mr. Pendleton added several other observations, but spoke too low to be heard.]

## **Mr. MADISON.**

Mr. Chairman: finding, sir, that the clause more immediately under consideration still meets with the disapprobation of the honorable gentleman over the way, (Mr. Grayson,) and finding that the reasons of the opposition, as further developed, are not satisfactory to myself and others who are in favor of the clause, I wish that it may meet with the most thorough and complete investigation. I beg the attention of the committee, in order to obviate what fell from the honorable gentleman. He set forth that, by giving up the power of taxation, we should give up every thing, and still insists on requisitions being made on tad states, and then, if they be not complied with, Congress shall lay direct taxes, by way of penalty. Let us consider the dilemma which arises from this doctrine. Either requisitions will be efficacious, or they will not. If they will be efficacious, then I say, sir, we give up every thing as much as by direct taxation.

The same amount will be paid by the people as by direct taxes. If they be not efficacious, where is the advantage of this plan? In what respect will it relieve us from the inconveniences which we have experienced from requisitions? The power of laying direct taxes by the general government is supposed by the honorable gentleman to be chimerical and impracticable. What is the consequence of the alternative he proposes? We are to rely upon this power to be ultimately used as a penalty to compel the states to comply. If it be chimerical and impracticable in the first instance, it will be equally so when it will be exercised as a penalty. A reference was made to concurrent executions as an instance of the possibility of interference between the two governments.

[Here Mr. Madison spoke so low that he could not be distinctly heard.]

This has been experienced under the state governments without involving any inconvenience. But it may be answered that, under the state governments, concurrent executions {306} cannot produce the inconvenience here dreaded, because they are executed by the same officer. Is it not in the power of the general government to employ the state officers? Is nothing to be left to future legislation, or must every thing be immutably fixed in the Constitution? Where exclusive power is given to the Union, there can be no interference. Where the general and state legislatures have concurrent power, such regulations will be made as shall be found necessary to exclude interferences and other inconveniences. It will be their interest to make regulations.

It has been said that there is no similarity between petty corporations and independent states. I admit that, in many points of view, there is a great dissimilarity; but in others, there is a striking similarity between them, which illustrates what is before us. Have we not seen, in our own country, (as has been already suggested in the course of the debates,) concurrent collections of taxes going on at once, without producing any inconvenience? We have seen three distinct collections of taxes, for three distinct purposes. Has it not been possible for collections of taxes, for parochial, county, and state purposes, to go on at the same time? Every gentleman must know

that this is now the case; and though there be a subordination in these cases which will not be ill the general government, yet in practice it has been found that these different collections have been concurrently carried on, with convenience to the people, without clashing with one another, and without deriving their harmony from the circumstance of being subordinate to one legislative body. The taxes will be laid for different purposes. The members of the one government, as well as of the other, are the agents of, and subordinate to, the people. I conceive that the collection of the taxes of the one will not impede that of the other, and that there can be no interference. This concurrent collection appears to me neither chimerical nor impracticable.

He compares resistance of the people to collectors to refusal of requisitions. This goes against all government. It is as much as to urge that there should be no legislature. The gentlemen, who favored us with their observations on this subject, seemed to reason on a supposition that the general government was confined, by the paper on your table, to lay general, uniform taxes. Is it necessary that there should be {307} a tax on any given article throughout the United States? It is represented to be oppressive, that the states which have slaves, and make tobacco, should pay taxes on these for federal wants, when other states, which have them not, would escape. But does the Constitution on the table admit of this? On the contrary, there is a proportion to be hid on each state, according to its population. The most proper articles will be selected in each state. If one article, in any state, should be deficient, it will be laid on another article. Our state is secured on this foundation. Its proportion will be commensurate to its population. This is a constitutional scale, which is an insuperable bar against disproportion, and ought to satisfy all reasonable minds. If the taxes be not uniform, and the representatives of some states contribute to lay a tax of which they bear no proportion, is not this principle reciprocal? Does not the same principle hold in our state government in some degree? It has been found inconvenient to fix on uniform objects of taxation in this state, as the back parts are not circumstanced like the lower parts of the country. In both cases, the reciprocity of the principle will prevent a disposition in one part to oppress the other. My honorable friend seems to suppose that Congress, by the possession of this ultimate power as a penalty, will have as much credit, and will be as able to procure any sums, on any emergency, as if they were possessed of it in the first instance; and that the votes of Congress will be as competent to procure loans as the votes of the British Commons. Would the votes of the British House of Commons have that credit which they now have, if they were liable to be retarded in their operation, and, perhaps, rendered ultimately nugatory, as those of Congress must be by the proposed alternative? When their vote passes, it usually receives the concurrence of the Other branch; and it is known that there is sufficient energy in the government to carry it into effect.

But here the votes of Congress are, in the first place, dependent on the compliance of thirteen different bodies, and, after non-compliance, are liable to be opposed and defeated by the jealousy of the states against the exercise of this power, and by the opposition of the people, which may be expected if this power be exercised by Congress after partial compliances. These circumstances being known, Congress could not command one shilling. My honorable friend {308} seems to think that we ought to spare the present generation, and throw our burdens upon posterity. I will not contest the equity of this reasoning; but I must say that good policy, as well as views of economy, strongly urges us, even to distress ourselves to comply with our most solemn engagements. We must take effectual provision for the payment of the interest of our public debts. In order to do justice to our creditors, and support our credit and reputation, we

must lodge power somewhere or other for this purpose. As yet the United States have not been able, by any energy contained in the old system, to accomplish this end.

Our creditors have a right to demand the principal, but would be satisfied with a punctual payment of the interest. If we have been unable to pay the interest, much less shall we be able to discharge the principal. It appears to me that the whole reasoning used on this occasion shows that we ought to adopt this system, to enable us to throw our burdens on posterity. The honorable member spoke of the *decemviri* at Rome as having some similitude to the ten representatives who are to be appointed by this state. I can see no point of similitude here, to enable us to draw any conclusion. For what purpose were the *decemviri* appointed? They were invested with a plenipotentiary commission to make a code of laws. By whom were they appointed? By the people at large? My memory is not infallible, but it tells me they were appointed by the senate, — I believe, in the name of the people. If they were appointed by the senate, and composed of the most influential characters among the nobles, can any thing be inferred from that against our federal representatives? Who made a discrimination between the nobles and the people? The senate.

Those men totally perverted the powers which were given them, for the purpose above specified, to the subversion of the public liberty. Can we suppose that a similar usurpation might be made by men appointed in a totally different manner? As their circumstances were totally dissimilar, I conceive that no arguments drawn from that source can apply to this government. I do not thoroughly comprehend the reasoning of my honorable friend, when he tells us that the federal government will predominate, and that the state interest will be lost, when, at the same time, he tells us that it will be a faction of seven states. If seven states will prevail, {309} *as states*, I conceive that state influence will prevail. If state influence, under the present feeble government, has prevailed, I think that a remedy ought to be introduced, by giving the general government power to suppress it.

He supposed that my argument with respect to a future war between Great Britain and France was fallacious. The other nations of Europe have acceded to that neutrality, while Great Britain opposed it. We need not expect, in case of such a war, that we should be suffered to participate in the profitable emoluments of the carrying trade, unless we were in a respectable situation. Recollect the last war. Was there ever a war in which the British nation stood opposed to so many nations? All the belligerent nations in Europe, with nearly one half of the British empire, were united against it. Yet that nation, though defeated, and humbled beyond any previous example, stood out against this. From her firmness and spirit in such desperate circumstances, we may divine what her future conduct may be.

I did not contend that it was necessary for the United States to establish a navy for that sole purpose, but instanced it as one reason, out of several, for rendering ourselves respectable. I am no friend to naval or land armaments in time of peace; but if they be necessary, the calamity must be submitted to. Weakness will invite insults. A respectable government will not only entitle us to a participation of the advantages which are enjoyed by other nations, but will be a security against attacks and insults. It is to avoid the calamity of being obliged to have large armaments that we should establish this government. The best way to avoid danger is to be in a capacity to withstand it.

The impost, we are told, will not diminish, because the emigrations to the westward will prevent the increase of population. He has reasoned on this subject justly to certain degree. I admit that the imposts will increase, till population becomes so great as to compel us to recur to manufactures. The period cannot be very far distant when the unsettled parts of America will be inhabited. At the expiration of twenty-five years hence, I conceive that, in every part of the United States, there will be as great a population as there is now in the settled parts. We see, already, that, in the most populous parts of the Union, and where there is but a medium, manufactures are beginning to be established. {310} Where this is the case, the amount of importation will begin to diminish. Although the impost may even increase during the term of twenty-five years, yet when we are preparing a government for perpetuity, we ought to found it on permanent principles, and not on those of a temporary nature.

Holland is a favorite quotation with honorable members on the other side of the question. Had not their sentiments been discovered by other circumstances, I should have concluded, from their reasonings on this occasion, that they were friends of the Constitution. I should suppose that they had forgotten which side of the question they were on. Holland has been called a republic, and a government friendly to liberty. Though it may be greatly superior to some other governments in Europe, still it is not a republic or a democracy. Their legislature consists, in some degree, of men who legislate for life. Their councils consist of men who hold their offices for life, who fill up offices and appoint their salaries themselves. The people have no agency, mediate or immediate, in the government. If we look at their history, we shall find that every mischief which has befallen them has resulted from the existing confederacy. If the stadtholder has been productive of mischiefs, if we ought to guard against such a magistrate more than any evil, let me beseech the honorable gentleman to take notice of what produced that, and those troubles which have interrupted their tranquillity from time to time. The weakness of their confederacy produced both.

When the French arms were ready to overpower their republic, and they were feeble in the means of defence, which was principally owing to the violence of parties, they then appointed a stadtholder, who sustained them. If we look at more recent events, we shall have a more pointed demonstration that their political infelicity, arises from the imbecility of their government. In the late disorders, the states were almost equally divided — three provinces on one side, three on the other, and the other divided. One party inclined to the Prussians, and the other to the French. The situation of France did not admit of her interposing immediately in their disputes by an army; that of the Prussians did. A powerful and large army marched into Holland, and compelled the other party to surrender. We know the distressing consequences to the people. What produced {311} those disputes, and the necessity of foreign interference, but the debility of their confederacy? We may be warned by their example, and shun their fate, by removing the causes which produced their misfortunes. My honorable friend has referred to the transaction of the federal council with respect to the navigation of the Mississippi. I wish it was consistent with delicacy and prudence to lay a complete view of the whole matter before this committee. The history of it is singular and curious, and perhaps its origin ought to be taken into consideration.

I will touch on some circumstances, and introduce nearly the substance of most of the facts relative to it, that I may not seem to shrink from explanation. It was soon perceived, sir, after the commencement of the war with Britain, that, among the various objects that would affect the

happiness of the people of America, the navigation of the Mississippi was one. Throughout the whole history of foreign negotiation, great stress was laid on its preservation. In the time of our greatest distresses, and particularly when the Southern States were the scene of war, the Southern States cast their eyes around to be relieved from their misfortunes. It was supposed that assistance might be obtained for the, relinquishment of that navigation. It was thought that, for so substantial a consideration, Spain might be induced to afford decisive succor. It was opposed by the Northern and Eastern States. They were sensible that it might be dangerous to surrender this important right, particularly to the inhabitants of the western country. But so it was, that the Southern States were for it, and the Eastern States opposed to it. Since obtaining that happy peace, which secures to us all our claims, this subject has been taken again into consideration, and deliberated upon in the federal government. A temporary relinquishment has been agitated. Several members from the different states, but particularly from the Northern, were for a temporary surrender, because it would terminate disputes, and, at the end of the short period for which it was to be given, the right would revert, of course, to those who had given it up; and for this temporary surrender some commercial advantages were offered. For my part, I consider this measure, though founded on considerations plausible and honorable, was yet not justifiable but on grounds of inevitable necessity. I must declare, in justice {312} to many characters who were in Congress, that they declared that they never would enter into the measure, unless the situation of the United States was such as could not prevent it.

I suppose that the adoption of this government will be favorable to the preservation of the right to that navigation. Emigration will be made, from those parts of the United States which are settled, to those parts which are unsettled. If we afford protection to the western country, we shall see it rapidly peopled. Emigrations from some of the Northern States have been lately increased. We may conclude, as has been said by a gentleman on the same side, (Mr. Nicholas,) that those who emigrate to that country will leave behind them all their friends and connections as advocates for this right.

What was the cause of those states being the champions of this right when the Southern States were disposed to surrender it? The preservation of this right will be for the general interest of the Union. The western country will be settled from the north as well as the south, and its prosperity will add to the strength and security of the Union. I am not able to recollect all those circumstances which would be necessary to give gentlemen a full view of the subject. I can only add, that I conceive that the establishment of the new government will be the best possible means of securing our rights, as well in the western parts as elsewhere. I will not sit down till I make one more observation on what fell from my honorable friend. He says that the true difference between the states lies in this circumstance — that some are carrying states and others productive, and that the operation of the new government will be, that there will be a plurality of the former to combine against the interest of the latter, and that consequently it will be dangerous to put it in their power to do so. I would join with him in sentiments, if this were the case. Were this within the bounds of probability, I should be equally alarmed; but I think that those states, which are contradistinguished, as carrying states, from the non-importing states, will be but few. I suppose the Southern States will be considered by all asunder the latter description. Some other states have been mentioned by an honorable member on the same side, which are not considered as carrying states. New Jersey {313} and Connecticut can by no means be enumerated among the carrying states. They receive their supplies through New York. Here, then, is a plurality of

non-importing states. I could add another, if necessary. Delaware, though situated upon the water, is upon the list of non-carrying states. I might say that a great part of New Hampshire is so. I believe a majority of the people of that state receive their supplies from Massachusetts, Rhode Island, and Connecticut. Might I not add all those states which will be admitted hereafter into the Union? These will be non-carrying states, and will support Virginia in case the carrying states will attempt to combine against the rest. This objection must therefore fall to the ground. My honorable friend has made several other remarks, but I will defer saying any more till we come to those parts to which his objections refer.

## Mr. HENRY.

Mr. Chairman, once more I find it necessary to trespass on your patience. An honorable gentleman, several days ago, observed, that the great object of this government was justice. We were told before, that the greater consideration was union. However, the consideration of justice seems to have been what influenced his mind when he made strictures on the proceedings of the Virginia Assembly. I thought the reasons of that transaction had been sufficiently explained.

It is exceedingly painful to me to be objecting; but I must make a few observations. I shall not again review the catalogue of dangers which the honorable gentleman entertained us with. They appear to me absolutely imaginary. They have, in my conception, been proved to be such.

But sure I am that the dangers of this system are real, when those who have no similar interests with the people of this country are to legislate for us — when our dearest interests are left in the power of those whose advantage it may be to infringe them. How will the quotas of troops be furnished? *Hated* as requisitions are, your federal officers cannot collect troops, like dollars, and carry them in their pockets. You must make those *abominable* requisitions for them, and the scale will be in proportion to the number of your blacks, as well as your whites, unless they violate the constitutional rule of apportionment. This is not calculated to rouse the fears of the people. It is founded in truth. {314} How oppressive and dangerous must this be to the Southern States, who alone have slaves! This will render their proportion infinitely greater than that of the Northern States. It has been openly avowed that this shall be the rule. I will appeal to the judgments of the committee, whether there be danger. The honorable gentleman said that there was no precedent for *this* American revolution. We have precedents in abundance. They have been drawn from Great Britain. Tyranny has arisen there in the same manner in which it was introduced among the Dutch. The tyranny of Philadelphia may be like the tyranny of George III. I believe this similitude will be incontestably proved before we conclude.

The honorable gentleman has endeavored to explain the opinion of Mr. Jefferson, our common friend, into an advice to adopt this new government. What are his sentiments? He wishes nine states to adopt, and that four states may be found somewhere to reject it. Now, sir, I say, if we pursue his advice, what are we to do? To prefer form to substance? For, give me leave to ask, what is the substantial part of his counsel? It is, sir, that four states should *reject*. They tell us that, from the most authentic accounts, New Hampshire will adopt it. When I denied this, gentlemen said they were absolutely certain of it. Where, then, will four states be found to reject, if we adopt it? If we do, the counsel of this enlightened and worthy countryman of ours will be thrown away; and for what? He wishes to secure amendments and a bill of rights, if I am not

mistaken. I speak from the best information, and if wrong, I beg to be put right. His amendments go to that despised thing, called a *bill of rights*, and all the rights which are dear to human nature — trial by jury, the liberty of religion and the press, &c. Do not gentlemen see that, if we adopt, under the idea of following Mr. Jefferson's opinion, we amuse ourselves with the shadow, while the substance is given away? If Virginia be for adoption, what states will be left, of sufficient respectability and importance to secure amendments by their rejection? As to North Carolina, it is a *poor, despised place*. Its dissent will not have influence to introduce any amendments. Where is the American spirit of liberty? Where will you find attachment to the rights of mankind, when Massachusetts, the great northern state, Pennsylvania, {315} the great middle state, and Virginia, the great southern state, shall have adopted this government? Where will you find magnanimity enough to reject it? Should the remaining states have this magnanimity, they will not have sufficient weight to have the government altered. This state has weight and importance. Her example will have powerful influence — her rejection will procure amendments. Shall we, by our adoption, hazard the loss of amendments? Shall we forsake that importance and respectability which our station in America commands, in hopes that relief will come from an obscure part of the Union? I hope my countrymen will spurn at the idea.

The necessity of amendments is universally admitted. It is a word which is reechoed from every part of the continent. A majority of those who hear me think amendments are necessary. Policy tells us they are necessary. Reason, self-preservation, and every idea of propriety, powerfully urge us to secure the dearest rights of human nature. Shall we, in direct violation of these principles, rest this security upon the uncertainty of its being obtained by a few States, more weak and less respectable than ourselves, and whose virtue and magnanimity may be overborne by the example of so many adopting states? *Poor* Rhode Island, and North Carolina, and even New York, surrounded with federal walls on every side, may not be magnanimous enough to reject; and if they do reject it, they will have but little influence to obtain amendments. I ask, if amendments be necessary, from whence can they be so properly proposed as from this state? The example of Virginia is a powerful thing, particularly with respect to North Carolina, whose supplies must come *through* Virginia. Every possible opportunity of procuring amendments is gone, our power and political salvation are gone, if we ratify unconditionally. The important right of making treaties is upon the most dangerous foundation. The President, and a few senators, possess it in the most unlimited manner, without any real responsibility, if, from sinister views, they should think proper to abuse it; for they may keep all their measures in the most profound secrecy, as long as they please. Were we not told that war was the case wherein secrecy was the most necessary? But, by the paper on your table, their secrecy is not limited to this case only. It is as unlimited and unbounded as their {316} powers. Under the abominable veil of political secrecy and contrivance, your most valuable rights may be sacrificed by a most corrupt faction, without having the satisfaction of knowing who injured you. They are bound by honor and conscience to act with integrity, but they are under no constitutional restraint. The navigation of the Mississippi, which is of so much importance to the happiness of the people of this country, may be lost by the operation of that paper. There are seven states now decidedly opposed to this navigation. If it be of the highest consequence to know who they are who shall have voted its relinquishment, the federal veil of secrecy will prevent that discovery. We may labor under the magnitude of our miseries without knowing or being able to punish those who produced them. I did not wish that transactions relative to treaties should, when unfinished, be exposed; but it

should be known, after they were concluded, who had advised them to be made, in order to secure some degree of certainty that the public interest shall be consulted in their formation.

We are told that all powers not given are reserved. I am sorry to bring forth hackneyed observations. But, sir, important truths lose nothing of their validity or weight, by frequency of repetition. The English history is frequently recurred to by gentlemen. Let us advert to the conduct of the people of that country. The people of England lived without a declaration of rights till the war in the time of Charles I. That king made usurpations upon the rights of the people. Those rights were, in a great measure, before that time undefined. Power and privilege then depended on implication and logical discussion. Though the declaration of rights was obtained from that king, his usurpations cost him his life. The limits between the liberty of the people, and the prerogative of the king, were still not clearly defined.

The rights of the people continued to be violated till the Stuart family was banished, in the year 1688. The people of England magnanimously defended their rights, banished the tyrant, and prescribed to William, Prince of Orange, by the bill of rights, on what terms he should reign; and this bill of rights put an end to all construction and implication. Before this, sir, the situation of the public liberty of England was dreadful. For upwards of a century, the nation was {317} involved in every kind of calamity, till the bill of rights put an end to all, by defining the rights of the people, and limiting the king's prerogative. Give me leave to add (if I can add any thing to so splendid an example) the conduct of the American people. They, sir, thought a bill of rights necessary. It is alleged that several states, in the formation of their government, omitted a bill of rights. To this I answer, that they had the substance of a bill of rights contained in their constitutions, which is the same thing. I believe that Connecticut has preserved it, by her Constitution, her royal charter, which clearly defines and secures the great rights of mankind — secures to us the great, important rights of humanity; and I care not in what form it is done.

Of what advantage is it to the American Congress to take away this great and general security? I ask, Of what advantage is it to the public, or to Congress, to drag an unhappy debtor, not for the sake of justice, but to gratify the malice of the plaintiff, with his witnesses, to the federal court, from a great distance? What was the principle that actuated the Convention in proposing to put such dangerous powers in the hands of any one? Why the trial by jury taken away? All the learned arguments that have been used on this occasion do not prove that it is secured. Even the advocates for the plan do not all concur in the certainty of its security. Wherefore is religious liberty not secured? One honorable gentleman, who favors adoption, said that he had had his fears on the subject. If I can well recollect, he informed us that he was perfectly satisfied, by the powers of reasoning, (with which he is so happily endowed,) that those fears were not well grounded. There is many a religious man who knows nothing of argumentative reasoning; there are many of our most worthy citizens who cannot go through all the labyrinths of syllogistic, argumentative deductions, when they think that the rights of conscience are invaded. This sacred right ought not to depend on constructive, logical reasoning.

When we see men of such talents and learning compelled to use their utmost abilities to convince themselves that there is no danger, is it not sufficient to make us tremble? Is it not sufficient to fill the minds of the ignorant part of men with fear? If gentlemen believe that the apprehensions of men will be quieted, they are mistaken, {318} since our best informed men are in doubt with

respect to the security of our rights. Those who are not so well informed will spurn at the government. When our common citizens, who are not possessed with such extensive knowledge and abilities, are called upon to change their bill of rights (which, in plain, unequivocal terms, secures their most valuable rights and privileges) for construction and implication, will they implicitly acquiesce? Our declaration of rights tells us that "all men are by nature free and independent," &c. [Here Mr. Henry read the declaration of rights.] Will they exchange these rights for logical reasons? If you had a thousand acres of land dependent on this, would you be satisfied with logical construction? Would you depend upon a title of so disputable a nature? The present opinions of individuals will be buried in entire oblivion when those rights will be thought of. That sacred and lovely thing, religion, ought not to rest on the ingenuity of logical deduction. Holy religion, sir, will be prostituted to the lowest purposes of human policy. What has been more productive of mischief among mankind than religious disputes? Then here, sir, is a foundation for such disputes, when it requires learning and logical deduction to perceive that religious liberty is secure.

The honorable member told us that he had doubts with respect to the judiciary department. I hope those doubts will be explained. He told us that his object was union. I admit that the reality of union, and not the name, is the object which most merits the attention of every friend to his country. He told you that you should hear many great, sounding words on our side of the question. We have heard the word union from him. I have heard no word so often pronounced in this house as he did this. I admit that the American Union is dear to every man. I admit that every man, who has three grains of information, must know and think that union is the best of all things. But, as I said before, we must not mistake the end for the means. If he can show that the rights of the Union are secure, we will consent. It has been sufficiently demonstrated that they are not secured. It sounds mighty prettily to gentlemen, to curse paper money and honestly pay debts. But apply to the situation of America, and you will find there are thousands and thousands of contracts, whereof equity forbids an {319} exact literal performance. Pass that government, and you will be bound hand and foot. There was an immense quantity of depreciated Continental paper money in circulation at the conclusion of the war. This money is in the hands of individuals to this day. The holders of this money may call for the nominal value, if this government be adopted. This state may be compelled to pay her proportion of that currency, pound for pound. Pass this government, and you will be carried to the federal court, (if I understand that paper right,) and you will be compelled to pay shilling for shilling. I doubt on the subject: at least, as a public man, I ought to have doubts. A state may be sued in the federal court, by the paper on your table. It appears to me, then, that the holder of the paper money may require shilling for shilling. If there be any latent remedy to prevent this, I hope it will be discovered.

The precedent, with respect to the union between England and Scotland, does not hold. The union of Scotland speaks in plain and direct terms. Their privileges were particularly secured. It was expressly provided that they should retain their own particular laws. Their nobles have a right to choose representatives to the number of sixteen. I might thus go on and specify particulars: but it will suffice to observe, generally, that their rights and privileges were expressly and unequivocally reserved. The power of direct taxation was not given up by the Scotch people. There is no trait in that union which will maintain their arguments. In order to do this, they ought to have proved that Scotland united without securing their rights, and afterwards got that security by subsequent amendments. Did the people of Scotland do this? No, sir: like a sensible people,

they trusted nothing to hazard. If they have but forty-five members, and those be often corrupted, these defects will be greater here. The number will be smaller, and they will be consequently the more easily corrupted. Another honorable gentleman advises us to give this power, in order to exclude the necessity of going to war. He wishes to establish national credit, I presume, and imagines that, if a nation has public faith, and shows a disposition to comply with her engagements, she is safe among ten thousand dangers. If the honorable gentleman can prove that this paper is calculated to give us public faith, I will be satisfied. But if {320} you be in constant preparation for war, on such airy and imaginary grounds as the mere possibility of danger, your government must be military, which will be inconsistent with the enjoyment of liberty.

But, sir, we must become formidable, and have a strong government, to protect us from the British nation. Will the paper on the table prevent the attacks of the British navy, or enable us to raise a fleet equal to the British fleet? The British have the strongest fleet in Europe, and can strike any where. It is the utmost folly to conceive that the paper can have such an operation. It will be no less so to attempt to raise a powerful fleet. With respect to requisitions, I beseech gentlemen to consider the importance of the subject. We, who are for amendments, propose (as has been frequently mentioned) that a requisition shall be made for two hundred thousand pounds, for instance, instead of direct taxation, and that, if it be not complied with, then it shall be raised by direct taxes. We do not wish to have strength, to refuse to pay them, but to possess the power of raising the taxes in the most easy mode for the people. But, says he, you may delay us by this mode. Let us see if there be not sufficient to counterbalance this evil. The oppression arising from taxation is not from the amount, but from the mode: a thorough acquaintance with the condition of the people is necessary to a just distribution of taxes. The whole wisdom of the science of government, with respect to taxation, consists in selecting that mode of collection which will best accommodate the convenience of the people. When you come to tax a great country, you will find that ten men are too few to settle the manner of collection. One capital advantage, which will result from the proposed alternative, is this — that there will be necessary communications between your ten members in Congress and your hundred and seventy representatives here. If it goes through the hands of the latter, they will know how much the citizens can pay, and, by looking at the paper on your table, they will know how much they ought to pay. No man is possessed of sufficient information to know how much we can or ought to pay.

We might also remonstrate, if, by mistake or design, they should call for a greater sum than our proportion. After a remonstrance, and a free investigation between our representatives here and those in Congress, the error would be removed.

{321} Another valuable thing which it will produce is, that the people will pay the taxes cheerfully. It is supposed that this would occasion a waste of time, and be an injury to public credit. This would only happen if requisitions should not be complied with. In this case the delay would be compensated by the payment of interest, which, with the addition of the credit of the state to that of the general government, would in a great measure obviate this objection. But if it had all the force which it is supposed to have, it would not be adequate to the evils of direct taxation. But there is every probability that requisitions would be then complied with. Would it not, then, be our interest as well as duty to comply? After non-compliance, there would be a general acquiescence in the exercise of this power. We are fond of giving power, at least power

which is constitutional. Here is an option to pay according to your own mode or otherwise. If you give probability fair play, you must conclude that they would be complied with, Would the Assembly of Virginia, by refusal, destroy the country, and plunge the people in misery and distress? If you give your reasoning faculty fair play, you cannot but know that payment must be made, when the consequence of a refusal would be an accumulation of inconveniences to the people. Then they say that, if requisitions be not complied with, in case of a war, the destruction of the country may be the consequence: that therefore we ought to give the power of taxation to the government, to enable it to protect us. Would not this be another reason for complying with requisitions, to prevent the country from being destroyed? You tell us that, unless requisitions be complied with, your commerce is gone. The prevention of this, also, will be an additional reason to comply.

He tells us that responsibility is secured by direct taxation. Responsibility, instead of being increased, will be lost forever by it. In our state government, our representatives may be severally instructed by their constituents. There are no persons to counteract their operations. They can have no excuse for deviating from our instructions. In the general government, other men have power over the business. When oppressions may take place, our representatives may tell us, — We contended for your interest: but we could not carry our point, because the representatives from Massachusetts, New Hampshire, Connecticut, &c., were against us. {322} Thus, sir, you may see there is no real responsibility. He further said that there was such a contrariety of interests as to hinder a consolidation. I will only make one remark. There is a variety of interests. Some of the states owe a great deal on account of paper money: others very little: some of the Northern States have collected and barrell'd up paper money. Virginia has sent thither her cash long ago. There is little or none of the Continental paper money retained in this state. Is it not their business to appreciate this money? Yes, and it will be your business to prevent it. But there will be a majority against you, and you will be obliged to pay your share of this money, in its nominal value. It has been said, by several gentlemen, that the freeness of elections would be promoted by throwing the country into large districts. I contend, sir, that it will have a contrary effect. It will destroy that connection that ought to subsist between the electors and the elected. If your elections be by districts, instead of counties, the people will not be acquainted with the candidates. They must, therefore, be directed in the elections by those who know them. So that, instead of a confidential connection between the electors and the elected, they will be absolutely unacquainted with each other. A common man must ask a man of influence how he is to proceed, and for whom he must vote. The elected, therefore, will be careless of the interest of the electors. It will be a common job to extort the suffrages of the common people for the most influential characters. The same men may be repeatedly elected by these means. This, sir, instead of promoting the freedom of election, leads us to an aristocracy. Consider the mode of elections in England. Behold the progress of an election in an English shire. A man of an enormous fortune will spend thirty or forty thousand pounds to get himself elected. This is frequently the case. Will the honorable gentleman say that a poor man, as enlightened as any man in the island, has an equal chance with a rich man, to be elected? He will stand no chance, though he may have the finest understanding of any man in the shire. It will be so here. Where is the chance that a poor man can come forward with the rich? The honorable gentleman will find that, instead of supporting democratical principles, it goes absolutely to destroy them.

The state governments, says he, will possess greater advantages {323} than the general government, and will consequently prevail. His opinion and mine are diametrically opposite. Bring forth the federal allurements, and compare them with the poor, contemptible things that the state legislatures can bring forth. On the part of the state legislatures, there are justices of the peace and militia officers: and even these justices and officers are bound by oath in favor of the Constitution. A constable is the only man who is not obliged to swear paramount allegiance to this beloved Congress. On the other hand, there are rich, fat, federal emoluments. Your rich, snug, fine, fat, federal officers — the number of collectors of taxes and excises — will outnumber any thing from the states. Who can cope with the excisemen and taxmen? There are none in this country who can cope with this class of men alone. But, sir, is this the only danger? Would to Heaven that it were! If we are to ask which will last the longest, the state or the general government, you must take an army and a navy into the account. Lay these things together, and add to the enumeration the superior abilities of those who manage the general government.

Can, then, the state governments look it in the face? You dare not look it in the face now, when it is but in embryo. The influence of this government will be such, that you never can get amendments: for if you propose alterations, you will affront them. Let the honorable gentleman consider all these things, and say, whether the state governments will last as long as the federal government. With respect to excises, I can never endure them. They have been productive of the most intolerable oppressions every where. Make a probable calculation of the expense attending the legislative, executive, and judiciary. You will find that there must be an immense increase of taxes. We are the same mass of people we were before: in the same circumstances: the same pockets are to pay. The expenses are to be increased. What will enable us to bear this augmentation of taxes? The mere form of government will not do it. A plain understanding cannot conceive how the taxes can be diminished, when our expenses are augmented, and the means of paying them not increased.

With respect to our tax laws, we have purchased a little knowledge by sad experience upon the subject. Reiterated experiments have taught us what can alleviate the distresses, {324} and suit the convenience, of the people. But we are now to throw away that system by which we have acquired this knowledge, and send ten men to legislate for us.

The honorable gentleman was pleased to say that the representation of the people was the vital principle of this government. I will readily agree that it ought to be so. But I contend that this principle is only nominally, and not substantially, to be found there. We contended with the British about representation. They offered us such a representation as Congress now does. They called it a virtual representation. If you look at that paper, you will find it so there. Is there but a virtual representation in the upper house? The states are represented, as states, by two senators each. This is virtual, not actual. They encounter you with Rhode Island and Delaware. This is not an actual representation. What does the term *representation* signify? It means that a certain district — a certain association of men — should be represented in the government, for certain ends. These ends ought not to be impeded or obstructed in any manner. Here, sir, this populous state has not an adequate share of legislative influence. The two petty states of Rhode Island and Delaware, which, together, are infinitely inferior to this state in extent and population, have double her weight, and can counteract her interest. I say that the representation in the Senate, as

applicable to states, is not actual. Representation is not, therefore, the vital principle of this government. So far it is wrong.

Rulers are the servants and agents of the people: the people are their masters. Does the new Constitution acknowledge this principle? Trial by jury is the best appendage of freedom. Does it secure this? Does it secure the other great rights of mankind? Our own Constitution preserves these principles. The honorable gentleman contributed to form that Constitution. The applauses so justly due to it should, in my opinion, go to the condemnation of that paper.

With respect to the failures and errors of our government, they might have happened in any government. I do not justify what merits censure, but I shall not degrade my country. As to deviations from justice, I hope they will be attributed to the errors of the head, and not to those of the heart.

The honorable gentleman did our judiciary honor in saying {325} that they had firmness to counteract the legislature in some cases. Yes, sir, our judges opposed the acts of the legislature. We have this landmark to guide us. They had fortitude to declare that they were the judiciary, and would oppose unconstitutional acts. Are you sure that your federal judiciary will act thus? Is that judiciary as well constructed, and as independent of the other branches, as our state judiciary? Where are your landmarks in this government? I will be bold to say you cannot find any in it. I take it as the highest encomium on this country, that the acts of the legislature, if unconstitutional, are liable to be opposed by the judiciary.

Then the honorable gentleman said that the two judiciaries and legislatures would go in a parallel line, and never interfere: that, as long as each was confined to its proper objects, there would be no danger of interference: that, like two parallel lines, as long as they continued in their parallel direction, they never Would meet. With submission to the honorable gentleman's opinion, I assert that there is danger of interference, because no line is drawn between the powers of the two governments, in many instances: and, where there is a line, there is no check to prevent the one from encroaching upon the powers of the other.

I therefore contend that they must interfere, and that this interference must subvert the state government, as being less powerful. Unless your government have checks, it must inevitably terminate in the destruction of your privileges. I will be bold to say that the British government has real checks. I was attacked by gentlemen, as if I had said that I loved the British government better than our own. I never said so. I said that, if I were obliged to relinquish a republican government, I would choose the British monarchy. I never gave the preference to the British or any other government, when compared to that which the honorable gentleman assisted to form. I was constrained to say what I said. When two disagreeable objects present, themselves to the mind, we choose that which has the least deformity.

As to the western country, notwithstanding our representation in Congress, and notwithstanding any regulation that may be made by Congress, it may be lost. The seven Northern States are determined to give up the Mississippi. {326} We are told that, in order to secure the navigation of that river, it was necessary to give it up, for twenty-five years, to the Spaniards, and that thereafter we should enjoy it forever, without any interruption from them. This argument

resembles that which recommends adopting first and then amending. I think the reverse of what the honorable gentleman said on the subject. Those seven states are decidedly against it. He tells us that it is the policy of the Whole Union to retain it. If men were wise, virtuous, and honest, we might depend on an adherence to this policy. Did we not know of the fallibility of human nature, we might rely on the present structure of this government. We might depend that the rules of propriety, and the general interest of the Union, would be observed. But the depraved nature of man is well known. He has a natural bias towards his own interest, which will prevail over every consideration, unless it be checked. It is the interest and inclination of the seven Northern States to relinquish this river. If you enable them to do so, will the mere propriety of consulting the interest of the other six states refrain them from it? Is it imagined that Spain will, after a peaceable possession of it for thirty years, give it up to you again? Can credulity itself hope that the Spaniards, who wish to have it for that period, wish to clear the river for you? What is it they wish? To clear the river! For whom? America saw the time when she had the reputation of common sense at least. Do you suppose they will restore it to you after thirty years? If you do, you depart from that rule. Common observation tells you that it must be the policy of Spain to get it first, and then retain it forever. If you give it up, in my poor estimation they will never voluntarily restore it. Where is the man who will believe that, after clearing the river, strengthening themselves, and increasing the means of retaining it, the Spaniards will tamely surrender it?

With respect to the concurrent collection of parochial, county, and state taxes, which the honorable gentleman has instanced as a proof of the practicability of the concurrent collection of taxes by the general and state governments, the comparison will not stand examination. As my honorable friend has said, these concurrent collections come from one power. They radiate from the same centre. They are not coequal or coextensive. There is no clashing {327} of power between them. Each is limited to its own particular objects, and all subordinate to one supreme, controlling power — the legislature. The county courts have power over the county and parish collections, and can constantly redress any injuries or oppressions committed by the collectors. Will this be the case in the federal Courts? I hope they will not have federal courts in every county. If they will, the state courts will be debased and stripped of their cognizance, and utterly abolished. Yet, if there be no power in the country to call them to account, they will more flagrantly trample on your rights. Does the honorable gentleman mean that the thirteen states will have thirteen different tax laws? Is this the expedient which is to be substituted for the unequal and unjust one of uniform taxes? If so, many horrors present themselves to my mind. They may be imaginary, but it appears to my mind to be the most abominable system that could be imagined. It will destroy every principle of responsibility. It will be destructive of that fellow-feeling, and consequent confidence, which ought to subsist between the representatives and the represented. We shall then be taxed by those who bear no part in the taxes themselves, and who, consequently, will be regardless of our interest in imposing them upon us. The efforts of our ten men will avail very little when opposed by the northern majority. If our ten men be disposed to sacrifice our interest, we cannot detect them. Under the color of being outnumbered by the northern representatives, they can always screen themselves. When they go to the general government, they may make a bargain with the northern delegates. They may agree to tax our citizens in any manner which may be proposed by the northern members; in consideration of which, the latter may make them some favorite concessions. The Northern States will never assent to regulations promotive of southern aggrandizement. Notwithstanding what gentlemen

say of the probable virtue of our representatives, I dread the depravity of human nature. I wish to guard against it by proper checks, and trust nothing to accident or chance. I will never depend on so slender a protection as the possibility of being represented by virtuous men.

Will not thirteen different objects of taxation in the thirteen different states involve us in an infinite number of {328} inconveniences, and absolute confusion? There is a striking difference, and great contrariety of interests, between the State. They are naturally divided into carrying and productive states. This is an actual, existing distinction, which cannot be altered. The former are more numerous, and must prevail. What, then, will be the consequence of their contending interests, if the taxation of America is to go on in thirteen different shapes? This government subjects every thing to the northern majority. Is there not, then, a settled purpose to check the southern interest? We thus put unbounded power over our property in hands not having a common interest with us. How can the southern members prevent the adoption of the most oppressive mode of taxation in the Southern States, as there is a majority in favor of the Northern States? Sir, this is a picture so horrid, so, wretched, so dreadful, that I need no longer dwell upon it, Mr. Henry then concluded by remarking, that he dreaded the most iniquitous speculation and stock-jobbing, from the operation of such a system.

## **Mr. MADISON.**

Mr. Chairman, pardon me for making a few remarks on what fell from the honorable gentleman last up. I am sorry to follow the example of gentlemen in deviating from the rule of the house. But as they have taken the utmost latitude in their objections, it is necessary that those who favor the government should answer them. But I wish, as soon as possible, to take up the subject regularly. I will therefore take the liberty to answer some observations which have been irregularly made, though they might be more properly answered when we come to discuss those parts of the Constitution to which they respectively refer. I will, however, postpone answering some others till then, If there be that terror in direct taxation, that the states would comply with requisitions to guard against the federal legislature; and if, as gentlemen say, this state will always have it in her power to make her collections speedily and fully, — the people will be compelled to pay the same amount as quickly and punctually as if raised by the general government.

It has been amply proved that the general government can lay taxes as conveniently to the people as the state governments, by imitating the state systems of taxation. If the general government have not the power of collecting {329} its own revenues, in the first instance, it will be still dependent on the state governments in some measure; and the exercise of this power, after refusal, will be inevitably productive of injustice and confusion, if partial compliances be made before it is driven to assume it. Thus, sir, without relieving the people in the smallest degree, the alternative proposed will impair the efficacy of file government, and will perpetually endanger the tranquillity of the Union.

The honorable member's objection with respect to requisitions of troops will be fully obviated at another time. Let it suffice now to say that it is altogether unwarrantable, and founded upon a misconception of the paper before you. But the honorable member, in order to influence our decision, has mentioned the opinion of a citizen who is an ornament to this state. When the name

of this distinguished character was introduced, I was much surprised. Is it come to this, then, that we are not to follow our own reason? Is it proper to introduce the opinions of respectable men not within these walls? If the opinion of an important character were to weigh on this occasion, could we not adduce a character equally great on our side? Are we, who (in the honorable gentleman's opinion) are not to be governed by an erring world, now to submit to the opinion of a citizen beyond the Atlantic? I believe that, were that gentleman now on this floor, he would be for the adoption of this Constitution. I wish his name had never been mentioned. I wish every thing spoken here, relative to his opinion, may be suppressed, if our debates should be published. I know that the delicacy of his feelings will be wounded, when he will see in print what has and may be said concerning him on this occasion. I am, in some measure, acquainted with his sentiments on this subject: It is not right for me to unfold what he has informed me; but I will venture to assert that the clause now discussed is not objected to Mr. Jefferson. He approves of it, because it enables the government to carry on its operations. He admires several parts of it, which have been reprobated with vehemence in this house. He is captivated with the equality of suffrage in the Senate, which the honorable gentleman (Mr. Henry) Calls the rotten part of this Constitutions. But, Whatever be the opinion of that illustrious citizen, considerations {330} of personal delicacy should dissuade us from introducing it here.

The honorable member has introduced the subject of religion. Religion is not guarded; there is no bill of rights declaring that religion should be secure. Is a bill of rights a security for religion? Would the bill of rights, in this state, exempt the people from paying for the support of one particular sect, if such sect were exclusively: established by law? If there were a majority of one sect, a bill of rights would be a poor protection for liberty. Happily for the states, they enjoy the utmost freedom of religion. This freedom arises from that multiplicity of sects which pervades America, and which is the best and only security for religions liberty in any society; for where there is such a variety of sects, there cannot be a majority of any one sect to oppress and persecute the rest, Fortunately for this commonwealth, a majority of the people are decidedly against any exclusive establishment. I believe it to be so in the other states. There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation. I can appeal to my uniform conduct on this subject, that I have warmly supported religious freedom. It is better that this security should be depended upon from the general legislature, than from one particular state. A particular state might concur in one religious project. But the United States abound in such a variety of sects, that it is a strong security against religious persecution; and it is sufficient to authorize a conclusion, that no one sect will ever be able to outnumber or depress the rest.

I will not travel over that extensive tract which the honorable member has traversed. I shall not now take notice of all his desultory objections. As occasions arise, I shall answer them.

It is worthy of observation, on this occasion, that the honorable gentleman himself seldom fails to contradict the arguments of gentlemen on that side of the question. For example, he strongly complains that the federal government, from the number of its members, will make an addition to the public expense too formidable to be borne; and yet he, and other gentlemen on the same side, object that the number of representatives is too small, though ten men are more {331} than we are entitled to under the existing system! How can these contradictions be reconciled? If we are to adopt any efficient government at all, how can we discover or establish such a system, if it

be thus, attacked? Will it be possible to form a rational conclusion upon contradictory principles? If arguments of a contradictory nature were to be brought against the wisest and most admirable system to the formation of which human intelligence is competent, it never could stand them.

He has acrimoniously inveighed against the government, because such transactions as Congress think require secrecy, may be concealed; and particularly those which relate to treaties. He admits that, when a treaty is forming, secrecy is proper; but urges that, when actually made, the public ought to be made acquainted with every circumstance relative to it. The policy of not divulging the most important transactions, and negotiations of nations, such as those which relate to warlike arrangements and treaties, is universally admitted. The congressional proceedings are to be occasionally published, including all receipts and expenditures of public money, of which no part can be used but in consequence of appropriations made by law. This is a security which we do not enjoy under the existing system. That part which authorizes the government to withhold from the public knowledge what in their judgment may require secrecy, is imitated from the Confederation — that very system which the gentleman advocates.

No treaty has been formed, and I will undertake to say that none will be formed, under the old system, which will secure to us the actual enjoyment of the navigation of the Mississippi. Our weakness precludes us from it. We are entitled to it; but it is not under an inefficient government that we shall be able to avail ourselves fully of that right. I most conscientiously believe that it will be far better secured under the new government than the old, as we shall be more able to enforce our right. The people of Kentucky will have an additional safeguard from the change of system. The strength and respectability of the Union will secure them in the enjoyment of that right till that country becomes sufficiently populous. When this happens, they will be able to retain it in spite of every opposition.

I can never admit that seven states are disposed to surrender {332} that navigation. Indeed, it never was the case. Some of their most distinguished characters are decidedly opposed to its relinquishment. When its cession was proposed by the Southern States, the Northern States opposed it. They still oppose it. New Jersey directed her delegates to oppose in, and is strenuously against it. The same Sentiments pervade Pennsylvania: at least, I am warranted to say so from the best information which I have. Those states, added to the Southern States, would be a majority against it.

The honorable gentleman, to obviate the force of my observations with respect to concurrent collection of taxes under different authorities, said that there was no interference between the concurrent collection of parochial, county, and state taxes, because they all radiated from the same centre; but that this was not the case with the general government. To make use of the gentleman's own terms, the concurrent collections under the authorities of the general government and state governments all radiate from the people at large; The people is their common superior. The sense of the people at large is to be the predominating spring of their actions. This is a sufficient security against interference.

Our attention was called to our commercial interest, and at the same time the landed interest was said to be in danger. If those ten men, who were to be chosen, be elected by landed men, and have land themselves, can the electors have any thing to apprehend? If the commercial interests

be in danger, why are we alarmed about the carrying trade? Why is it said that the carrying states will preponderate, if commerce be in danger? With respect to speculation, I will remark that stock-jobbing has prevailed more or less in all countries, and ever will, in some degree, notwithstanding any exertions to prevent it. If you judge from what has happened under the existing system, any change would render a melioration probable.

---

**F**<sub>RIDAY</sub>, *June 13, 1788.*

**Mr. NICHOLAS**

urged that the Convention should either proceed according to the original determination, clause by clause, or rescind that order, and go into the Constitution at large.

**Mr. HENRY**

opposed the motion as to taking up the subject clause by clause. He thought it ought to be considered {333} at large. He observed that, among a great variety of subjects, the business of the Mississippi had taken up a great deal of time. He wished, before they should take leave of that subject, that the transactions of Congress relative to the navigation of that river should be communicated to the Convention, in order that they might draw their conclusions from the best source. For this purpose, he hoped that those gentlemen who had been then in Congress, and the present members of Congress who were in Convention, would communicate what they knew on the subject. He declared that he did not wish to hurt the feelings of the gentlemen who had been in Congress, or to reflect on any private character; but that, for the information of the Convention, he was desirous of having the most authentic and faithful account of facts.

**Mr. NICHOLAS**

had no objection to Mr. Henry's proposal.

**Mr. MADISON**

then declared that, if the honorable gentleman thought that *he* had given an incorrect account of the transactions relative to the Mississippi, he would, on a thorough and complete investigation, find himself mistaken; that he had his information from his own knowledge, and from a perusal of the documents and papers which related to those transactions; that it had always been his opinion that the policy which had for its object the relinquishment of that river was unwise, and the mode of conducting it was still more exceptionable. He added, that he had no objection to have every light on the subject that could tend to elucidate it.

## **Mr. NICHOLAS**

hoped that, after the information should be given respecting that river, they would confine themselves to the order of the house.

The Convention then resolved itself into a committee of the whole Convention, to take into further consideration the proposed Constitution, and more particularly for the purpose of receiving information concerning the transactions of Congress relative to the Mississippi. — Mr. WYTHE in the chair.

On motion, the acts and resolutions of Assembly relative to the Mississippi were read.

## **Mr. LEE (of Westmoreland)**

then, in a short speech, related several congressional transactions respecting that river, and strongly asserted that it was the inflexible and determined resolution of Congress never to give it up; that the secretary of foreign affairs, who was authorized to form a {334} treaty with Gardoqui, the Spanish ambassador, had positive directions not to assent to give up that navigation, and that it never had been their intention or wish to relinquish it; that, on the contrary, they earnestly wished to adopt the best plan of securing it.

After some desultory conversation, Mr. MONROE spoke as follows: Mr. Chairman, my conduct respecting the transactions of Congress, upon this interesting subject, since my return to the state, has been well known to many worthy gentlemen here. I have often been called upon before this, in a public line, and particularly in the last Assembly, whilst I was present, for information of these transactions; but have heretofore declined it, and for reasons that were held satisfactory. Being amenable, upon the principles of the federal compact, to the legislature for my conduct in Congress, it cannot be doubted, if required, it was my duty to obey their directions; but that honorable body thought it best to dispense with such demand. The right in this assembly is unquestionably more complete, having powers paramount to that; but even here I could wish it had not been exerted, as I understand it to be, by going into committee for that purpose. Before, however, I enter into this subject, I cannot but observe it has given me pain to hear it debated, by honorable gentlemen, in a manner that has appeared not altogether free from exception. For they have not gone into it fully, and given a proper view of the transactions in every part, but of those only which preceded and were subsequent to that which has been the particular object of inquiry — a conduct that has seemed so much calculated to make an impression favorable to their wishes in the present instance. But, in making this observation, I owe it to those gentlemen to declare that it is my opinion such omission has proceeded not from intention, but their having forgotten facts, or from some cause not obvious to me, and which I make no doubt they will readily explain.

The policy of this state respecting this river has always been the same. It has contemplated but one object — the opening it for the use of the inhabitants whose interest depended on it; and in this she has, in my opinion, shown her wisdom and magnanimity. I may, I believe, with propriety say that all the measures that have at any time been taken by Congress for that purpose were

adopted at the instance {335} of this state. There was a time, it is true, sir, when even this state in some measure abandoned the object, by authorizing this cession to the court of Spain. But let us take all circumstances rate view, as they were at that time, and I am persuaded it will by no means show a departure from this liberal and enlightened system of policy, although it may manifest an accommodation to the exigencies which pressed on us at the time. The Southern States were overrun, and in possession of the enemy. The governments of South Carolina and Georgia were prostrate, and opposition there an end. North Carolina made but a feeble resistance; and Virginia herself was greatly harassed by the enemy in force at that time in the heart of the country, and by impressments for her own and the defence of the Southern States. In addition to this, the finances of the United States were in a deplorable condition, if not totally exhausted; and France, our ally, seemed anxious for peace; and, as the means of bringing the war to a more happy and speedy conclusion, the object of. this cession was the hopes of uniting Spain in it, with all her forces, If I recollect aright, me, at this moment the minister of the United States at the court of Madrid, informed Congress of the difficulty he found in prevailing upon that court to acknowledge our independence, or take any measure in our favor: and suggested the jealousy with which it viewed our settlements in the western country, and the probability of better success provided we would cede the navigation of this river, as the consideration. The latter circumstances were made known to the legislature, and they had their weight. All inferior objects must yield to the safety of society itself. A resolution passed to that effect. An act of Congress likewise passed, and the minister of the United States had full authority to relinquish this valuable right to that court, upon the condition above stated. But what was the issue of this proposition? Was any treaty made with Spain that obtained an acknowledgment of our independence, although at war with Great Britain, and such acknowledgment would have cost her nothing? Was a loan of money accomplished? In short does it appear that even Spain herself thought it an object of any importance? So soon as the war ended, this resolution was rescinded. The power to make such a treaty was revoked. So that this system of policy was departed from, only for a short {336} time, for the most important object that can be conceived, and resumed again as soon as it possibly could be.

After the peace, it became the business of Congress to investigate the relation of these states to the different powers of the earth; in a more extensive view than they had hitherto done, and particularly in the commercial line, and to make arrangements for entering into treaties with them on such terms as might be mutually beneficial for each party. As the result of the deliberations of that day, it was resolved, "That commercial treaties be formed, if possible, with said powers, (those of Europe in particular, Spain included,) upon similar principles, and three commissioners, Mr. Adams, Mr. Franklin, and Mr. Jefferson, be appointed for that purpose." So that an arrangement for a treaty of commerce with Spain had already been taken, Whilst these powers were in force, a representative from Spain arrived, authorized to treat with the United States on the interfering claims of the two nations respecting the Mississippi, and the boundaries, and other concerns wherein they were respectively interested. A similar commission was given to the honorable the secretary of foreign affairs, on the part of the United States, with these *ultimata*: "That he enter into no treaty, compact, or convention whatever, with the said representative of Spain, which did not stipulate our right to the navigation of the Mississippi, and the boundaries as established in our treaty with Great Britain." And thus the late negotiation commenced, and under auspices, as I supposed, very favorable to the wishes of the United States; for Spain had become sensible of the propriety of cultivating the friendship of the states.

Knowing our claim to the navigation of this river, she had sent a minister hither principally to treat on that point; and the time would not be remote when, under the increasing population of that country, the inhabitants would be able to open it without our assistance or her consent. These circumstances being considered, was it not presumable she intended to make a merit of her concession to our wishes, and to agree to an accommodation upon that subject, that would not only be satisfactory, but highly pleasing to the United States?

But what was the issue of this negotiation? How was it terminated? Has it forwarded the particular object in view, or otherwise promoted the interest and the harmony of {337} the states, or any of them? Eight or ten months elapsed without any communications of its progress to Congress. At length a letter was received from the secretary, stating that difficulties had arisen in his negotiation with the representative of Spain, which, in his opinion, should be so managed, as that even their existence should remain a secret for the present; and proposing that a committee be appointed, with full power to direct and instruct him in every case relative to the proposed treaty. As the only *ultimata* in his instructions respected the Mississippi and the boundaries, it readily occurred that these occasioned the difficulties alluded to, and were those he wished to remove. And for many reasons this appeared, at least to me, an extraordinary proposition. By the Articles of Confederation, nine states are necessary, to enter into treaties. The instruction is the foundation of the treaty; for, if it is formed agreeably thereto, good faith requires that it be ratified. The practice of Congress hath also been always, I believe, in conformity to this idea. The instructions under which our commercial treaties have been made were carried by nine states. Those under which the secretary now acted were passed by nine states. The proposition then would be, that the powers which, under the Constitution, nine states only were competent to, should be transferred to a committee, and the object, thereby to disengage himself from the *ultimata* already mentioned in his existing instructions. In this light the subject was taken up, and on these principles discussed. The secretary, Mr. Jay, being at length called before Congress to explain the difficulties mentioned in his letter, presented to their view the project of a treaty of commerce, containing, as he supposed, advantageous stipulations in our favor, in that line; in consideration for which, we were to contract to forbear the use of the navigation of the River Mississippi for the term of twenty-five or thirty years; and he earnestly advised our adopting it.

The subject now took a decided form: there was no further ambiguity in it; and we were surprised, for reasons that have been already given, that he had taken up the subject of commerce at all. We were greatly surprised that it should, form the, principal object of the project, and that partial or temporary sacrifice of that interest, for the advancement of which the negotiation was set on foot, should {338} be the consideration proposed to be given for it. But the honorable secretary urged that it was necessary to stand well with Spain; that the commercial project was a beneficial one, and should not be neglected; that a stipulation to forbear the use contained an acknowledgment, on her part, of the right in the United States; that we were in no condition to take the river, and therefore gave nothing for it; with other reasons, which, perhaps, I have forgotten; for the subject in detail has nearly escaped my memory. We differed with the honorable secretary almost in every respect. We admitted, indeed, the propriety of standing well with Spain, but supposed we might accomplish that end at least on equal terms. We considered the stipulation to forbear the use as a species of barter that should never be countenanced in the Councils of the American states, since it might tend to the destruction of society itself; for a forbearance of the use of one river might lead to more extensive consequences — to the

Chesapeake, the Potomac, or any other of the rivers that emptied into it. In short, that the councils of the confederacy should be conducted with more magnanimity and candor — they should contemplate the benefit of all parts upon common principles, and not the sacrifice of one part for that of another. There appeared to us a material difference between stipulating by treaty to forbear the use, and not being able to open the river: the former would be considered by the inhabitants of the western country as an act of hostility; the latter might be justified by our inability. And with respect to the commercial part of the project, we really thought it an ill-advised one, on its own merits solely.

Thus was this project brought before Congress, and, so far as I recollect, in this form, and upon these principles. It was subject of tedious and lengthy discussion in that honorable body. Every distinct measure that was taken I do not remember, nor do I suppose it of consequence. I have shown the outlines of the transaction, which is, if I apprehend rightly, all that the committee wish to possess. The communications of the secretary were referred to a committee of the whole house. The delegates of the seven easternmost states voted that the *ultimatum* in the secretary's instructions be repealed; which was reported to the house, and entered on the journal, by the secretary of Congress, that the question was Carried. Upon this entry, a constitutional {339} question arose to this effect: "Nine states belong necessary, by the federal Constitution, to give an instruction, and seven having repealed a part of an instruction so given, for the formation of a treaty with a foreign power, so as to alter its import, and authorize, under the remaining part thereof, the formation of a treaty, on principles altogether different from what the said instruction originally contemplated, — can such remaining part be considered as in force, and constitutionally obligatory?" We pressed on Congress for a decision on this point often, but without effect.

Notwithstanding this, I understood it was the intention of the secretary to proceed, and conclude a treaty, in conformity to his project, with the minister of Spain. In this situation I left Congress. What I have since heard belongs not to me to discover. Other gentlemen have more complete information of this business, in the course it has taken, than I can possibly have been able to obtain; for having done my duty whilst there, I left it for others who succeeded me to perform theirs, and I have made but little further inquiry respecting it. The animated pursuit that was made of this object, required, and, I believe, received, as firm an opposition. The Southern States were on their guard, and warmly opposed it. For my part, I thought it my duty to use every effort in Congress for the interest of the Southern States. But so far as depended on me, with my official character it ceased. With many of those gentlemen, to whom I always considered it as my particular misfortune to be opposed, I am now in habits of correspondence and friendship, and I am concerned for the necessity which has given birth to this relation.

Whether the delegates of those states spoke the language of their constituents — whether it may be considered as the permanent interest of such states to depress the growth and increasing population of the western country — are points which I cannot pretend to determine. I must observe, however, that I always supposed it would, for a variety of reasons, prove injurious to every part of the confederacy. These are well understood, and need not be dilated on here. If, however, such should be the interest of seven states, let gentlemen contemplate the consequences in the operation of the government, as it applies to this subject. I have always been of opinion, sir, that the American states, as to all national objects, had, in every respect, a common interest,

Few persons {340} would be willing to bind them together by a stronger or more indissoluble bond, or give the national government more powers, than myself. I only wish to prevent it from doing harm, either to states or individuals; and the rights and interests of both, in a variety of instances in which they are now left unprotected, might, in my opinion, be better guarded. If I have mistaken any facts, honorable gentlemen will correct me. If I have omitted any, as it has not been intentional, so I shall be happy with their assistance to supply the defect.

Mr. Monroe added several other observations, the purport of which was, that the interest of the western country would not be as secure, under the proposed Constitution, as under the Confederation; because, under the latter system, the Mississippi could not be relinquished without the consent of nine states — whereas, by the former, he said, a majority, or Seven states, could yield it. His own opinion was, that it would be given up by a majority of the senators present in the Senate, with the President, which would put it in the power of less than seven states to surrender it; that the Northern States were inclined to yield it; that it was their interest to prevent an augmentation of the southern influence and power; and that, as mankind in general, and states in particular, were governed by interest, the Northern States would not fail of availing themselves of the opportunity, given them by the Constitution, of relinquishing that river, in order to depress the western country, and prevent the southern interest from preponderating.

## **Mr. GRAYSON.**

Mr. Chairman, the honorable gentleman was mistaken when he supposed that I said seven states had absolutely voted to surrender the navigation of the Mississippi. I only spoke of the general disposition of the states, which I alleged to be actuated by interest; that consequently the Carrying states were necessarily inclined against the extension of the interest and influence of the productive states; and that, therefore, they would not favor any measure to extend the settlements to the westward.

I wished not to enter into this discussion, for the reasons mentioned by my honorable friend. Secrecy was required on this subject. I told Congress that imposing secrecy, on such a great occasion, was unwarrantable. However, as it was not given up, I conceived myself tinder some restraint. {341} But since it has come before the committee, and they desire to develop the subject, I shall stand excused for mentioning what I know of it. My honorable friend gave a very just account of it, when he said that the Southern States were on their guard, and opposed every measure tending to relinquish or waive that valuable right. They would not agree to negotiate, but on condition that no proposition whatever should be made to surrender that great right. There was a dispute between this country and Spain, who claimed one half of Georgia, and one half of Kentucky, or, if not that proportion, a very considerable part, as well as the absolute and exclusive navigation of the Mississippi. The Southern States thought that the navigation of the Mississippi should not be trusted to any hands but those in which the Confederation had placed the right of making treaties. That system required the consent of nine states for that purpose. The secretary for foreign affairs was empowered to adjust the interfering claims of Spain and the United States with the Spanish minister; but, as my honorable friend said, with an express prohibition of entering into any negotiation that would lead to the surrender of that river. Affairs continued in this state for some time. At length a proposition was made to Congress, not directly, but by a side wind. The first proposal was, to take off the fetters of the secretary. When the

whole came out, it was found to be a proposal to cede the Mississippi to Spain for twenty-five or thirty years, (for it was in the disjunctive,) in consideration of certain commercial stipulations. In support of this proposal, it was urged that the right was in him who surrendered; and that their acceptance of a temporary relinquishment was an acknowledgment of our right, (which would revert to us at the expiration of that period,) that we could not take by war: that the thing was useless to us, and that it would be wise and politic to give it up, as we were to receive a beneficial compensation for that temporary cession. Congress, after a great deal of animosity, came to a resolution which, in my opinion, violated the Confederation. It was resolved, by seven states, that the prohibition in the secretary's instruction should be repealed; whereby the unrepealed part of his instructions authorized him to make a treaty, yielding that inestimable navigation, although, by the Confederation, nine states were necessary to concur in the formation of a treaty! {342} How, then, could seven states constitutionally adopt any measure, to which, by the Constitution, nine states alone were competent? It was entered on the journals and transmitted to the secretary of foreign affairs, for his direction in his negotiation with the Spanish minister.

If I recollect rightly, by the law of nations, if a negotiator makes a treaty, in consequence of a power received from a sovereign authority, non-compliance with his stipulations is a just cause of war. The opposition suggested (whether wrong or not let this house determine) that this was the case; that the proceedings were repugnant to the principles and express letter of the Constitution; and that, if the compact which the secretary might form with the Spanish minister should not be complied with, it would be giving Spain a just cause of quarrel; so that we should be reduced to the dilemma of either violating the Constitution by a compliance, or involving us in a war by a non-compliance. The opposition remonstrated against these transactions, (and their remonstrance was entered on the journal,) and took every step for securing this great national right. In the course of the debates in Congress on this subject, which were warm and animated, it was urged that Congress, by the law of nations, had no right, even with the consent of nine states, to dismember the empire, or relinquish any part of the territory, appertaining to the aggregate society, to any foreign power. Territorial dismemberment, or the relinquishment of any other privilege, is the highest act of a sovereign power. The right of territory has ever been considered as most sacred, and ought to be guarded in the most particular and cautious manner. Whether that navigation be secure on this principle, by the new Constitution, I will not pretend to determine. I will, however, say one thing. It is not well guarded under the old system. A majority of seven states are disposed to yield it. I speak not of any particular characters. I have the charity to suppose that all mankind act on the best motives. Suffice it for me to tell direct and plain facts, and leave the conclusion with this honorable house.

It has been urged, by my honorable friend on the other side, (Mr. Madison,) that the Eastern States were averse to surrender it during the war, and that the Southern States proposed it themselves, and wished to yield it. My honorable {343} friend last up has well accounted for this disgraceful offer, and I will account for the refusal of the Eastern States to surrender it.

Mr. Chairman, it is no new thing to you to discover these reasons. It is well known that the Newfoundland fisheries and the Mississippi are balances for one another; that the possession of one tends to the preservation of the other. This accounts for the eastern policy. They thought that, if the Mississippi was given up, the Southern States would give up the right of the fishery, on

which their existence depends. It is not extraordinary, therefore, while these great rights of the fishery depend on such a variety of circumstances, — the issue of war, the success of negotiations, and numerous other causes, — that they should wish to preserve this great counterbalance. What has been their conduct since the peace? When relieved from the apprehensions of losing that great advantage, they are solicitous of securing a superiority of influence in the national councils. They look at the true interest of nations. Their language has been, "Let us prevent any new states from rising in the western world, or they will outvote us — we shall lose our importance, and become as nothing in the scale of nations. If we do not prevent it, our countrymen will remove to those places, instead of going to sea, and we shall receive no particular tribute or advantage from them."

This, sir, has been the language and spirit of their policy, and I suppose ever will be. The Mississippi is not secured under the old Confederation; but it is better secured by that system than by the new Constitution. By the existing system, nine states are necessary to yield it. A few states can give it away by the paper on your table. But I hope it will never be put in the power of a less number than nine states. Jersey, we are told, changed her temper on that great occasion. I believe that that mutability depended on characters. But we have lost another state — Maryland. For, from fortuitous circumstances, those states deviated from their natural character — Jersey in not giving up the right of the Mississippi, and Maryland in giving it up. Whatever be their object, each departed from her natural disposition. It is with great reluctance I have said any thing on the subject, and if I have misrepresented facts, I wish to be corrected.

### **{344} Mr. HENRY**

then arose, and requested that the honorable gentleman (Mr. Monroe) would discover the rest of the project, and what Spain was to do, on her part, as an equivalent for the cession of the Mississippi.

### **Mr. MONROE.**

Mr. Chairman, I do not thoroughly recollect every circumstance relative to this project. But there was to be a commercial intercourse between the United States and Spain. We are to be allowed to carry our produce to the ports of Spain, and the Spaniards to have an equal right of trading hither. It was stipulated that there should be a reciprocity of commercial intercourse and benefits between the subjects of Spain and the citizens of the United States. The manufactures of Spain were to be freely imported and reworked in this country, and our manufactures to be carried to Spain, &c., without obstruction; and both parties were to have mutual privileges in point of commercial intercourse and connection. This, sir, is the amount of the project of Spain, which was looked upon as advantageous to us. I thought myself that it was not. I considered Spain as being without manufactures — as the most slow in the progress of arts, and the most unwise with respect to commerce, of all nations under the sun, (in which respect I thought Great Britain the wisest.) Their gentlemen and nobles look on commerce with contempt. No man of character among them will undertake it. They make little discrimination with any nation. Their character is to shut out all nations, and exclude every intercourse with them; and this would be the case with respect to us. Nothing is given to us, by this project, but what is given to all other nations. It is

bad policy, and unjustifiable, on such terms to yield that valuable right. Their merchants have great stocks in trade. It is not so with our merchants. Our people require encouragement. Mariners must be encouraged. On a review of these circumstances, I thought the project unwise and impolitic.

## **Mr. MADISON.**

Mr. Chairman, it is extremely disagreeable to me to enter into this discussion, as it is foreign to the object of our deliberations here, and may, in the opinion of some, tend to sully the reputation of our public councils. As far as my memory will enable me, I will develop the subject. We shall not differ, from one another with respect to facts: perhaps we may differ with respect to principles. {345} I will take the liberty to observe that I was led, before, to make some observations which had no relation to the subject under consideration, as relative to the western country, to obviate suggestions of gentlemen which seemed to me to be groundless. I stated that there was a period when the Southern States were advocates for the alienation, or suspension, of the right to the Mississippi, (I will not say which,) and the Eastern States were against both. I mention this to show that there was no disposition in that part to surrender that right, or dispose of that country. I do suppose that the fishery had its influence on those states. No doubt it was the case.

For that and other reasons, they still continue against the alienation; for it might lessen the security of retaining the fishery. From the best information, it never was the sense of the people at large, or the prevailing character of the Eastern States, to approve of the measure. If interest, sir, should continue to operate on them, I humbly conceive that they will derive more advantage from holding the Mississippi than even the Southern States; for, if the carrying business be their natural province, how can it be so much extended and advanced as by giving encouragement to agriculture in the western country, and having the emolument of carrying their produce to market? The carrying trade must depend on agriculture, for its support, in a great measure. In what place is agriculture so capable of improvement and great extension as in the western country? But whatever considerations may prevail in that quarter, or any other, respecting their interest, I think we may fairly suppose that the consideration which the honorable member mentioned, and which has been repeated, — I mean the emigrations which are going on to the westward, — must produce the same effect as to them which it may produce with respect to us. Emigrations are now going on from that quarter, as well as from this state.

I readily confess that neither the old Confederation nor the new Constitution involves a right to give up the navigation of the Mississippi. It is repugnant to the law of nations. I have always thought and said so. Although the right be denied, there may be emergencies which will make it necessary to make a sacrifice. But there is a material difference between emergencies of safety in time of war, and those {346} which may relate to mere commercial regulations. You might, on solid grounds, deny, in peace, what you give up in war. I do not conceive, however, that there is that extreme aversion, in the minds of the people of the Eastern States, to emigrate to the westward, which was insinuated by my honorable friend. Particular citizens, it cannot be doubted, may be averse to it; but it is the sense of the people at large which will direct the public measures. We find, from late arrangements made between Massachusetts and New York, that a

very considerable country to the westward of New York was disposed of to Massachusetts, and by Massachusetts to some individuals, to conduct emigrants to that country.

There were seven states who thought it right to give up the navigation of the Mississippi, for twenty-five years, for several reasons which have been mentioned. As far as I can recollect, it was nearly as my honorable friend said. But they had no idea of absolutely alienating it. I think one material consideration which governed them was, that there were grounds of serious negotiation between Great Britain and Spain, which might bring on a coalition between those nations, which might enable them to bind us on different sides, permanently withhold that navigation from us, and injure us in other respects materially. The temporary cession, it was supposed, would fix the permanent right in our favor, and prevent that dangerous coalition. It is but justice to myself to say that, however plausible the reasons urged for its temporary cession may have been, they never convinced me of its utility. I have uniformly disapproved of it, and do now.

With respect to the secretary of foreign affairs, I am intimately connected with him. I shall say nothing of his abilities, and attachment to his country. His character is established in both respects. He has given a train of reasoning which governed him in his project. If he was mistaken, his integrity and probity more than compensate for the error. I am led to think there is no settled disposition in seven states to give up that object, because New Jersey, on a further consideration of the subject, actually gave instructions to her delegates to oppose it. And what was the ground of this? I do not know the extent and particular reasons of her instructions. But I recollect that a material consideration {347} was, that the cession of that river would diminish the value of the western country, (which was a common fund for the United States,) and would, consequently, tend to impoverish their public treasury. These, sir, were rational grounds.

Give me leave, sir, — as I am upon this subject, and as the honorable gentleman has raised a question whether it be not more secure under the old than the new Constitution, — to differ from him. I shall enter into the reasoning which, in my mind, renders it more secure under the new system. Two thirds of the senators present, (which will be nine states, if all attend to their duty,) and the President, must concur in every treaty which can be made. Here are two distinct and independent branches, which must agree to every treaty. Under the existing system, two thirds of the states must concur to form a treaty. But it is but one body. Gentlemen may reason and conclude differently on this subject. I own that, as far as I have any rights, which are but trivial, I would rather trust them to the new than the old government. Besides, let me observe that the House of Representatives will have a material influence on the government, and will be additional security in this respect. But there is one thing which he mentioned which merits attention. If commercial policy be a source of great danger, it will have less influence in the new system than in the old; for, in the House of Representatives, it will have little or no influence. They are drawn from the landed interest, taken from the states at large, and many of them from the western country; whereas the present members of Congress have been taken from the Atlantic side of the continent. When we calculate the dangers that may arise in any case, we judge from the rules of proportion and chances of numbers. The people at large choose those who elect the President. The weight of population will be to the southward, if we include the western country. There will then be a majority of the people in favor of this right. As the President must be influenced by the sense and interest of his electors, as far as it depends on him,

(and his agency in making treaties is equal to that of the Senate,) he will oppose the cession of that navigation. As far as the influence of the representatives goes, it will also operate in favor of this right. The power of treaties is not lodged in the senators of particular states. Every state has an equal weight. If {348} ten senators can make a treaty, ten senators can prevent one from being made. It is from a supposition that all the southern delegates will be absent, that ten senators, or two thirds of a majority, can give up this river. The possibility of absence operates equally as much against the Northern States. If one fifth of the members present think the measure erroneous, the votes of the states are to be taken upon it, and entered on the journals. Every gentleman here ought to recollect that this is some security, as the people will thereby know those who advocate iniquitous measures. If we consider the number of changes in the members of the government, we shall find it another security. But, after all, sir, what will this policy signify, which tends to surrender the navigation of the Mississippi? Resolutions of Congress to retain it may be repeated, and reechoed from every part of the United States. It is not resolutions of this sort which the people of this country wish for. They want an actual possession of the right, and protection in its enjoyment. Similar resolutions have been taken, under the existing system, on many occasions. But they have been heretofore, and will be hereafter, in my opinion, nugatory and fruitless, unless a change takes place which will give energy to the acts of the government.

I will take the liberty to touch once more on the several considerations which produced the question, because perhaps the committee may not yet thoroughly comprehend it. In justice to those gentlemen who concluded in favor of the temporary cession, I mention their reasons, although I think the measure wrong. The reasons for so doing under the old system will be done away by the new system. We could not, without national dishonor, assert our right to the Mississippi, and suffer any other nation to deprive us of it. This consideration, with others before mentioned, influenced them. I admit it was wrong. But it is sufficient to prove that they acted on principles, of integrity. Will they not be bound by honor and conscience, when we are able to enjoy and retain our right, not to give it up, or suffer it to be interrupted? A weak system produced this project. A strong system will remove the inducement. For may we not suppose it will be reversed by a change of system? I was called up to say what was its present situation. There are some circumstances within my knowledge which I am not at liberty {349} to communicate to this house. I will not go farther than to answer the objections of gentlemen. I wish to conceal no circumstance which I can relate consistently with my duty. As to matters of fact, I have advanced nothing which I presume will be contradicted. On matters of opinion we may differ. Were I at liberty, I could develop some circumstances which would convince this house that this project will never be revived in Congress, and that, therefore, no danger is to be apprehended.

## **Mr. GRAYSON.**

Mr. Chairman, the honorable gentleman last up concluded by leaving impressions that there were some circumstances which, were he at liberty to communicate, would induce this house to believe that the matter would never be revived. Were we to exclude from facts and opinions, or were we to appeal to the resolutions of Congress, a very different conclusion would result. When I was in Congress last, there was a resolution to apologize to his Catholic Majesty for not making the treaty, and intimating that, when the situation of things was altered, it might be done. Had it

not been for one particular circumstance, it would have been concluded on the terms my honorable friend mentioned. When I was last in Congress, the project was not given over. Its friends thought it would be renewed.

With respect to the Mississippi and back lands, the Eastern States are willing to relinquish that great and essential right; for they consider the consequences of governing the Union as of more importance than those considerations which he mentioned should induce them to favor it.

But, says the honorable gentleman, there is a great difference between actually giving it up altogether, and a temporary cession. If the right was given up for twenty-five years, would this country be able to avail herself of her right, and resume it at the expiration of that period? If ever the house of Bourbon should be at war with all Europe, then would be the golden opportunity of regaining it. Without this, we never could wrest it from the house of Bourbon, the branches of which always support each other.

If things continue as they are now, emigrations will continue to that country. The hope that this great national right will be retained, will induce them to go thither. But take away that hope, by giving up the Mississippi for twenty-five years, and the emigrations will cease. As interest {350} actuates mankind, will they go thither when they know they cannot enjoy the privilege of navigating that river, or find a ready market for their produce? There is a majority of states which look forward with anxiety to the benefits of the commercial project with Spain. In the course of the Spanish negotiation, our delegation thought of a project which would be accommodated to their particular interest. It was proposed, by way of compromise, as being suitable to the interest of all the states, that the Spanish crown should make New Orleans a general depository, and that the growth of the American states should be sent down for the use of the Spanish troops; Spain being obliged to foreign nations for provisions. This was throwing out a lure to the Eastern States to carry the produce of that whole country. But this temptation did not succeed. It was thought no object in their view, when greater objects presented themselves.

It was alleged that the emigration from the Eastern States will have the same effect as emigration from this country. I know every step will be taken to prevent emigration from thence, as it will be transferring their population to the Southern States. They will coincide in no measure that will tend to increase the weight or influence of the Southern States. There is, therefore, a wide line of distinction between migrations from thence and from hence.

But we are told, in order to make that paper acceptable to the Kentucky people, that this high act of authority cannot, by the law of nations, be warrantable, and that this great right cannot be given up. I think so also. But how will the doctrine apply to America? After it is actually given away, can it be reclaimed? If nine states give it away, what will the Kentucky people do? Will Grotius and Puffendorf relieve them? If we reason what was done — if seven states attempted to do what nine states ought to have done — you may judge of the attention which will be paid to the law of nations. Should Congress make a treaty to yield the Mississippi, that people will find no redress in the law of nations.

But, says he, Massachusetts is willing to protect emigration. When the act of Congress passed respecting the settlement of the western country, and establishing a state there, it passed in a

lucky moment. I was told that that state was extremely uneasy about it; and that, in order to retain her {351} inhabitants, lands in the province of Maine were lowered to the price of one dollar per acre. As to the tract of country conveyed by New York to Massachusetts, neither of them had a right to it. Perhaps that great line of policy, of keeping the population on that side of the continent, in contradistinction to the emigration to the westward of us, actuated Massachusetts in that transaction. There is no communication between that country and the Mississippi. The two great northern communications are by the North Rivers and by the River St. Lawrence, to the Mississippi. But there is no communication between that country, where the people of Massachusetts emigrate, and the Mississippi; nor do I believe that there ever will be one traveller from it thither.

I have a great regard for the secretary of foreign affairs. In my opinion, all America is under great obligations to him. But I differed in opinion with him.

But the Mississippi is said to be more secure under the new than the old government. It is infinitely more secure under the latter than the former, How is the fact? Seven states wished to pass an affirmative act ceding it, They repealed part of the instructions given the secretary, to enable him to conclude a compact for its cession, and wished to get nine states to agree to it. Nine states, by the Confederation, must concur in the formation of treaties. This saved it. Only seven states were willing to yield it. But, by this Constitution, two thirds of the senators present, with the President, can make any treaty. A quorum is fourteen, two thirds of which are ten. We find, then, that ten members can, at any time, surrender that great and valuable right. As seven states are willing to yield it now, how the gentleman can reason in the manner he does, I cannot conceive.

## **Mr. HENRY.**

Mr. Chairman: I hope, sir, as the honorable gentleman on my left set the example of debating the merits, that whatever may result as consequences of that example, it may not be attributed to me. I hope that I shall be indulged in offering a few words in addition to what has been said. Gentlemen may do what they will. Their reflections will have no influence on me. It is said that we are scuffling for Kentucky votes, and attending to local circumstances. But if you consider the interests of this country, you will find that the interests of Virginia and Kentucky are most intimately {352} and vitally connected. When I see the great rights of the community in real danger, the ideal dangers which gentlemen speak of dissipate. A union with our western brethren is highly desirable, almost on any terms; a union with them, alone, can lessen or annihilate the dangers arising from that species of population of which we have been reminded in the catalogue of dangers which were dwelt upon. They are at present but few in number, but may be very numerous hereafter. If that fatal policy shall take place, you throw them into the arms of Spain. If Congress should, for abase purpose, give away this dearest right of the people, your western brethren will be ruined. We ought to secure to them that navigation which is necessary to their very existence. If we do not, they will look upon us as betrayers of their interest. Shall we appear to care less for their interest than for that of distant people? When gentlemen tell us that the change of system will render our western brethren more secure, and that this system will not betray them, they ought to prove it. When a matter which respects the great national interests of America is concerned, we expect the most decided proofs. Have they given any? Unless you

keep open the Mississippi, you never can increase in number. Although your population should go on to an infinite degree, you will be in the minority in Congress; and although you should have a right to be the majority, yet so unhappily is this system of politics constituted, that you will ever be a contemptible minority. To preserve the balance of American power, it is essentially necessary that the right of the Mississippi should be secured.

But, said the honorable gentleman, the Eastern States will wish to secure their fishery, and will, therefore, favor this right. How does he draw the inference? Is it possible that they can act on that principle? The principle which led the Southern States to admit of the cession, was to avoid the most dreadful perils of war. But their difficulties are now ended by peace. Is there any thing like this that can influence the minds of the people of the north? Since the peace, those states have discovered a determined resolution to give it away. There was no similar danger to compel them to yield it. No, sir, they wished to relinquish it. Without any kind of necessity, they acted in conformity to their natural disposition, with respect to emigrations going {353} on in that quarter. This, thought improbable, may be so. But to say that, because some settlements are going on in New York, Massachusetts will form a connection with the Mississippi, is, to my mind, most wonderful indeed. The great balance will be in the southern parts of America. There is the most extensive and fertile territory. There is the happiest geographical position, situated contiguously to that valuable and inestimable river. But the settlement of that country will not be warranted by the new Constitution, if it will not be forbidden by it.

No constitution under heaven, founded on principles of justice, can warrant the relinquishment of the most sacred rights of society, to promote the interest of one part of it. Do you not see the danger into which you are going, to throw away one of your dearest and most valuable rights? The people of that country now receive great and valuable emoluments from that right being protected by the existing government. But they must now abandon them. For is there any actual security? Show me any clause in that paper which secures that great right. What was the calculation which told you that it would be safer under the new than under the old government? In my mind, it was erroneous. The honorable gentleman told you that there were two bodies, or branches, which must concur to make a treaty. Sir, the President, as distinguished from the Senate, is nothing. They will combine, and be as one. My honorable friend said that ten men, the senators of five states, could give it up. The present system requires the consent of nine states. Consequently, its security will be much diminished. The people of Kentucky, though weak now, will not let the President and Senate take away this right. Look right, and see this abominable policy — consider seriously its fatal and pernicious tendency! Have we not that right guaranteed to us by the most respectable power in Europe? France has guaranteed to us our sovereignty and all its appendages. What are its appendages? Are not the rivers and waters, that wash the shores of the country, appendages inseparable from our right of sovereignty? France has guaranteed this right to us in the most full and extensive manner. What would have been the consequences had this project with Spain been completed and agreed to? France would have told you, "You have {354} given it up yourselves; you have put it on a different footing; and if your bad policy has done this, it is your own folly. You have drawn it on your own heads; and, as you have bartered away this valuable right, neither policy nor justice will dell on me to guaranty what you gave up yourselves." This language would satisfy the most sanguine American.

Is there an opinion that any future projects will better secure you? If this strong government contended for be adopted, seven states will give it up forever; for a temporary cession is, in my opinion, perfectly the same thing. The thing is so obviously big with danger, that the blind man himself might see it.

As to the American secretary, the goodness of his private character is not doubted. It is public conduct which we are to inspect. The public conduct of this secretary goes against the express authority of nine states. Although he may be endowed with the most brilliant talents, I have a right to consider his politics as abandoned. Yet his private virtues may merit applause. You see many attempts made, which, when brought into actual experiment, are found to result from abandoned principles. The states are geographically situated so and so. Their circumstances are well known. It is suggested, this expedient was only to temporize till a more favorable opportunity. Will any gentleman tell me that the business was taken up hastily, when that vote was taken in Congress? When you consider the ability of the gentlemen who voted in Congress on that question, you must be persuaded that they knew what they were about. American interest was fully understood. New Jersey called her delegates from Congress for having voted against this right. Delegates may be called and instructed under the present system, but not by the new Constitution. The measure of the Jersey delegates was adverse to the interest of that state, and they were recalled for their conduct.

The honorable gentleman has said that the House of Representatives would give some curb to this business of treaties respecting the Mississippi. This is to me incomprehensible. He will excuse me if I tell him he is exercising his imagination and ingenuity. Will the honorable gentleman say that the House of Representatives will break through their balances {355} and checks, and break into the business of treaties? He is obliged to support this opinion of his, by supposing that the checks and balances of this Constitution are to be an impenetrable wall for some purposes, and a mere cobweb for some other purposes. What kind of Constitution, then, can this be? I leave gentlemen to draw the inference. I may have misunderstood the gentleman, but my notes tell me that he said the House of Representatives might interfere, and prevent the Mississippi from being given away. They have no power to do this by the Constitution. There will be a majority against it there also. Can you find on the journals the names of those who sacrifice your interest? Will they act so imprudently as to discover their own nefarious project? At present you may appeal to the voice of the people, and send men to Congress positively instructed to obey your instructions. You can recall them if their system of policy be ruinous. But can you in this government recall your senators? Or can you instruct them? You cannot recall them. You may instruct them, and offer your opinions; but if they think them improper, they may disregard them. If they give away or sacrifice your most valuable rights, can you impeach or punish them? If you should see the Spanish ambassador bribing one of your senators with gold, can you punish him? Yes, you can impeach him before the Senate. A majority of the Senate may be sharers in the bribe. Will they pronounce him guilty who is in the same predicament with themselves? Where, then, is the security? I ask not this out of triumph, but anxiously to know if there be any real security.

The gentleman here observed, what I would not give a single pin for. The doctrine of chances, it seems, will operate in our favor. This ideal, figurative doctrine will satisfy no rational people. I have said enough to answer the gentleman as to retaining the navigation.

Give me leave to tell you that, when the great branch of the house of Bourbon has guaranteed to us this right, I wish not to lean on American strength, which may be employed to sacrifice it. This present despised system alone has reserved it. It rests on strong grounds — on the arms of France. The honorable member then told us that he thought the project would not be revived. Here, again, the doctrine of chances is introduced. I will admit that the honorable gentleman {356} can calculate as to future events. But it is too much for him to say that it will not be taken up again. The same disposition may again revive that nefarious project. I can inform him of this — that the American ambassador advises *to let it rest for the present*, which insinuates that it will be resumed at a more favorable opportunity. If this be the language or spirit which causes its suspension, this nefarious, abominable project will be again introduced the first favorable opportunity. We cannot fortify the Atlantic Ocean. The utmost we can do, is to become formidable to the westward. This will be prevented, if this abominable project be adopted. Mr. Henry then added, that, in treating the subject at large, he followed the example of other gentlemen, and that he trusted he should be permitted to consider it generally again.

## Mr. MADISON

arose, and observed, that the particular ground, on which the abandonment of that project was founded, was, that it was repugnant to the wishes of a great part of America. This reason, says he, becomes stronger and stronger every day, and the sense of America will be more and more known, and more and more understood. The project, therefore, will, in all probability, never be revived. [He added some other observations, which could not be heard.]

## Mr. NICHOLAS.

Mr. Chairman, the arguments used to-day, on this occasion, astonish me exceedingly. The most valuable right of a part of the community has been invaded. By whom? By Congress, under the existing system — the worthy members favorite Confederation. Is this an argument to continue that Confederation? Does it not prove that that Confederation is not sufficient for the purposes for which it was instituted? It was doubted what proportion had a right, on that occasion, to repeal the prohibitory part of the secretary's instructions. The Confederation, which makes it a doubt whether they had a right to sacrifice this right, — whether seven states, and not nine, had a right to make the temporary cession, — is the system which merits censure. Yet, by an ingenious and subtile deviation, this instance is brought against this Constitution. We have been alarmed about the loss of the Mississippi, in and out of doors. What does it all amount to? It amounts to an attempt, under the present Confederation, to yield it {357} up. Why have we been told of the great importance of this valuable right? Every man knows it. No man has a greater regard for it than I have. But what is the question which the honorable gentleman ought to ask himself? *Is this right better secured under the present Confederation than the new government?* This is the sole question. I beg leave to draw the attention of the committee to this subject. It is objected, by my friend to my left, that two thirds of the Senate present may advise the President to give up this right by a treaty, by which five states may relinquish it. It is provided, in the first article, that a majority of each house shall constitute a quorum to do business; and then, in the second article, that the President, by and with the advice and consent of the Senate, shall have power to make treaties. What part of the Senate? It adds, "Provided two thirds of the senators

concur." What is the inference? That there must be a quorum, and *two thirds of the whole* must agree. I shall be told, perhaps, that this construction is not natural, not the positive construction of the clause. If the right construction be, that two thirds of a quorum, or ten senators, may, with the President, make a treaty, — to justify the conclusion, that the Mississippi may be given away by five states, two most improbable things must concur: first, that, on the important occasion of treaties; ten senators will neglect to attend; and in the next place, that the senators whose states are most interested in being fully represented, will be those who will fail to attend. I mean those from the Southern States. How natural this supposition is, I refer to the candor of the committee. But we are told that we have every thing to fear from the Northern States, because they will prevent an accession of states to the south. The policy of states will sometimes change. This is the case with those states, if, indeed, they were enemies to the right; and therefore, as I am informed by very good authority, Congress has admitted Kentucky, as a state, into the Union. Then the law of nations will secure it to them, as the deprivation of territorial rights is obviously repugnant to that law.

But we are told that we may not trust them, because self-interest will govern them. To that interest I will appeal. You have been told that there was a difference between the states — that they were naturally divided into {358} carrying and non-carrying states. It is not reasonable to presume that the advancement of population and agriculture, in the western country, will mostly operate in favor of those states, who, from their situation, are best calculated to carry the produce of America to foreign markets. Besides, as members of the Union, they will be materially affected by the sale of the back lands, which will be greatly diminished in case of the relinquishment of that right. The same reason which induced them to erect states there, will also actuate them on every future occasion.

But Congress has violated the Confederation. Shall we continue, then, under a government which warrants, or cannot prevent violations? Shall we hesitate to embrace a government which will check them? But, says the honorable gentleman over the way, (Mr. Grayson,) the Eastern States were interested, during the war, in retaining the Mississippi. But now they have nothing to fear. Will war not return? A great part of his argument turns upon that supposition: — *We shall always have peace, and need make no provision against wars*. Is not this deceiving ourselves? Is it not fallacious? Did there ever exist a nation which, at some period or other, was not exposed to war? As there is no security against future wars, the New England States will be as much interested in the possession of the Mississippi hereafter, as they were during the war. But, says he, the Confederation affords greater security to the western country than the new government. Consider it maturely, and you will find the contrary to be a fact. The security arising from the Confederation is said to be this, that nine states must concur in the formation of a treaty. If, then, hereafter thirty states should come into the Union, yet nine states will still be able to make a treaty. Where, then, is your boasted security, if nine states can make a treaty, although ever so many states should come into the Union? On the other hand, how is this guarded under the new Constitution? No *certain limited number of states* is required to form a treaty. As the number of states will be increasing in the Union, the security will be increased. Every new state will bring an accession of security, because two thirds of the senators must concur. Let the number of states increase ever so much, two thirds of the senators must concur. According to the present system, nine states may make a treaty. It will {359} therefore take five states to prevent a treaty from being made. If five states oppose a treaty, it cannot be made. Let us see how it is in the new

Constitution. Two thirds of the senators must agree. Kentucky, added to the other states, will make fourteen states. Twenty-eight senators will be the representation of the states, two thirds of which will be nineteen; and if nine members concur in opposition, the Senate can do no act. Five states, you are told, have concurred in opposing the relinquishment of that right. Kentucky has come into the Union. She will oppose it naturally. It may be naturally concluded, then, that there will be at least twelve members in the Senate against it; so that there will be several persons in the Senate more than will be sufficient to prevent the alienation or suspension of that river. From this true representation, it will at least be as secure under the new as under the old government.

But, says he, the concurrence of the President to the formation of treaties will be no security. Why so? Will he not injure himself, if he injures the states, by concurring in an injudicious treaty? How is he elected? Where will the majority of the people be? He told you that the great weight of population will be in the southern part of the United States. Their numbers will weigh in choosing the President, as he is elected by electors chosen by the people in proportion to their numbers. If the Southern States be interested in having the Mississippi, and have weight in choosing the President, will he not be a great check in favor of this right? Another thing is treated with great contempt. The House of Representatives, it seems, can have no influence in making treaties. What is the House of Representatives? Where, says he, are your checks and balances, your rope-dancers, &c.? How is this business done in his favorite government? The king of Great Britain can make what treaties he pleases. But, sir, do not the House of Commons influence them? Will he make a treaty manifestly repugnant to their interest? Will they not tell him he is mistaken in that respect, as in many others? Will they not bring the minister who advises a bad treaty to punishment? This gives them such influence that they can dictate in what manner they shall be made. But the worthy member says that this strong government is such a one as Kentucky ought to dread. Is this just, Mr. Chairman? Is it just by general {360} assertions, without arguments or proofs, to cast aspersions on it?

What is the situation of that country? If she has a right, and is in possession of the river, I ask the gentleman why she does not enjoy the fruits of her right. I wish, if she has the river, she would give the people passports to navigate it. What do they want? They want a government which will force from Spain the navigation of that river. I trust, sir, that, let the situation, government, and politics, of America be what they may, I shall live to see the time when the inhabitants of that country will wrest from that nation that right which she is so justly entitled to. If we have that government which we ought to have, they will have ability to enforce their right. But he treats with ridicule the situation of the territory settled by Massachusetts. They can have no connection with the Mississippi. Sir, they are materially affected by the navigation of that river. The facility of disposing of their produce, and intercourse with other people, are essential interests.

But, sir, we have the guaranty of France under the existing system. What avails this guaranty? If dependence be put upon it, why did they not put us in possession, and enable us to derive benefits from it? Our possession of it is such that we dare not use it. But the opinion and characters of private men ought to have nothing to do in our discussion. I wish the gentleman had always thought so. If he had, these debates would not have been thus lengthened. But we are not to calculate any thing on New Jersey. You are told she gave instructions to her delegates to vote against the cession of that right. Will not the same principles continue to operate on the minds of the people of that state?

We cannot recall our senators. We can give them instructions; and if they manifestly neglect our interest, we have sufficient security against them. The dread of being recalled would impair their independence and firmness.

I think that Kentucky has nothing to expect from any one state alone in America. She can expect support and succor alone from a strong, efficient government, which can command the resources of the Union when necessary. She can receive no support from the old Confederation. Consider the present state of that country. Declared independent of Virginia, to whom is she to look up for succor? No sister {361} state can help her. She may call on the present general government; but, whatever may be the wish of Congress, they can give them no relief. That country contains all my wishes and prospects. There is my property, and there I intend to reside. I should be averse to the establishment of any system which would be injurious to it. I flatter myself that this government will secure their happiness and liberty.

## Gov. RANDOLPH.

Since I have seen so many attempts made, and so many wrong inducements offered, to influence the delegation from Kentucky, I must, from a regard to justice and truth, give my opinion on the subject. If I have no interest in that country, I hope they will consider what I have to say as proceeding from an impartial mind. — That the people of Kentucky have an unequivocal right to the navigation of the Mississippi, by the law of nature and nations, is clear and undoubted; though, to my own knowledge, a question has arisen, whether the former connection of America with Great Britain has not taken it away from them. There was a dispute respecting the right of Great Britain to that river, and the United States have only the same right which the original possessor had, from whom it was transferred. I am willing to declare that the right is complete; but where is the danger of losing it by the operation of the new government? The honorable gentleman tells us that France has guaranteed to us the possession of that river. *We* need not trouble ourselves about it. France, he supposes, will do every thing for us. Does this pretended security enable us to make use of it? Is there any reasonable motive to induce the government to give it up? If it be not given up, if the guaranty of France be any security now, it will be so then. I wish an honorable gentleman over the way had known certain facts. If he had, they must have operated on his mind to refrain from making such observations. [Here his excellency read the treaty of peace with Great Britain, defining the boundaries of the United States.]

He then declared, that, from the most liberal interpretation, it would never give the inhabitants a right to pass through the middle of New Orleans. I appeal to what the French ambassador said, in 1781, in Congress — that America had no right to the Mississippi. If the opinion of the ambassador {362} of his Most Christian Majesty, and the treaty, have any influence, why are we told such things? There is not a greater or less degree of power, given by this Constitution, than is necessary to be given; but whether the power of treaties be improper to be given, or not, to the general government, I only now ask whether there be any real danger of losing this right. How many senators are there? Twenty-six, supposing the United States remain as they are. We are told that there never were more than seven states willing to give it up; so that there were six states against it. There can be little danger, then, of the loss of that navigation. Pennsylvania is interested to maintain the Mississippi. Her interest will stimulate her to do it. She has settlements near Fort Pitt, on the Ohio, which must be affected greatly by that cession. If his own arguments

be credited, New Jersey is against it. There is no danger of her voting the alienation of that right, as she instructed her delegates to oppose it. The Southern States are naturally opposed to it. There will, therefore, be a majority in favor of the Mississippi — a majority that does not depend on the doctrine of chances. There will be fourteen senators against twelve, admitting the states to remain as they are. It will, moreover, be contrary to the law of nations to relinquish territorial rights. To make a treaty to alienate any part of the United States, will amount to a declaration of war against the inhabitants of the alienated part, and a general absolution from allegiance. They will never abandon this great right. Are not the states interested in the back lands, as has been repeatedly observed? Will not the connection between the emigrants and those they leave behind them, serve to strengthen opposition to it? The gentleman wishes us to show him a clause which shall preclude Congress from giving away this right. It is first incumbent upon him to show where the right is given up. There is a prohibition naturally resulting from the nature of things, it being contradictory and repugnant to reason, and the law of nature and nations, to yield the most valuable right of a community, for the exclusive benefit of one particular part of it.

But there is an expression which clearly precludes, the general government from ceding the navigation of this river. In the 2d clause of the 3d section of the 4th article, Congress is empowered "to dispose of, and make all needful {363} rules and regulations respecting the territory or other property belonging to the United States." But it goes on, and provides that "nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or any particular state." Is this a claim of the particular state of Virginia? If it be, there is no authority in the Constitution to prejudice it. If it be not, then we need not be told of it. This is a sufficient limitation and restraint. But it has been said that there is no restriction with respect to making treaties. The various contingencies which may form the object of treaties, are, in the nature of things, incapable of definition. The government ought to have power to provide for every contingency. The territorial rights of the states are sufficiently guarded by the provisions just recited. If you say that, notwithstanding the most express restriction, they may sacrifice the rights of the states, then you establish another doctrine — that the creature can destroy the creator, which is the most absurd and ridiculous of all doctrines.

The honorable gentleman has warned us from taking rash measures that may endanger the rights of that country. Sir, if this navigation be given up, the Country adjacent will also be given up to Spain; for the possession of the one must be inseparable from that of the other. Will not this be a sufficient check on the general government? This you will admit to be true, unless you carry your suspicion to such an unlimited length as to imagine that they will, among their iniquitous acts, destroy and dismember the Union. As to the objection of my friend over the way, (Mr. Monroe,) that so few states could by treaty yield that navigation, it has been sufficiently answered, and its futility fully detected, by the gentleman who spoke last.

Another mistake, which my friend over the way has committed, is, that the temporary forbearance of the use of the Mississippi might lead to the absolute cession of the Chesapeake. The gentleman has a mind to make up his climax of imaginary objections, or he never would have suffered such an idea to obtrude on his mind. Were the Mississippi, as he says, in danger of being ceded, — which I deny, — yet it could not be a precedent for the relinquishment of the Chesapeake. It never can be put in such a jeopardy. All the Atlantic states will oppose a measure of this sort, lest it should destroy their commerce.

{364} The consanguinity between the western people and the inhabitants of the other states would alone have a powerful operation to prevent any measures injurious to them from being adopted.

Let me, in a few words, endeavor to obviate the strong observations made to the gentlemen from that country. I contend that there is no power given to the general government to surrender that navigation. There is a positive prohibition, in the words I have already mentioned, against it. I consider that the policy of the states, and disposition of the people, make it impossible; and I conclude that their safety is at least as great under the new as under the old government. Let me entreat those gentlemen, whose votes will be scuffled for, to consider in what character they are here. For what have they come hither? To deliberate on a Constitution, which some have said will secure the liberty and happiness of America, and which others represent as not calculated for that purpose. They are to decide on a Constitution for the collective society of the United States. Will they, as honest men, not disdain all applications made to them from local interests? Have they not far more valuable rights to secure? The present general government has much higher powers than that which has been so long contested. We allow them to make war and requisitions without any limitation. That paper contains much higher powers. Let it not be said that we have been actuated from local interests. I wish it may not be said that partial considerations governed any gentleman here, when we are investigating a system for the general utility and happiness of America. I know such narrow views will not influence the gentlemen from that country, because I know their characters. I hope this subject is sufficiently discussed, and that we shall proceed regularly.

## **Mr. CORBIN.**

Mr. Chairman, all attempts made to bias the opinion of any gentleman on this great occasion, are, in my opinion, very reprehensible. No member of this committee can be a more zealous supporter of the right of navigating the Mississippi, and the other rights of the aggregate community, than I am. But that right, sir, is in no danger. This has been proven with much ability by my friend to the left, and other gentlemen. We are told that five states may make a treaty. I say that five states can prevent a treaty from being made.

{365} Will not, my argument be of equal force with theirs? How can five states make a treaty? This presupposes that the members from every other state will be absent when the important subject of treaties will be on the carpet. Is this plausible, or does it not amount to an impossibility? He says that the House of Representatives can have no influence in the formation of treaties. I say, they can. Treaties are generally of a commercial nature, being a regulation of commercial intercourse between different nations. In all commercial treaties, it will be necessary to obtain the consent of the representatives.

[Here a storm arose, which was so violent as to compel Mr. Corbin to desist, and the committee to rise.]

---

**S**ATURDAY, *June 14, 1788.*

A letter from the honorable the president to the Convention was read, stating his inability to attend to his duty in the house to-day.

Whereupon the honorable JOHN TYLER was unanimously elected vice-president, to preside during the inability of the president.

### **Mr. CORBIN**

thought the Mississippi subject had been amply discussed. He hoped that the committee would enter into the discussion of the proposed Constitution regularly; but that, if any gentleman would continue the inquiry relative to that river, he would answer him. He moved that they should debate it clause by clause.

### **Mr. GRAYSON.**

Mr. Chairman, I conceive the investigation of this subject, which materially concerns the welfare of this country, ought not to wound the feelings of any gentleman. I look upon this as a contest for empire. Our country is equally affected with Kentucky. The Southern States are deeply interested in this subject. If the Mississippi be shut up, emigrations will be stopped entirely. There will be no new states formed on the western waters. This will be a government of seven states. This contest of the Mississippi involves this great national contest; that is, whether one part of the continent shall govern the other. The Northern States have the majority, and will endeavor to retain it. This is, therefore, a contest for dominion — for empire. I apprehend that God and nature have intended, from the extent of territory and fertility of soil, that the {366} weight of population should be on this side of the continent. At present, for various reasons, it is on the other side. This dispute concerns every part of Kentucky. A particular investigation ought to offend no gentleman. Mr. Grayson then declared, he hoped the subject would be further continued.

### **Mr. ALEXANDER WHITE**

wished the further discussion of that subject to be postponed till they came to that part which enables the Senate to make treaties. He seconded Mr. Corbin's motion, to proceed clause by clause.

[The 3d section, article 1, was then read.]

### **Mr. TYLER**

hoped that, when amendments should be brought forward, they should be at liberty to take a general view of the whole Constitution. He thought that the power of trying impeachments,

added to that of making treaties, was something enormous, and rendered the Senate too dangerous.

## **Mr. MADISON**

answered, that it was not possible to form any system to which objections might not be made; that the junction of these powers might be in some degree objectionable, but that it could not be amended. He agreed with the gentleman, that, when amendments were brought on, a collective view of the whole system might be taken.

[The 4th and 5th sections were then read.]

## **Mr. MONROE**

wished that the honorable gentleman, who had been in the federal Convention, would give information respecting the clause concerning elections. He wished to know why Congress had an ultimate control over the time, place, and manner, of elections of representatives, and the time and manner of that of senators, and also why there was an exception as to the place of electing senators.

## **Mr. MADISON.**

Mr. Chairman, the reason of the exception was, that, if Congress could fix the place of choosing the senators, it might compel the state legislatures to elect them in a different place from that of their usual sessions, which would produce some inconvenience, and was not necessary for the object of regulating the elections. But it was necessary to give the general government a control over the time and manner of choosing the senators, to prevent its own dissolution.

{367} With respect to the other point, it was thought that the regulation of time, place, and manner, of electing the representatives, should be uniform throughout the continent. Some states might regulate the elections on the principles of equality, and others might regulate them otherwise. This diversity would be obviously unjust. Elections are regulated now unequally in some states, particularly South Carolina, with respect to Charleston, which is represented by thirty members. Should the people of any state by any means be deprived of the right of suffrage, it was judged proper that it should be remedied by the general government. It was found impossible to fix the time, place, and manner, of the election of representatives, in the Constitution. It was found necessary to leave the regulation of these, in the first place, to the state governments, as being best acquainted with the situation of the people, subject to the control of the general government, in order to enable it to produce uniformity, and prevent its own dissolution. And, considering the state governments and general government as distinct bodies, acting in different and independent capacities for the people, it was thought the particular regulations should be submitted to the former, and the general regulations to the latter. Were they exclusively under the control of the state governments, the general government might easily be dissolved. But if they be regulated properly by the state legislatures, the congressional control

will very probably never be exercised. The power appears to me satisfactory, and as unlikely to be abused as any part of the Constitution.

## **Mr. MONROE**

wished to hear an explanation of the clause which prohibits either house, during the session of Congress, from adjourning for more than three days without the consent of the other. He asked if it was proper or right, that the members of the lower house should be dependent on the Senate. He considered that it rendered them in some respect dependent on the senators, as it prevented them from returning home, or adjourning, without their consent; and, as this might increase their influence unduly, he thought it improper.

## **Mr. MADISON**

wondered that this clause should meet with a shadow of objection. It was possible, he observed, that the two branches might not agree concerning the time {368} of adjournment, and this possibility suggested the power given the President of adjourning both houses to such time as he should think proper, in case of their disagreement. That it would be very exceptionable to allow the senators, or even the representatives, to adjourn, without the consent of the other house, at any season whatsoever, without any regard to the situation of public exigencies. That it was possible, in the nature of things, that some inconvenience might result from it; but that it was as well secured as possible.

## **Gov. RANDOLPH**

observed, that the Constitution of Massachusetts was produced as an example, in the grand Convention, in favor of this power given to the President. If, said his excellency, he be honest, he will do what is right: if dishonest, the representatives of the people will have the power of impeaching him.

[The 6th section was then read.]

## **Mr. HENRY.**

Mr. Chairman, our burden should, if possible, be rendered more light. I was in hopes some other gentleman would have objected to this part. The pay of the members is, by the Constitution, to be fixed by themselves, without limitation or restraint. They may therefore indulge themselves in the fullest extent. They may make their compensation as high as they please. I suppose, if they be good men, their own delicacy will lead them to be satisfied with moderate salaries. But there is no security for this, should they be otherwise inclined. I really believe that, if the state legislatures were to fix their pay, no inconvenience would result from it, and the public mind would be better satisfied. But in the same section there is a defect of a much greater consequence. There is no restraint on corruption. They may be appointed to offices without any material restriction, and the principal source of corruption in representatives is the hope or

expectation of offices and emoluments. After the first organization of offices, and the government is put in motion, they may be appointed to any existing offices which become vacant, and they may create a multiplicity of offices, in order thereafter to be appointed to them. What says the clause? "No senator or representative shall, during the time for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments {369} whereof shall have been increased, during such time." This is an idea strangely expressed.

He shall not accept of any office created during the time he is elected for, or of any office whereof the emoluments have been increased in that time. Does not this plainly say that, if an office be not created during the time for which he is elected, or if its emoluments be not increased during such time, he may accept of it? I can see it in no other light. If we wish to preclude the enticement to getting offices, there is a clear way of expressing it. If it be better that Congress should go out of their representative offices by accepting other offices, then it ought to be so. If not, we require an amendment in the clause, that it shall not be so. I may be wrong. Perhaps the honorable member may be able to give a satisfactory answer on this subject.

## **Mr. MADISON.**

Mr. Chairman, I most sincerely wish to give a proper explanation on this subject, in such a manner as may be to the satisfaction of every one. I shall suggest such considerations as led the Convention to approve of this clause. With respect to the right of ascertaining their own pay, I will acknowledge that their compensations, if practicable, should be fixed in the Constitution itself, so as not to be dependent on Congress itself, or on the state legislatures. The various vicissitudes, or rather the gradual diminution, of the value of all coins and circulating medium, is one reason against ascertaining them immutably; as what may be now an adequate compensation, might, by the progressive reduction of the value of our circulating medium, be extremely inadequate at a period not far distant.

It was thought improper to leave it to the state legislatures, because it is improper that one government should be dependent on another; and the great inconveniences experienced under the old Confederation show the states would be operated upon by local considerations, as contradistinguished from general and national interests. Experience shows us that they have been governed by such heretofore, and reason instructs us that they would be influenced by them again. This theoretic inconvenience of leaving to Congress the fixing their compensations is more than counterbalanced by this in the Confederation — that the state legislatures had a right to determine the pay of the members of Congress, {370} which enabled the states to destroy the general government. There is no instance where this power has been abused. In America, legislative bodies have reduced their own wages lower, rather than augmented them. This is a power which cannot be abused without rousing universal attention and indignation. What would be the consequence of the Virginian legislature raising their pay to four or five pounds each per day? The universal indignation of the people. Should the general Congress annex wages disproportionate to their service, or repugnant to the sense of the community, they would be universally execrated. The certainty of incurring the general detestation of the people will prevent abuse.

It was conceived that the great danger was in creating new offices, which would increase the burdens of the people; and not in a uniform admission of all meritorious characters to serve their country in the old offices. There is no instance of any state constitution which goes as far as this. It was thought to be a mean between two extremes. It guards against abuse by taking away the inducement to create new offices, or increase the emolument of old offices; and it gives them an opportunity of enjoying, in common with other citizens, any of the existing offices which they may be capable of executing. To have precluded them from this, would have been to exclude them from a common privilege to which every citizen is entitled, and to prevent those who had served their country with the greatest fidelity and ability from being on a par with their fellow-citizens. I think it as well guarded as reason requires; more so than the constitution of any other nation.

## **Mr. NICHOLAS**

thought it sufficiently guarded, as it prevented the members of the general government from holding offices which they created themselves, or of which they increased the emoluments; and as they could not enjoy any office during their continuance in Congress, to admit them to old offices when they left Congress, was giving them no exclusive privilege, but such as every citizen had an equal right to.

## **Mr. TYLER**

was afraid that, as their compensations were not fixed in the Constitution, Congress might fix them so low, that none but rich men could go; by which the government might terminate in an aristocracy. The states {371} might choose men noted for their wealth and influence, and state influence would govern the Senate. This, though not the most capital objection, he thought was considerable, when joined to others of greater magnitude. He thought the gentleman's account of it was by no means satisfactory. A parallel had been drawn between this power in Congress of fixing their compensations, and that of our Assembly fixing the quantum of their salaries. He was of opinion the comparison did not apply, as there was less responsibility in the former than in the latter case. He dreaded that great corruption would take place, and wished to have it amended so as to prevent it.

## **Mr. GRAYSON.**

Mr. Chairman, it strikes me that they may fix their wages very low. From what has happened in Great Britain, I am warranted to draw this conclusion. I think every member of the House of Commons formerly had a right to receive twenty shillings, or a guineas a day. But I believe that this salary is taken away since the days of corruption. The members of the House of Commons, if I recollect rightly, get nothing for their services as such. But there are some noble emoluments to be derived from the minister, and some other advantages to be obtained. Those who go to Parliament form an idea of emoluments. They expect something besides wages. They go in with the wishes and expectations of getting offices. This, sir, may be the case in this government. My fears are increased from the inconveniences experienced under the Confederation.

Most of the great officers have been taken out of Congress, such as ambassadors to foreign courts, &c. A number of offices have been unnecessarily created, and ambassadors have been unnecessarily sent to foreign countries — to countries with which we have nothing to do. If the present Congress exceeded the limits of propriety, though extremely limited with respect to power in the creation of offices, what may not the future Congress do, when they have, by this system, a full scope of creating what offices and annexing what salaries they please? There are but few members in the Senate and lower house. They may all get offices at different times, as they are not excluded from being appointed to existing offices for the time for which they shall have been elected. Considering the corruption of human {372} nature, and the general tendency of mankind to promote their own interest, I think there is great danger. I am confirmed in my opinion from what I have seen already in Congress, and among other nations. I wish this part, therefore, to be amended, by prohibiting any senator or representative from being appointed to any office during the time for which he was elected, and by fixing their emoluments; though I would not object to the Constitution on this account solely, were there no other defect.

## Mr. MADISON.

### NOTE

Mr. Chairman, let me ask those who oppose this part of the system, whether any alteration would not make it equally, or more liable to objections. Would it be better to fix their compensations. Would not this produce inconveniences? What authorizes us to conclude that the value of coins will continue always the same? Would it be prudent to make them dependent on the state governments for their salaries — on those who watch them with jealous eyes, and who consider them as encroaching, not on the people, but on themselves? But the worthy member supposes that Congress will fix their wages so low, that only the rich can fill the offices of senators and representatives. Who are to appoint them? The rich? No, sir; the people are to choose them. If the members of the general government were to reduce their compensations to a trifle, before the evil suggested could happen, the people could elect other members in their stead, who would alter that regulation. The people do not choose them for their wealth. If the state legislatures choose such men as senators, it does not influence the people at large in their election of representatives. They can choose those who have the most merit and least wealth. If Congress reduce their wages to a trifle, what shall prevent the states from giving a man of merit so much as will be an adequate compensation? I think the evil very remote; and if it were now to happen, the remedy is in our own hands, and may by ourselves be applied.

Another gentleman seems to apprehend infinite mischief from a possibility that any member of Congress may be appointed to an office, although he ceases to be a member the moment he accepts it. What will be the consequence of precluding them from being so appointed? If you have in your country one man whom you could, in time of danger, {373} trust, above all others, with an office of high importance, he cannot undertake it till two years expire if he be a representative, or till six years elapse if a senator. Suppose America was engaged in war, and the man of the greatest military talents and approved fidelity was a member of either house; would it be right that this man, who could lead us to conquer, and who could save his country from destruction, could not be made general till the term of his election expired? Before that time we might be conquered by our enemies. This will apply to civil as well as military officers. It is

impolitic to exclude from the service of his country, in any office, the man who may be most capable of discharging its duties, when they are most wanting.

The honorable gentleman said, that those who go to Congress will look forward to offices, as a compensation for their services, rather than salaries. Does he recollect that they shall not fill offices created by themselves? When they go to Congress, the old offices will be filled. They cannot make any probable calculation that the men in office will die, or forfeit their offices. As they cannot get any new offices, one of these contingencies must happen before they can get any office at all. The chance of getting an office is, therefore, so remote, and so very distant, that it cannot be considered as a sufficient reason to operate on their minds to deviate from their duty.

Let any man calculate in his own mind the improbability of a member of the general government getting into an office, when he cannot fill any office newly created, and when he finds all the old offices filled at the time he enters into Congress. Let him view the danger and impolicy of precluding a member of Congress from holding existing offices, and the danger of making one government dependent on another, and he will find that both clauses deserve applause.

The observations made by several honorable members illustrate my opinion, that it is impossible to devise any system agreeable to all. When objections so contradictory are brought against it, how shall we decide? Some gentlemen object to it because they may make their wages too high; others object to it because they may make them too low. If it is to be perpetually attacked by principles so repugnant, we may cease to discuss. For what is the object of our discussion? Truth, sir. To draw a true and just conclusion. {374} Can this be done without rational premises and syllogistic reasoning?

As to the British Parliament, it is nearly as he says. But how does it apply to this case? Suppose their compensations had been appointed by the state governments, or fixed in the Constitution; would it be a safe government for the Union, if its members depended on receiving their salaries from other political bodies at a distance, and fully competent to withhold them? Its existence would, at best, be but precarious. If they were fixed in the Constitution, they might become extremely inadequate, and produce the very evil which gentlemen seem to fear; for then a man of the highest merit could not act unless he were wealthy. This is the most delicate part in the organization of a republican government. It is the most difficult to establish on unexceptionable grounds. It appears to me most eligible as it is. The Constitution has taken a medium between the two extremes, and perhaps with more wisdom than either the British or the state governments, with respect to their eligibility to office. They can fill no new offices created by themselves, nor old ones of which they increased the salaries. If they were excluded altogether, it is possible that other disadvantages might accrue from it, besides the impolicy and injustice of depriving them of a common privilege. They will not relinquish their legislative, in order to accept other offices. They will more probably confer them on their friends and connections. If this be an inconvenience, it is incident to all governments. After having heard a variety of principles developed, I thought that on which it is established the least exceptionable, and it appears to me sufficiently well guarded.

**Mr. GRAYSON.**

Mr. Chairman, I acknowledge that the honorable gentleman has represented the clause rightly as to their exclusion from new offices; but is there any clause to hinder them from giving offices to uncles, nephews, brothers, and other relations and friends? I imagine most of the offices will be created the first year, and then gentlemen will be tempted to carry on this accommodation.

A worthy member has said — what had been often said before — that, suppose a war took place, and the most experienced and able man was unfortunately in either house, he could not be made general, if the proposed amendment was {375} adopted. Had he read the clause, he would have discovered that it did not extend to military offices, and that the restriction extends to civil offices only. No case can exist, with respect to civil offices, that would occasion a loss to the public, if the members of both houses were precluded from holding any office during the time for which they were elected. The old Confederation is so defective in point of power, that no danger can result from creating offices under it; because those who hold them cannot be paid. The power of making paper money will not be exercised. This country is so thoroughly sensible of the impropriety of it, that no attempt will be made to make any more. So that no danger can arise, as they have not power to pay, if they appoint, officers. Why not make this system as secure as that, in this respect? A great number of offices will be created, to satisfy the wants of those who shall be elected. The worthy member says, the electors can alter them. But have the people the power of making honest men be elected? If he be an honest man, and his wages so low that he could not pay for his expenses, he could not serve them if elected. But there are many thirsting after offices more than public good. Political adventurers go up to Congress solely to advance their own particular emoluments. It is so in the British House of Commons. There are two sets always in that house — one, the landed interest, the most patriotic and respectable; the other, a set of dependants and fortune-hunters, who are elected for their own particular interest, and are willing to sell the interest of their constituents to the crown. The same division may happen among our representatives. This clause might as well not be guarded at all, as in this flimsy manner. They cannot be elected to offices for the terms for which they were elected, and continue to be members of Congress. But as they can create as many offices as they please for the particular accommodation of their friends, it might as well not be guarded at all. Upon the whole, I consider it entirely imperfect.

[The 7th section read.]

## **Mr. GRAYSON**

objected to the power of the Senate to propose or concur with amendments to money bills. He looked upon the power of proposing amendments to be equal, in principle, to that of originating, and that they were, in {376} fact, the same. As this was, in his opinion, a departure from that great principle which required that the immediate representatives of the people only should interfere with money bills, he wished to know the reasons on which it was founded. The lords in England had never been allowed to intermeddle with money bills. He knew not why the Senate should. In the lower house, said he, the people are represented according to their numbers. In the upper house, the states are represented in their political capacities. Delaware, or Rhode Island, has as many representatives here as Massachusetts. Why should the Senate have a right to intermeddle with money, when the representation is neither equal nor just?

## Mr. MADISON.

Mr. Chairman, the criticism made by the honorable member is, that there is an ambiguity in the words, and that it is not clearly ascertained where the origination of money bills may take place. I suppose the first part of the clause is sufficiently expressed to exclude all doubts. The gentlemen who composed the Convention divided in opinion concerning the utility of confining this to any particular branch. Whatever it be in Great Britain, there is a sufficient difference between us and them to render it inapplicable to this country. It has always appeared to me to be a matter of no great consequence, whether the Senate had a right of originating or proposing amendments to money bills, or not. To withhold it from them would create disagreeable disputes. Some American constitutions make no difference. Virginia and South Carolina are, I think, the only states where this power is restrained. In Massachusetts, and other states, the power of proposing amendments is vested, unquestionably, in their senates. No inconvenience has resulted from it. On the contrary, with respect to South Carolina, this clause is continually a source of disputes. When a bill comes from the other house, the Senate entirely rejects it, and this causes contentions. When you send a bill to the Senate, without the power of making any alteration, you force them to reject the bill altogether, when it would be necessary and advantageous that it should pass.

The power of proposing alterations removes this inconvenience, and does not appear to me at all objectionable. I should have no objection to their having a right of originating {377} such bills. People would see what was done, and it would add the intelligence of one house to that of the other. It would be still in the power of the other house to obstruct any injudicious measure proposed by them.

There is no landmark or constitutional provision in Great Britain, which prohibits the House of Lords from intermeddling with money bills; but the House of Commons have established this rule. Yet the lords insist on their having a right to originate them, as they possess great property, as well as the commons, and are taxed like them. The House of Commons object to their claim, lest they should too lavishly make grants to the crown, and increase the taxes. The honorable member says that there is no difference between the right of originating bills and proposing amendments. There is some difference, though not considerable. If any grievances should happen in consequence of unwise regulations in revenue matters, the odium would be divided, which will now be thrown on the House of Representatives. But you may safely lodge this power of amending with the Senate. When a bill is sent with proposed amendments to the House of Representatives, if they find the alterations defective, they are not conclusive. The House of Representatives are the judges of their propriety, and the recommendation of the Senate is nothing. The experience of this state justifies this clause. The House of Delegates has employed weeks in forming a money bill; and because the Senate had no power of proposing amendments, the bill was lost altogether, and a new bill obliged to be again introduced, when the insertion of one line by the Senate would have done. Those gentlemen who oppose this clause will not object to it when they recollect that the senators are appointed by the states, as the present members of Congress are appointed; for, as they will guard the political interests of the states in other respects, they will attend to them very probably in their amendments to money bills. I think this power, for these considerations, is useful and necessary.

## Mr. GRAYSON

still considered the power of proposing amendments to be the same, in effect, as that of originating. The Senate could strike out every word of the bill, except the word whereas, or any other introductory word, and might substitute new words of their own. As the state of Delaware was not so large as the county of Augusta, and Rhode {378} Island was still less, and yet had an equal suffrage in the Senate, he could not see the propriety of giving them this power, but referred it to the judgment of the house.

[The 8th section read.]

## Mr. CLAY

wished to be informed why the Congress were to have power to provide for calling forth the militia, to put the laws of the Union into execution.

## Mr. MADISON

supposed the reasons of this power to be so obvious that they would occur to most gentlemen. If resistance should be made to the execution of the laws, he said, it ought to be overcome. This could be done only in two ways — either by regular forces or by the people. By one or the other it must unquestionably be done. If insurrections should arise, or invasions should take place, the people ought unquestionably to be employed, to suppress and repel them, rather than a standing army. The best way to do these things was to put the militia on a good and sure footing, and enable the government to make use of their services when necessary.

## Mr. GEORGE MASON.

### Militia AND HOW TO ABANDON IT

Mr. Chairman, unless there be some restrictions on the power of calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions, we may very easily see that it will produce dreadful oppressions. It is extremely unsafe, without some alterations. It would be to use the militia to a very bad purpose, if any disturbance happened in New Hampshire, to call them from Georgia. This would harass the people so much that they would agree to abolish the use of the militia, and establish a standing army. I conceive the general government ought to have power over the militia, but it ought to have some bounds. If gentlemen say that the militia of a neighboring state is not sufficient, the government ought to have power to call forth those of other states, the most convenient and contiguous. But in this case, the consent of the state legislatures ought to be had. On *real* emergencies, this consent will never be denied, each state being concerned in the safety of the rest. This power may be restricted without any danger. I wish such an amendment as this — that the militia of any state should not be marched beyond the limits of the adjoining state; and if it be necessary to draw them from one end of the continent to {379} the other, I wish such a check, as the consent of the state

legislature, to be provided. Gentlemen may say that this would impede the government, and that the state legislatures would counteract it by refusing their consent. This argument may be applied to all objections whatsoever. How is this compared to the British constitution? Though the king may declare war, the Parliament has the means of carrying it on. It is not so here. Congress can do both. Were it not for that check in the British government, the monarch would be a despot. When a war is necessary for the benefit of the nation, the means of carrying it on are never denied. If any unjust requisition be made on Parliament, it will be, as it ought to be, refused. The same principle ought to be observed in our government. In times of real danger, the states will have the same enthusiasm in aiding the general government, and granting its demands, which is seen in England, when the king is engaged in a war apparently for the interest of the nation. This power is necessary; but we ought to guard against danger. If ever they attempt to harass and abuse the militia, they may abolish them, and raise a standing army in their stead. There are various ways of destroying the militia. A standing army may be perpetually established in their stead. I abominate and detest the idea of a government, where there is a standing army. The militia may be here destroyed by that method which has been practised in other parts of the world before; that is, by rendering them useless — by disarming them. Under various pretences, Congress may neglect to provide for arming and disciplining the militia; and the state governments cannot do it, for Congress has an exclusive right to arm them, &c. Here is a line of division drawn between them — the state and general governments. The power over the militia is divided between them. The national government has an exclusive right to provide for arming, organizing, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States. The state governments have the power of appointing the officers, and of training the militia, according to the discipline prescribed by Congress, if they should think proper to prescribe any. Should the national government wish to render the militia useless, they may neglect them, and let them perish, in order to have a pretence of establishing a standing army.

{380} No man has a greater regard for the military gentlemen than I have. I admire their intrepidity, perseverance, and valor. But when once a standing army is established in any country, the people lose their liberty. When, against a regular and disciplined army, yeomanry are the only defence, — yeomanry, unskilful and unarmed, — what chance is there for preserving freedom? Give me leave to recur to the page of history, to warn you of your present danger. Recollect the history of most nations of the world. What havoc, desolation, and destruction, have been perpetrated by standing armies! An instance within the memory of some of this house will show us how our militia may be destroyed. Forty years ago, when the resolution of enslaving America was formed in Great Britain, the British Parliament was advised by an artful man,<sup>[1]</sup> who was governor of Pennsylvania, to disarm the people; that it was the best and most effectual way to enslave them; but that they should not do it openly, but weaken them, and let them sink gradually, by totally disusing and neglecting the militia. [Here Mr. Mason quoted sundry passages to this effect.] This was a most iniquitous project. Why should we not provide against the danger of having our militia, our real and natural strength, destroyed? The general government ought, at the same time, to have some such power. But we need not give them power to abolish our militia. If they neglect to arm them, and prescribe proper discipline, they will be of no use. I am not acquainted with the military profession. I beg to be excused for any errors I may commit with respect to it. But I stand on the general principles of freedom, whereon I dare to meet any one. I wish that, in case the general government should neglect to

arm and discipline the militia, there should be an express declaration that the state governments might arm and discipline them. With this single exception, I would agree to this part, as I am conscious the government ought to have the power.

They may effect the destruction of the militia, by rendering the service odious to the people themselves, by harassing them from one end of the continent to the other, and by keeping them under martial law.

The English Parliament never pass a mutiny bill but for {381} one year. This is necessary; for otherwise the soldiers would be on the same footing with the officers, and the army would be dissolved. One mutiny bill has been here in force since the revolution. I humbly conceive there is extreme danger of establishing cruel martial regulations. If, at any time, our rulers should have unjust and iniquitous designs against our liberties, and should wish to establish a standing army, the first attempt would be to render the service and use of militia odious to the people themselves — Subjecting them to unnecessary severity of discipline in time of peace, confining them under martial law, and disgusting them so much as to make them cry out, "Give us a standing army!" I would wish to have some check to exclude this danger; as, that the militia should never be subject to martial law but in time of war. I consider and fear the natural propensity of rulers to oppress the people. I wish only to prevent them from doing evil. By these amendments I would give necessary powers, but no unnecessary power. If the clause stands as it is now, it will take from the state legislatures what divine Providence has given to every individual — the means of self-defence. Unless it be moderated in some degree, it will ruin us, and introduce a standing army.

## **Mr. MADISON.**

Mr. Chairman, I most cordially agree, with the honorable member last up, that a standing army is one of the greatest mischiefs that can possibly happen. It is a great recommendation for this system, that it provides against this evil more than any other system known to us, and, particularly, more than the old system of confederation. The most effectual way to guard against a standing army, is to render it unnecessary. The most effectual way to render it unnecessary, is to give the general government full power to call forth the militia, and exert the whole natural strength of the Union, when necessary. Thus you will furnish the people with sure and certain protection, without recurring to this evil; and the certainty of this protection from the whole will be a strong inducement to individual exertion. Does the organization of the government warrant a belief that this power will be abused? Can we believe that a government of a federal nature, consisting of many coëqual sovereignties, and particularly having one branch chosen from the people, would drag the militia unnecessarily to an immense distance? This, sir, would be unworthy the most arbitrary despot. They have no temptation whatever to abuse this power; such abuse could only answer the purpose of exciting the universal indignation of the people, and drawing on themselves the general hatred and detestation of their country.

I cannot help thinking that the honorable gentleman has not considered, in all its consequences, the amendment he has proposed. Would this be an equal protection, sir, or would it not be a most partial provision? Some states have three or four states in contact. Were this state invaded, as it is bounded by several states, the militia of three or four states would, by this proposition, be

obliged to come to our aid; and those from some of the states would come a far greater distance than those of others. There are other states, which, if invaded, could be assisted by the militia of one state only, there being several states which border but on one state. Georgia and New Hampshire would be infinitely less safe than the other states. Were we to adopt this amendment, we should set up those states as butts for invasions, invite foreign enemies to attack them, and expose them to peculiar hardships and dangers. Were the militia confined to any limited distance from their respective places of abode, it would produce equal, nay, more inconveniences. The principles of equality and reciprocal aid would be destroyed in either case.

I cannot conceive that this Constitution, by giving the general government the power of arming the militia, takes it away from the state governments. The power is concurrent, and not exclusive. Have we not found, from experience, that, while the power of arming and governing the militia has been solely vested in the state legislatures, they were neglected and rendered unfit for immediate service? Every state neglected too much this most essential object. But the general government can do it more effectually. Have we not also found that the militia of one state were almost always insufficient to secure its harassed neighbor? Did all the states furnish their quotas of militia with sufficient promptitude? The assistance of one state will be of little avail to repel invasion. But the general head of the whole Union can do it with effect, if it be vested with power to use the aggregate strength of the Union. If the regulation of the militia were to be committed to the executive authority alone, there might be reason for providing {383} restrictions. But, sir, it is the legislative authority that has this power. They must make a law for the purpose.

## **Martial Law**

The honorable member is under another mistake. He wishes martial law to be exercised only in time of war, under an idea that Congress can establish it in time of peace. The states are to have the authority of training the militia according to the congressional discipline; and of governing them at all times when not in the service of the Union. Congress is to govern such part of them as may be employed in the actual service of the United States; and such part only can be subject to martial law. The gentlemen in opposition have drawn a most tremendous picture of the Constitution in this respect. Without considering that the power was absolutely indispensable, they have alarmed us with the possible abuse of it, but have shown no inducement or motive to tempt them to such abuse. Would the legislature of the state drag the militia of the eastern shore to the western frontiers, or those of the western frontiers to the eastern shore, if the local militia were sufficient to effect the intended purpose? There is something so preposterous, and so full of mischief, in the idea of dragging the militia unnecessarily from one end of the continent to the others that I think there can be no ground of apprehension, If you limit their power over the militia, you give them a pretext for substituting a standing army. If you put it in the power of the state governments to refuse the militia, by requiring their consent, you destroy the general government, and sacrifice particular states. The same principles and motives which produce disobedience to requisitions, will produce refusal in this case.

The restrictions which the honorable gentleman mentioned to be in the British constitution are all provisions against the power of the executive magistrate; but the House of Commons may, if they be so disposed, sacrifice the interest of their constituents in all those cases. They may

prolong the duration of mutiny bills, and grant supplies to the king to carry on an impolitic war. But they have no motives to do so; for they have strong motives to do their duty. We have more ample security than the people of Great Britain. The powers of the government are more limited and guarded, and our representatives are more responsible than the members of the British House of Commons.

### **{384} Mr. CLAY**

apprehended that, by this power, our militia might be sent to the Mississippi. He observed that the sheriff might raise the *posse comitatus* to execute the laws. He feared it would lead to the establishment of a military government, as the militia were to be called forth to put the laws into execution. He asked why this mode was preferred to the old, established custom of executing the laws.

### **Mr. MADISON**

answered, that the power existed in all countries; that the militia might be called forth, for that purpose, under the laws of this state and every other state in the Union; that public force must be used when resistance to the laws required it, otherwise society itself must be destroyed; that the mode referred to by the gentleman might not be sufficient on every occasion, as the sheriff must be necessarily restricted to the *posse* of his own county. If the *posse* of one county were insufficient to overcome the resistance to the execution of the laws, this power must be resorted to. He did not, by any means, admit that the old mode was superseded by the introduction of the new one. And it was obvious to him, that, when the civil power was sufficient, this mode would never be put in practice.

### **Mr. HENRY.**

Mr. Chairman, in my judgment the friends of the opposition have to act cautiously. We must make a firm stand before we decide. I was heard to say, a few days ago, that the sword and purse were the two great instruments of government; and I professed great repugnance at parting with the purse, without any control, to the proposed system of government. And now, when we proceed in this formidable compact, and come to the national defence, the sword, I am persuaded we ought to be still more cautious and circumspect; for I feel still more reluctance to surrender this most valuable of rights.

The honorable member who has risen to explain several parts of the system was pleased to say, that the best way of avoiding the danger of a standing army, was, to have the militia in such a way as to render it unnecessary; and that, as the new government would have power over the militia, we should have no standing army — it being unnecessary. This argument destroys itself. It demands a power, and denies the probability of its exercise. There are suspicions of power on one hand, and absolute and unlimited confidence {385} on the other. I hope to be one of those who have a large share of suspicion. I leave it to this house, if there be not too small a portion on the other side, by giving up too much to that government. You can easily see which is the worst of two extremes. Too much suspicion may be corrected. If you give too little power to-day, you

may give more to-morrow. But the reverse of the proposition will not hold. If you give too much power to-day, you cannot retake it to-morrow: for to-morrow will never come for that purpose. If you have the fate of other nations, you will never see it. It is easier to supply deficiencies of power than to take back excess of power. This no man can deny.

But, says the honorable member, Congress will keep the militia armed; or, in other words, they will do their duty. Pardon me if I am too jealous and suspicious to confide in this remote possibility. My honorable friend went on a supposition that the American rulers, like all others, will depart from their duty without bars and checks. No government can be safe without checks. Then he told us they had no temptation to violate their duty, and that it would be their interest to perform it. Does he think you are to trust men who cannot have separate interests from the people? It is a novelty in the political world (as great a novelty as the system itself) to find rulers without private interests, and views of personal emoluments, and ambition. His supposition, that they will not depart from their duty, as having no interest to do so, is no satisfactory answer to my mind. This is no check. The government may be most intolerable and destructive, if this be our only security.

My honorable friend attacked the honorable gentleman with universal principles — that, in all nations and ages, rulers have been actuated by motives of individual interest and private emoluments, and that in America it would be so also. I hope, before we part with this great bulwark, this noble palladium of safety, we shall have such checks interposed as will render us secure. The militia, sir, is our ultimate safety. We can have no security without it. But then, he says that the power of arming and organizing the militia is concurrent, and to be equally exercised by the general and state governments. I am sure, and I trust in the candor of that gentleman, that he will recede from that {386} opinion, When his recollection will be called to the particular clause which relates to it.

As my worthy friend said, there is a positive partition of power between the two governments. To Congress is given the power of "arming, organizing, and disciplining the militia, and governing such part of them as may be employed in the service of the United States." To the state legislatures is given the power of appointing the officers, and training the militia according to the discipline prescribed by Congress." I observed before, that, if the power be concurrent as to arming them, it is concurrent in other respects. If the states have the right of arming them, &c., concurrently, Congress, has a concurrent power of appointing the officers, and training the militia. If Congress have that power, it is absurd. To admit this mutual concurrence of powers will carry on into endless absurdity — that Congress has nothing exclusive on the one hand, nor the states on the other. The rational explanation is, that Congress shall have exclusive power of arming them, &c., and that the State governments shall have exclusive power of appointing the officers, &c. Let me put it in another light.

May we not discipline and arm them, as well as Congress, if the power be concurrent? so that our militia shall have two sets of arms, double sets of regimentals, &c.; and thus, at a very great cost, we shall be doubly armed. [The great object is, that every man be armed.](#) But can the people afford to pay for double sets of arms, &c.? Every one Who is able may have a gun. But we have learned, by experience, that, necessary as it is to have arms, and though our Assembly has, by a succession of laws for many years, endeavored to have the militia completely armed, it is still far

from being the case. When this power is given up to Congress without limitation or bounds, how will your militia be afraid? You trust to chance; for sure I am that that nation which shall trust its liberties in other hands cannot long exist. If gentlemen are serious when they suppose a concurrent power, where can be the impolicy to amend it? Or, in other words, to say that Congress shall not arm or discipline them, till the states shall have refused or neglected to do it? This is my object. I only wish to bring it to what they themselves say is implied. Implication is to be the foundation of our civil liberties; and when you speak of arming the militia by a {387} concurrence of power, you use implication. But implication will not save you, when a strong army of veterans comes upon you. You would be laughed at by the whole world, for trusting your safety implicitly to implication.

The argument of my honorable friend was, that rulers might tyrannize. The answer he received was, that they will not. In saying that they would not, he admitted they might. In this great, this essential part of the Constitution, if you are safe, it is not from the Constitution, but from the virtues of the men in government. If gentlemen are willing to trust themselves and posterity to so slender and improbable a chance, they have greater strength of nerves than I have.

The honorable gentleman, in endeavoring to answer the question why the militia were to be called forth to execute the laws, said that the civil power would probably do it. He is driven to say, that the civil power may do it instead of the militia. Sir, the military power ought not to interpose till the civil power refuse. If this be the spirit of your new Constitution, that the laws are to be enforced by military coercion, we may easily divine the happy consequences which will result from it. The civil power is not to be employed at all. If it be, show me it. I read inattentively, and could see nothing to warrant a belief that the civil power can be called for. I should be glad to see the power that authorizes Congress to do so. The sheriff will be aided by military force. The most wanton excesses may be committed under color of this; for every man in office, in the states, is to take an oath to support it in all its operations. The honorable gentleman said, in answer to the objection that the militia might be marched from New Hampshire to Georgia, that the members of the government would not attempt to excite the indignation of the people. Here, again, we have the general unsatisfactory answer, that they will be virtuous, and that there is no danger.

Will gentlemen be satisfied with an answer which admits of dangers and abuses if they be wicked? Let us put it of their power to do mischief. I am convinced, there is no safety in the paper on the table as it stands now. I am sorry to have an occasion to pass a eulogium on the British government, as gentlemen may object to it. But how natural it is, when comparing deformities to beauty, to be {388} struck with the superiority of the British government to that system! In England, self-love — self-interest — powerfully stimulates the executive magistrate to advance the prosperity of the nation. In the most distant part, he feels the loss of his subjects. He will see the great advantage of his posterity inseparable from the felicity of his people. Man is a fallen creature, a fallible being, and cannot be depended on without self-love. Your President will not have the same motives of self-love to impel him to favor your interests. His political character is but transient, and he will promote, as much as possible, his own private interests. He will conclude, the constant observation has been that he will abuse his power, and that it is expected. The king of England has a more permanent interest. His stock, his family, is to continue in possession of the same emolument. The more flourishing his nation, the more

formidable and powerful is he. The sword and purse are not united, in that government, in the same hands, as in this system. Does not infinite security result from a separation?

But it is said that our Congress are more responsible than the British Parliament. It appears to me that there is no real, but there may be some specious responsibility. If Congress, in the execution of their unbounded powers, shall have done wrong, how will you come at them to punish them, if they are at the distance of five hundred miles? At such a great distance, they will evade responsibility altogether. If you have given up your militia, and Congress shall refuse to arm them, you have lost every thing. Your existence will be precarious, because you depend on others, whose interests are not affected by your infelicity. If Congress are to arm us exclusively, the man of New Hampshire may vote for or against it, as well as the Virginian. The great distance and difference between the two places render it possible that the people of that country can know or pursue what will promote our convenience. I therefore contend that, if Congress do not arm the militia, we ought to provide for it ourselves.

## **Mr. NICHOLAS.**

Mr. Chairman, the great object of government, in every country, is security and public defence. I suppose, therefore, that what we ought to attend to here, is, what is the best mode of enabling the general government to protect us. One of three ways must be pursued {389} for this purpose. We must either empower them to employ, and rely altogether on, a standing army; or depend altogether on militia; or else we must enable them to use the one or the other of these two ways, as may be found most expedient. The least reflection will satisfy us that the Convention has adopted the only proper method. If a standing army were alone to be employed, such an army must be kept up in time of peace as would be sufficient in war. The dangers of such an army are so striking that every man would oppose the adoption of this government, had it been proposed by it as the only mode of defence. Would it be safe to depend on militia alone, without the agency of regular forces, even in time of war? Were we to be invaded by a powerful, disciplined army, should we be safe with militia? Could men unacquainted with the hardships, and unskilled in the discipline of war, — men only inured to the peaceable occupations of domestic life, — encounter with success the most skilful veterans, inured to the fatigues and toils of campaigns? Although some people are pleased with the theory of reliance on militia, as the sole defence of a nation, yet I think it will be found, in practice, to be by no means adequate. Its inadequacy is proved by the experience of other nations. But were it fully adequate, it would be unequal. If war be supported by militia, it is by personal service. The poor man does as much as the rich. Is this just? What is the consequence when war is carried on by regular troops? They are paid by taxes raised from the people, according to their property; and then the rich man pays an adequate share.

But, if you confine yourselves to militia alone, the poor man is oppressed. The rich man exempts himself by furnishing a substitute. And, although it be oppressive to the poor, it is not advantageous to the rich? For what he gives would pay regular troops. It is therefore neither safe nor just to depend entirely on militia. As these two ways are ineligible, let us consider the third method. Does this Constitution put this on a proper footing? It enables Congress to raise an army when necessary, or to call forth the militia when necessary. What will be the consequence of their having these two powers? Till there be a necessity for an army to be raised, militia will do.

And when an army will be raised, the militia will still be employed, which {390} will render a less numerous army sufficient. By these means, there will be a sufficient defence for the country, without having a standing army altogether, or oppressing the people. The worthy member has said, that it ought to be a part of the Constitution that the militia ought not to go out of the state without the consent of the state legislature. What would be the consequence of this? The general defence is trusted to the general government. How is it to protect the Union? It must apply to the state governments before it can do it. Is this right? Is it not subjecting the general will to the particular will, and exposing the general defence to the particular caprice of the members of the state governments? This would entirely defeat the power given to Congress to provide for the general defence; and unless the militia were to aid in the execution of the laws when resisted, the other powers of Congress would be nugatory. But he has said that this idea is justified by the English history; for that the king has the power of the sword, but must apply to the commons for the means of using it — for the purse. This is not a similar case. The king and commons are parts of the same government. But the general government is separate and perfectly distinct from the individual governments of the states. Should Congress be obliged to apply to the particular states for the militia, they may be refused, and the government overturned. To make the case similar, he ought to show us that the king and Parliament were obliged to call on some other power to raise forces, and provide for the means of carrying on war; for, otherwise, there is no similitude.

If the general government be obliged to apply to the states, a part will be thereby rendered superior to the whole. What are to be the effects of the amendments proposed? To destroy one of the most beneficial parts of the Constitution, put an obstacle in the way of the general government, and put it in the power of the state governments to take away the aid of the militia. Who will be most likely to want the aid of the militia? The Southern States, from their situation. Who are the most likely to be called for? The Eastern States, from their strength, &c. Should we put it in the power of particular states to refuse the militia, it ought to operate against ourselves. It is the height of bad policy to alter this part of the system. But it is said, the {391} militia are to be disarmed. Will they be worse armed than they are now? Still, as my honorable friend said, the states would have power to arm them. The power of arming them is concurrent between the general and state governments; for the power of arming them rested in the state governments before; and although the power be given to the general government, yet it is not given exclusively; for, in every instance where the Constitution intends that the general government shall exercise any power exclusively of the state governments, words of exclusion are particularly inserted. Consequently, in every case where such words of exclusion are not inserted, the power is concurrent to the state governments and Congress, unless where it is impossible that the power should be exercised by both. It is, therefore, not an absurdity to say, that Virginia may arm the militia, should Congress neglect to arm them. But it would be absurd to say that we should arm them after Congress had armed them, when it would be unnecessary; or that Congress should appoint the officers, and train the militia, when it is expressly excepted from their powers.

But his great uneasiness is, that the militia may be under martial law when not on duty. A little attention will be sufficient to remove this apprehension. The Congress is to have power "to provide for the arming, organizing, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States." Another part tells you that they are to provide for calling them forth, to execute the laws of the Union, suppress insurrections,

and repel invasions. These powers only amount to this — that they can only call them forth in these three cases, and that they can only govern such part of them as may be in the actual service of the United States. This causes a sufficient security that they will not be under martial law but when in actual service. If, sir, a mutiny bill has continued since the revolution, recollect that this is done under the present happy government. Under the new government, no appropriation of money, to the use of raising or supporting an army, shall be for a longer term than two years. The President is to command. But the regulation of the army and navy is given to Congress. Our representatives will be a powerful check here. The influence of the commons, in England, in this case, is very predominant. But the worthy member {392} on the other side of the house has said that the militia are the great bulwark of the nation, and wishes to take no step to bring them into disuse. What is the inference? He wishes to see the militia employed. The Constitution provides what he wants. This is, to bring them frequently into use. If he expects that, by depriving the general government of the power of calling them into more frequent use, they will be rendered more useful and expert, he is greatly deceived. We ought to part with the power to use the militia to somebody. To whom? Ought we not to part with it for the general defence? If you give it not to Congress, it may be denied by the states. If you withhold it, you render a standing army absolutely necessary; for if they have not the militia, they must have such a body of troops as will be necessary for the general defence of the Union.

It was said, by the gentleman, that there was something singular in this government, in saying that the militia shall be called forth to execute the laws of the Union. There is a great difference between having the power in three cases, and in all cases. They cannot call them forth for any other purpose than to execute the laws, suppress insurrections, and repel invasions. And can any thing be more demonstrably obvious, than that the laws ought to be enforced if resisted, and insurrections quelled, and foreign invasions repelled? But it is asked, Why has not the Constitution declared that the civil power shall be employed to execute the laws? Has it said that the civil power shall not be employed? The civil officer is to execute the laws on all occasions; and, if he be resisted, this auxiliary power is given to Congress of calling forth the militia to execute them, when it shall be found absolutely necessary.

From his argument on this occasion, and his eulogium on the executive magistrate of Britain, it might be inferred that the executive magistrate here was to have the power of calling forth the militia. What is the idea of those gentlemen who heard his argument on this occasion? Is it not that the President is to have this power — that President, who, he tells us, is not to have those high feelings, and that fine sensibility, which the British monarch possesses? No, sir, the President is not to have this power. God forbid we should ever see a public man in this country who should {393} have this power. Congress only are to have the power of calling forth the militia. And will the worthy member say that he would trust this power to a prince, governed by the dictates of ambition, or mere motives of personal interest, sooner than he would trust it in the hands of Congress? I will trust Congress, because they will be actuated by motives of fellow-feeling. They can make no regulations but what will affect themselves, their friends, and relations. But I would not trust a prince, whose ambition and private views would be the guide of his actions. When the government is carried on by representatives, and persons of my own choice, whom I can follow when far removed, who can be displaced at stated and short periods, — I can safely confide the power to them. It appears to me that this power is essentially necessary; for, as the general defence is trusted to Congress, we ought to intrust fully the means.

This cannot be fully done without giving the power of calling forth the militia; and this power is sufficiently guarded.

## **Mr. MADISON.**

Mr. Chairman, the honorable gentleman has laid much stress on the maxim, that the purse and sword ought not to be put in the same hands, with a view of pointing out the impropriety of vesting this power in the general government. But it is totally inapplicable to this question. What is the meaning of this maxim? Does it mean that the sword and purse ought not to be trusted in the hands of the same government? This cannot be the meaning; for there never was, and I can say there never will be, an efficient government, in which both are not vested. The only rational meaning is, that the sword and purse are not to be given to the same member. Apply it to the British government, which has been mentioned. The sword is in the hands of the British king; the purse in the hands of the Parliament. It is so in America, as far as any analogy can exist. Would the honorable member say that the sword ought to be put in the hands of the representatives of the people, or in other hands independent of the government altogether? If he says so, it will violate the meaning of that maxim. This would be a novelty hitherto unprecedented. The purse is in the hands of the representatives of the people. They have the appropriation of all moneys. They have the direction and regulation of land and naval forces. They are to provide for calling forth the militia; and the {394} President is to have the command, and, in conjunction with the Senate, to appoint the officers. The means ought to be commensurate to the end. The end is general protection. This cannot be effected without a general power to use the strength of the Union.

We are told that both sides are distinguished by these great traits, confidence and distrust. Perhaps there may be a less or greater tincture of suspicion on one side than the other. But give me leave to say that, where power can be safely lodged, if it be necessary, reason commands its cession. In such case, it is imprudent and unsafe to withhold it. It is universally admitted that it must be lodged in some hands or other. The question, then, is, in what part of the government it ought to be placed; and not whether any other political body, independent of the government, should have it or not. I profess myself to have had a uniform zeal for a republican government. If the honorable member, or any other person, conceives that my attachment to this system arises from a different source, he is greatly mistaken. From the first moment that my mind was capable of contemplating political subjects, I never, till this moment, ceased wishing success to a well-regulated republican government. The establishment of such in America was my most ardent desire. I have considered attentively (and my consideration has been aided by experience) the tendency of a relaxation of laws and a licentiousness of manners.

If we review the history of all republics, we are justified in the supposition that, if the bands of the government be relaxed, confusion will ensue. Anarchy ever has produced, and I fear ever will produce, despotism. What was the state of things that preceded the wars and revolutions in Germany? Faction and confusion. What produced the disorders and commotions of Holland? The like causes. In this commonwealth, and every state in the Union, the relaxed operation of the government has been sufficient to alarm the friends of their country. The rapid increase of population in every state is an additional reason to check dissipation and licentiousness. Does it not strongly call for the friends of republican government to endeavor to establish a republican

organization? A change is absolutely necessary. I can see no danger in submitting to practice an experiment which seems to be founded on the best theoretic principles.

{395} But the honorable member tells us there is not an equal responsibility delineated, on that paper, to that which is in the English government. Calculations have been made here, that, when you strike off those entirely elected by the influence of the crown, the other part does not bear a greater proportion to the number of their people, than the number fixed in that paper bears to the number of inhabitants in the United States. If it were otherwise, there is still more responsibility in this government. Our representatives are chosen for two years. In Great Britain, they are chosen for seven years. Any citizen may be elected here. In Great Britain, no one can be elected, to represent a county, without having an estate of the value of six hundred pounds sterling a year; nor to represent a corporation, without an annual estate of three hundred pounds. Yet we are told, there is no sympathy or fellow-feeling between the people here and their representatives; but that in England they have both. A just comparison will show that, if confidence be due to the government there, it is due tenfold here.

[Mr. Madison made many other observations, but spoke so very low that he could not be distinctly heard.]

## **Mr. HENRY.**

Mr. Chairman, it is now confessed that this is a national government. There is not a single federal feature in it. It has been alleged, within these walls, during the debates, to be national and federal, as it suited the arguments of gentlemen.

But now, when we have heard the definition of it, it is purely national. The honorable member was pleased to say that the sword and purse included every thing of consequence. And shall we trust them out of our hands without checks and barriers? The sword and purse are essentially necessary for the government. Every essential requisite must be in Congress. Where are the purse and sword of Virginia? They must go to Congress. What is become of your country? The Virginian government is but a name. It clearly results, from his last argument, that we are to be consolidated. We should be thought unwise indeed to keep two hundred legislators in Virginia, when the government is, in fact, gone to Philadelphia or New York. We are, as a state, to form no part of the government. Where are your checks? The most essential objects of government are to be administered {396} by Congress. How, then, can the state governments be any check upon them? If we are to be a republican government, it will be consolidated, not confederated.

The means, says the gentleman, must be commensurate to the end. How does this apply? All things in common are left with this government. There being an infinitude in the government, there must be an infinitude of means to carry it on. This is a sort of mathematical government that may appear well on paper, but cannot sustain examination, or be safely reduced to practice. The delegation of power to an adequate number of representatives, and an unimpeded reversion of it back to the people, at short periods, form the principal traits of a republican government. The idea of a republican government, in that paper, is something superior to the poor people. The governing persons are the servants of the people. There, the servants are greater than their masters; because it includes infinitude, and infinitude excludes every idea of subordination. In this the creature has destroyed and soared above the creator. For if its powers be infinite, what

rights have the people remaining? By that very argument, despotism has made way in all countries where the people unfortunately have been enslaved by it. We are told, the sword and purse are necessary for the national defence. The junction of these, without limitation, in the same hands, is, by logical and mathematical conclusions, the description of despotism.

The reasons adduced here to-day have long ago been advanced in favor of passive obedience and non-resistance. In 1688, the British nation expelled their monarch for attempting to trample on their liberties. The doctrine of divine right and passive obedience was said to be commanded by Heaven — it was inculcated by his minions and adherents. He wanted to possess, without control, the sword and purse. The attempt cost him his crown. This government demands the same powers. I see reason to be more and As more alarmed. I fear it will terminate in despotism. As to his objection of the abuse of liberty, it is denied. The political inquiries and promotions of the peasants are a happy circumstance. A foundation of knowledge is a great mark of happiness. When the spirit of inquiry after political discernment goes forth among the lowest of the people, it rejoices my heart. Why such fearful apprehensions? I {397} defy him to show that liberty has been abused. There has been no rebellion here, though there was in Massachusetts. Tell me of any country which has been so long without a rebellion. Distresses have been patiently borne, in this country, which would have produced revolutions in other countries. We strained every nerve to make provisions to pay off our soldiers and officers. They, though not paid, and greatly distressed at the conclusion of the war, magnanimously acquiesced. The depreciation of the circulating currency very much involved many of them, and thousands of other citizens, in absolute ruin; but the same patient fortitude and forbearance marked their conduct. What would the people of England have done in such a situation? They would have resisted the government, and murdered the tyrant. But in this country, no abuse of power has taken place. It is only a general assertion, unsupported, which suggests the contrary. Individual licentiousness will show its baneful consequences in every country, let its government be what it may.

But the honorable gentleman says, responsibility will exist more in this than in the British government. It exists here more in name than any thing else. I need not speak of the executive authority. But consider the two houses — the American Parliament. Are the members of the Senate responsible? They may try themselves, and, if found guilty on impeachment, are to be only removed from office. In England, the greatest characters are brought to the block for their sinister administration. They have a power there, not to dismiss them from office, but from life, for mal-practices. The king himself cannot pardon in this case. How does it stand with respect to your lower house? You have but ten. Whatever number may be there, six is a majority. Will your country afford no temptation, no money to corrupt them? Cannot six fat places be found to accommodate them? They may, after the first Congress, take any place. There will be a multiplicity of places. Suppose they corruptly obtain places. Where will you find them, to punish them? At the farthest parts of the Union; in the ten miles square, or within a state where there is a stronghold. What are you to do when these men return from Philadelphia? Two things are to be done. To detect the offender and bring him to punishment. You will find it difficult to do either.

{398} In England, the proceedings are openly transacted. They deliver their opinions freely and openly. They do not fear all Europe. Compare it to this. You cannot detect the guilty. The publication from time to time is merely optional in them. They may prolong the period, or suppress it altogether, under pretence of its being necessary to be kept secret. The yeas and nays

will avail nothing. Is the publication daily? It may be a year, or once in a century. I know this would be an unfair construction in the common concerns of life. But it would satisfy the words of the Constitution. It would be some security were it once a year, or even once in two years. When the new election comes on, unless you detect them, what becomes Of your responsibility? Will they discover their guilt when they wish to be reëlected? This would suppose them to be not only bad, but foolish men, in pursuit of responsibility. Have you a right to scrutinize into the conduct of your representatives? Can any man, who conceives himself injured, go and demand a sight of their journals? But it will be told that I am suspicious. I am answered, to every question, that they will be good men. In England, they see daily what is doing in Parliament. They will hear from their Parliament in one thirty-ninth part of the time that we shall hear from Congress in this scattered country. Let it be proposed, in England, to lay a poll tax, or enter into any measure, that will injure one part and produce emoluments to another, intelligence will fly quickly as the rays of light to the people. They will instruct their representatives to oppose it, and will petition against it, and get it prevented Or redressed instantly. Impeachment follows quickly a violation of duty. Will it be so here? You must detect the offence, and punish the defaulter. How will this be done When you know not the offender, even though he had a previous design to commit the misdemeanor? Your Parliament will consist of Sixty-five. Your share will be ten out of the sixty-five. Will they not take shelter, by saying they were in the minority — that the men from New Hampshire and Kentucky outvoted them? Thus will responsibility, that great pillar of a free government, be taken away.

The honorable gentleman wished to try the experiment. Loving his country as he does, he would not surely wish to trust his happiness to an experiment, from which much harm, but no good, may result.

{399} I will speak another time, and will not fatigue the committee now. I think the friends of the opposition ought to make a pause here; for I can see no safety to my country, if you give up this power.

## **Mr. MADISON.**

Mr. Chairman, the honorable member expresses surprise that I wished to see an experiment made of a republican government, or that I would risk the happiness of my country on an experiment. What is the situation of this country at this moment? Is it not rapidly approaching to anarchy? Are not the bands of the Union so absolutely relaxed as almost to amount to a dissolution? What has produced despotism and tyranny in other parts of the world? Is it not agreed, upon all hands, that a reform is necessary? If any takes place, will it not be an experiment, as well as this system? He acknowledges the existing system to be defective. He admits the necessity of some change. Would not the change he would choose himself be also an experiment? He has repeated objections which have already been clearly refuted, and which, therefore, I will pass over.

With respect to responsibility, still the honorable member thinks that the House of Representatives and Senate will suffer by a comparison with the British Parliament. I will not repeat the contrast made before, which he has mentioned. He tells us what may be done by our representatives with respect to the admission to offices, and insinuates that less may be done in Great Britain by the members of Parliament. In this country, by this system, no new office can be

taken by a member of the government, and if he takes an old one, he loses his seat. If the emoluments of any existing office be increased, he cannot take it. How is it in Great Britain? Any member may have any place; for Parliament may create any new offices they please, or increase the emoluments of existing offices, and yet the members may accept any such places. Any member may accept any office whatever, and go again into Parliament. Does this comparison militate against this system? He tells us the affairs of our country are not alarming. I wish this assertion was well founded. I concur with him in rejoicing to see the people enlightened and vigilant. I should be happy to see the people paying respect to the laws and magistracy. But is respect paid to our laws? Every man's experience will tell him more, perhaps, than any thing I could say. {400} Public and private confidence daily and rapidly decrease. Experiments must be made, and in that form which we must find most to the interest of our country.

## **Gov. RANDOLPH.**

Mr. Chairman, our attention is summoned to this clause respecting the militia, and alarms are thrown out to persuade us that it involves a multiplicity of danger. It is supposed by the honorable gentleman lately up, and another gentleman, that the clause for calling forth the militia to suppress insurrections, repel invasions, and execute the laws of the Union; implies that, instead of using civil force in the first instance, the militia are to be called forth to arrest petty offenders against the laws. Ought not common sense to be the rule of interpreting this Constitution? Is there an exclusion of the civil power? Does it provide that the laws are to be enforced by military coercion in all cases? No, sir. All that we are to infer is, that when the civil power is not sufficient, the militia must be drawn out. Who are they? He says (and I cheerfully acquiesce in the rectitude of the assertion) that they are the bulwarks of our liberties. Shall we be afraid that the people, this bulwark of freedom, will turn instruments of slavery? The officers are to be appointed by the states. Will you admit that they will act so criminally as to turn against their country? The officers of the general government are attached to it, because they derive their appointment from it. Admitting the militia officers to be corrupt, what is to make them be in favor of the general government? Will not the same reason attach them to the state governments? But it is feared that the militia are to be subjected to martial law when not in service. They are only to be called out in three cases, and only to be governed by the authority of Congress when in the actual service of the United States; so that their articles of war can no longer operate upon them than when in the actual service of the Union.

Can it be presumed that you can vest the supreme power of the United States with the power of defence, and yet take away this natural defence from them? You risk the general defence by withholding this power.

The honorable gentleman, speaking of responsibility, has mistaken facts. He says the king cannot pardon offenders found guilty on impeachment. The king can pardon after {401} impeachment, though not before. He says, further, that in America every thing is concealed, whereas in England the operations of the government are openly transacted. In England, those subjects which produce impeachments are not opinions. No man ever thought of impeaching a man for an opinion. It would be impossible to discover whether the error in opinion resulted from a wilful mistake of the heart, or an involuntary fault of the head. What are the occasions of impeachments

most commonly? Treaties. Are these previously known? No. Till after they are presented to the public eye, they are not known. Those who advised a treaty are not known till then. There ought not to be a publication on the subject of negotiations till they are concluded. So that, when he thinks there is a greater notoriety in this case in England than here, I say he is mistaken. There will be as much notoriety in America as in England. The spirit of the nation occasions the notoriety of their political operations, and not any constitutional requisition. The spirit of liberty will not be less predominant in America, I hope, than there. With respect to a standing army, I believe there was not a member in the federal Convention, who did not feel indignation at such an institution. What remedy, then, could be provided? Leave the country defenceless? In order to provide for our defence, and exclude the dangers of a standing army, the general defence is left to those who are the objects of defence. It is left to the militia, who will suffer if they become the instruments of tyranny. The general government must have power to call them forth when the general defence requires it. In order to produce greater security, the state governments are to appoint the officers. The President, who commands them when in actual service of the Union, is appointed secondarily by the people. This is a further security. Is it not incredible that men who are interested in the happiness of their country — whose friends, relations, and connections, must be involved in the fate of their country — should turn against their country? I appeal to every man whether, if any of our own officers were called upon to destroy the liberty of their country, he believes they would assent to such an act of suicide. The state governments, having the power of appointing them, may elect men who are the most remarkable for their virtue of attachment to their country.

## **{402} Mr. GEORGE MASON,**

after having read the clause which gives Congress power to provide for arming, organizing, and disciplining the militia, and governing those in actual service of the Union, declared it as his firm belief, that it included the power of annexing punishments, and establishing necessary discipline, more especially as the construction of this, and every other part of the Constitution, was left to those who were to govern. If so, he asked if Congress could not inflict the most ignominious punishments on the most worthy citizens of the community. Would freemen submit to such indignant treatment? It might be thought a strained construction, but it was no more than Congress might put upon it. He thought such severities might be exercised on the militia as would make them wish the use of the militia to be utterly abolished, and assent to the establishment of a standing army. He then adverted to the representation, and said it was not sufficiently full to take into consideration the feelings and sentiments of all the citizens. He admitted that the nature of the country rendered a full representation impracticable. But he strongly urged that impracticability as a conclusive reason for granting no powers to the government but such as were absolutely indispensable, and these to be most cautiously guarded.

He then recurred to the power of impeachment. On this subject he entertained great suspicions. He apologized for being suspicious. He entered into the world with as few suspicious as any man. Young men, he said, were apt to think well of every one, till time and experience taught them better. After a treaty manifestly repugnant to the interests of the country was made, he asked how they were to be punished. Suppose it had been made by the means of bribery and corruption. Suppose they had received one hundred thousand guineas, or louis d'ors, from a foreign nation, for consenting to a treaty, how was the truth to be come at? Corruption and

bribery of that kind had happened in other governments, and might in this. The House of Representatives were to impeach them. The senators were to try themselves. If a majority of them were guilty of the crime, would they pronounce themselves guilty? Yet, says he, this is called responsibility. He wished to know in what court the members of the government were to be tried for the commission of indictable offences, or injuries to individuals. {403} He acknowledged himself to be no lawyer; but he thought he could see that they could be tried neither in the state nor federal courts. The only means, therefore, of bringing them to punishment, must be by a court appointed by law; and the law to punish them must also be made by themselves. By whom is it to be made? demanded he. By the very men who are interested in not inflicting punishment. Yet, says he, though they make the law, and fix the punishment to be inflicted on themselves, it is called responsibility. If the senators do not agree to the law, it will not be made, and thus they will escape altogether.

[Mr. Mason then animadverted on the ultimate control of Congress over the elections, and was proceeding to prove that it was dangerous, when he was called to order, by Mr. Nicholas, for departing from the clause under consideration. A desultory conversation ensued, and Mr. Mason was permitted to proceed. He was of opinion that the control over elections tended to destroy responsibility. He declared he had endeavored to discover whether this power was really necessary, or what was the necessity of vesting it in the government, but he could find no good reason for giving it; that the reasons suggested were that, in case the states should refuse or neglect to make regulations, or in case they should be prevented from making regulations by rebellion or invasion, then the general government should interpose.]

Mr. Mason then proceeded thus: If there be any other cases, I should be glad to know them; for I know them not. If there be no other, why not confine them to these cases? But the power here, as in a thousand other instances, is without reason. I have no power which any other person call take from me. I have no right of representation, if they can take it from me. I say, therefore, that Congress may, by this claim, take away the right of representation, or render it nugatory, despicable, or oppressive. It is at least argumentative, that what may be done will be done, and that a favorite point will be done by those who can.

Suppose the state of Virginia should adopt such regulations as gentlemen say, (and in which I accord with all my heart,) and divide the state into ten districts. Suppose, then, that Congress should order, instead of this, that the elections should be held in the borough of Norfolk. Will any man say that any man in Frederick or Berkely county would have any share in this representation, if the members were chosen in Norfolk? Nay, I might go farther, and say that {404} the elections for all the states might be had in New York, and then we should have to go so far that the privilege would be lost altogether; for but few gentlemen could afford to go thither. Some of the best friends of the Constitution have advocated that the elections should be in one place. This power is not necessary, and is capable of great abuse. It ought to be confined to the particular cases in which they assert it to be necessary. Whatever gentlemen may think of the opposition, I will never agree to give any power which I conceive to be dangerous.

I have doubts on another point. The 5th section of the 1st article provides, "that each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy." This enables them to keep the negotiations about treaties secret. Under this veil they may conceal any thing and every thing. Why not insert words that would exclude ambiguity and danger? The words of the Confederation, that defective system, are, in this respect, more eligible. What are they? In the last clause of the 9th article it is

provided, "that Congress shall publish the journal of their proceedings monthly, except such parts thereof, relating to treaties, alliances, or military operations, as, in their judgment, require secrecy." The proceedings, by that system, are to be published monthly, with certain exceptions. These are proper guards. It is not so here. On the contrary, they may conceal what they please.

Instead of giving information, they will produce suspicion. You cannot discover the advocates of their iniquitous acts. This is an additional defect of responsibility. Neither house can adjourn, without the consent of the other, for more than three days. This is no parliamentary rule. It is untrodden ground, and it appears to me liable to much exception.

The senators are chosen for six years. They are not recallable for those six years, and are reëligible at the end of the six years. It stands on a very different ground from the Confederation. By that system, they were only elected for one year, might be recalled, and were incapable of reëlection. But in the new Constitution, instead of being elected for one, they are chosen for six years. They cannot be recalled, in all that time, for any misconduct, and at the end of that long term may again be elected. What will be {405} the operation of this? Is it not probable that those gentlemen, who will be elected senators, will fix themselves in the federal town, and become citizens of that town more than of our state? They will purchase a good seat in or near the town, and become inhabitants of that place. Will it not be, then, in the power of the Senate to worry the House of Representatives into any thing? They will be a continually existing body. They will exercise those machinations and contrivances which the many have always to fear from the few. The House of Representatives is the only check on the Senate, with their enormous powers. But, by that clause, you give them the power of worrying the House of Representatives into a compliance with any measure. The senators, living on the spot, will feel no inconvenience from long sessions, as they will vote themselves handsome pay, without incurring any additional expenses. Your representatives are on a different ground, from their shorter continuance in office. The gentlemen from Georgia are six or seven hundred miles from home, and wish to go home. The Senate, taking advantage of this, by stopping the other house from adjourning, may worry them into ally thing. These are my doubts, and I think the provision not consistent with the usual parliamentary modes.

## **Mr. LEE, (of Westmoreland.)**

Mr. Chairman, I am anxious to know the truth on this great occasion. I was in hopes of receiving true information, but have been disappointed. I have heard suspicions against possibility, and not against probability. As to the distinction which lies between the gentlemen for and against the Constitution, — in the first place, most of the arguments the latter use pay no regard to the necessity of the Union, which is our object. In the next place, they use contradictory arguments. It may be remembered that we were told there was great danger of an aristocracy governing this country; for that their wages would be so low, that the rich alone could serve. And what does another gentleman say? That the price will be so high, that they will fix themselves comfortably in office, and, by their power and extravagant emoluments, ruin us. Ought we to adduce arguments like these, which imply a palpable contradiction? We ought to use arguments capable of discussion.

I beg leave to make some reply to what the honorable {406} gentleman over the way said. He rose with great triumph and exultation, saying that we had conceded that the government was national. The honorable gentleman is so little used to triumph on the grounds of reasoning, that he suffers himself to be quite captivated by the least appearance of victory. What reason had he to say that we admitted it to be a national government? We agree that the sword and the purse are in the hands of the general government for different designated purposes. What had the honorable member conceded? That the objects of the government were general, as designated in that system, equally affecting the interests of the people of every state. This was the sole concession, and which by no means warrants his conclusion. Then why did the honorable gentleman seize it as a victory? Does he mean to object to the Constitution by putting words into our mouths which we never uttered? Did that gentleman say that the happiness of the people depended on the private virtues of the members of the government, and not on its construction? Did any gentleman admit this, as he insinuated? No, sir, we never admitted such a conclusion. Why, then, take up the time of this house in declaiming on words we never said? We say that it will secure our liberty and happiness, and that it is so constructed and organized, that we need apprehend no danger.

### **NOTE Militia**

But, says he, the creature destroys the creator. How has he proved it? By his bare assertion. By ascribing infinitude to powers clearly limited and defined, for certain designated purposes. I shall not repeat the arguments which have fully refuted this idea of the honorable gentleman.

But gentlemen say that we must apply to the militia to execute the constitutional laws, without the interposition of the civil power, and that a military officer is to be substituted for the sheriff in all cases. This unwarrantable objection is urged, like many others, to produce the rejection of this government, though contrary to reason. What is the meaning of the clause under debate? Does not their explanation violate the natural meaning of language? Is it to be inferred that, when the laws are not opposed, judgments must be executed by the militia? Is this the right and liberal way of discussing the general national objects? I am astonished that gentlemen should attempt to impose so absurd a construction upon us.

{407} The honorable gentleman last up says, that organizing the militia gives Congress power to punish them when not in the actual Service of the government. The gentleman is mistaken in the meaning of the word *organization*, to explain which would unnecessarily take up time. Suffice it to say, it does not include the infliction of punishments. The militia will be subject to the common regulations of war when in actual service; but not in time of peace.

But the honorable gentleman said there is danger of an abuse of the power, and attempted to exemplify. And delegated power may be abused. It would be civil and candid in those gentlemen, who inveigh against this Constitution with such malignity, to show in what manner adequate powers can be given without a possibility of being abused. It appears to me to be as well secured as it can be, and that the alterations he proposes would involve many disadvantages. I cannot, then, but conclude that this government will, in my opinion, secure our liberty and happiness, without any alteration.

## Mr. CLAY

made several remarks; but he spoke too low. He admitted that he might be mistaken with respect to the exclusion of the civil power in executing the laws. As it was insinuated that he was not under the influence of common sense in making the objection, his error might result from his deficiency in that respect. But he thought that another gentleman was as deficient in common decency as he was in common sense. He was not, however, convinced that the civil power would be employed. If it was meant that the militia should not be called out to execute the laws in all cases, why were they not satisfied with the words, "repel invasions, suppress insurrections"? He thought the word *insurrection* included every opposition to the laws; and if so, it would be sufficient to call them forth to suppress insurrections, without mentioning that they were to execute the laws of the Union. He added that, although the militia officers were appointed by the state governments, yet, as they were sworn to obey the superior power of Congress, no check or security would result from their nomination of them.

## Mr. MADISON.

Mr. Chairman, I cannot think that the explanation of the gentleman last up is founded in reason. It does not say that the militia shall be called out in all cases, {408} but in certain cases. There are cases in which the execution of the laws may require the operation of militia, which cannot be said to be an invasion or insurrection. There may be a resistance to the laws which cannot be termed an insurrection.

My honorable friend over the way has opened a new source of argument. He has introduced the assertions of gentlemen out of doors. If we thus depart from regularity, we shall never be able to come to a decision.

If there be any gentleman who is a friend to the government, and says that the elections may or ought to be held in one place, he is an enemy to it on that ground. With respect to the time, place, and manner of elections, I cannot think, notwithstanding the apprehensions of the honorable gentleman, that there is any danger, or, if abuse should take place, that there is not sufficient security. If all the people, of the United States should be directed to go to elect in one place, the members of the government would be execrated for the infamous regulation. Many would go to trample them under foot for their conduct; and they would be succeeded by men who would remove it. They would not dare to meet the universal hatred and detestation of the people, and run the risk of the certain dreadful consequences. We must keep within the compass of human probability. If a possibility be the cause of objection, we must object to every government in America. But the honorable gentleman may say that better guards may be provided. Let us consider the objection. The power of regulating the time, place, and manner of elections, must be vested somewhere. It could not be fixed in the Constitution without involving great inconveniences. They could then have no authority to adjust the regulation to the changes of circumstances. The question then is, whether it ought to be fixed unalterably in the state governments, or be subject to the control of the general government. Is it not obvious that the general government would be destroyed without this control? It has already been demonstrated that it will produce many conveniences. Have we not sufficient security against abuse? Consider

fully the principles of the government. The sum of the powers given up by the people of Virginia is divided into two classes — one to the federal and the other to the state government. Each is subdivided into three branches. These {409} may be kept independent of each other in the one as well as the other. In this system, they are as distinct as is consistent with good policy. This, in my opinion, instead of diminishing, increases the security of liberty more than any government that ever was; for the powers of government which, in every other country, are given to one body, are here given to two, and are favorable to public liberty. With respect to secrecy, if every thing in which it is necessary could be enumerated, I would have no objection to mention them. All the state legislatures can keep secret what they think ought to be concealed. The British House of Commons can do it. They are in this respect under much less restraint than Congress. There never was any legislative assembly without a discretionary power of concealing important transactions, the publication of which might be detrimental to the community. There can be no real danger as long as the government is constructed on such principles.

He objects also to the clause respecting adjournment — that neither house shall, without the consent of the other, adjourn for more than three days. It was before remarked that, if a difference should take place between the houses about the time of adjournment, the President could still determine it; from which no danger could arise, as he is chosen in a secondary degree by the people, and would consequently fix no time which would be repugnant to the sense of the representatives of the people. Another and more satisfactory answer is this: Suppose the Senate wished to chain down the House of Representatives; what is to hinder them from going home? How bring them back again? It would be contrary to the spirit of the Constitution to impede the operations of the government, perhaps at a critical period. I cannot conceive that such difference will often happen. Were the Senate to attempt to prevent an adjournment, it would but serve to irritate the representatives without having the intended effect, as the President could adjourn them. There will not be occasion for the continual residence of the senators at the seat of government. What business have they more than the House of Representatives? The appointment of officers and treaties. With respect to the appointment of officers, a law may be made to grant it to the President alone. It must be supposed there will be but few and subordinate officers to be appointed, as the principal {410} offices will be filled. It is observed that the President, when vacancies happen during the recess of the Senate, may fill them till it meets. With respect to treaties, the occasions of forming them will not be many, and will make but a small porportion of the time of session.

## **Mr. CLAY**

wished to know the instances where an opposition to the laws did not come within the idea of an insurrection.

## **Mr. MADISON**

replied, that a riot did not come within the legal definition of an insurrection. There might be riots, to oppose the execution of the laws, which the civil power might not be sufficient to quell. This was one case, and there might probably be other cases. He referred to the candor of the committee, whether the militia could ever be used to destroy themselves.

---

1. Sir William Keith.

---

**MONDAY, June 16, 1788.**[\[1\]](#)

The Convention, according to the order of the day, again resolved itself into a committee of the whole Convention, to take into further consideration the proposed plan of government. Mr. WYTHE in the chair.

[The 8th section still under consideration. See page 378.]

## **Mr. HENRY**

thought it necessary and proper that they should take a collective view of this whole section, and revert again to the first clause. He adverted to the clause which gives Congress the power of raising armies, and proceeded as follows: To me this appears a very alarming power, when unlimited. They are not only to raise, but to support, armies; and this support is to go to the utmost abilities of the United States. If Congress shall say that the general welfare requires it, they may keep armies continually on foot. There is no control on Congress in raising or stationing them. They may billet them on the people at pleasure. This unlimited authority is a most dangerous power: its principles are despotic. If it be unbounded, it must lead to despotism; for the power of a people in a free government is supposed to be paramount to the existing power.

We shall be told that, in England, the king, lords, and commons, have this power; that armies can be raised by the prince alone, without the consent of the people. How does this apply here? Is this government to place us in the situation of the English? Should we suppose this government to resemble king, lords, and commons, we of this state {411} should be like an English county. An English county Cannot control the government. Virginia cannot control the government of Congress any more than the county of Kent can control that of England. Advert to the power thoroughly. One of our first complaints, under the former government, was the quartering of troops upon us. This was one of the principal reasons for dissolving the connection with Great Britain. Here we may have troops in time of peace. They may be billeted in any manner — to tyrannize, oppress, and crush us.

We are told, we are afraid to trust ourselves; that our own representatives — Congress — will not exercise their powers oppressively; that we shall not enslave ourselves; that the militia cannot enslave themselves, &c. Who has enslaved France, Spain, Germany, Turkey, and other countries which groan under tyranny? They have been enslaved by the hands of their own people. If it will be so in America, it will be only as it has been every where else. I am still persuaded that the power of calling forth the militia, to execute the laws of the Union, &c., is dangerous. We requested the gentleman to show the cases where the militia would be wanting to execute the laws. Have we received a satisfactory answer? When we consider this part, and compare it to

other parts, which declare that Congress may declare war, and that the President shall command the regular troops, militia, and navy, we shall find great danger. Under the order of Congress, they shall suppress insurrections. Under the order of Congress, they shall be called to execute the laws. It will result, of course, that this is to be a government of force. Look at the part which speaks of excises, and you will recollect that those who are to collect excises and duties are to be aided by military force. They have power to call them out, and to provide for arming, organizing, disciplining, them. Consequently, they are to make militia laws for this state.

## **Common Law**

The honorable gentleman said that the militia should be called forth to quell riots. Have we not seen this business go on very well to-day without military force? It is a long-established principle of the **common law** of England, that civil force is sufficient to quell riots. To what length may it not be carried? A law may be made that, if twelve men assemble, if they do not disperse, they may be fired upon. {412} I think it is so in England. Does not this part of the paper bear a strong aspect? The honorable gentleman, from his knowledge, was called upon to show the instances, and he told us the militia may be called out to quell riots. They may make the militia travel, and act under a colonel, or perhaps under a constable. Who are to determine whether it be a riot or not? Those who are to execute the laws of the Union? If they have power to execute their laws in this manner, in what situation are we placed! Your men who go to Congress are not restrained by a bill of rights. They are not restrained from inflicting unusual and severe punishments, though the bill of rights of Virginia forbids it. What will be the consequence? They may inflict the most cruel and ignominious punishments on the militia, and they will tell you that it is necessary for their discipline.

Give me leave to ask another thing. Suppose an exciseman will demand leave to enter your cellar, or house, by virtue of his office; perhaps he may call on the militia to enable him to go. If Congress be informed of it, will they give you redress? They will tell you that he is executing the laws under the authority of the continent at large, which must be obeyed, for that the government cannot be carried on without exercising severity. It, without any reservation of rights or control, you are contented to give up your rights, I am not. There is no principle to guide the legislature to restrain them from inflicting the utmost severity of punishment. Will gentlemen voluntarily give up their liberty? With respect to calling the militia to enforce every execution indiscriminately, it is unprecedented. Have we ever seen it done in any free country? Was it ever so in the mother country? It never was so in any well-regulated country. It is a government of force, and the genius of despotism expressly. It is not proved that this power is necessary, and if it be unnecessary, shall we give it up?

## **Mr. MADISON.**

Mr. Chairman, I will endeavor to follow the rule of the house, but must pay due attention to the observations which fell from the gentleman. I should conclude, from abstracted reasoning, that they were ill founded I should think that, if there were any object which the general government ought to command, it would be the direction of the national forces. And as the force which lies in militia is most safe, the direction of that part ought to be {413} submitted to, in order to render another force unnecessary. The power objected to is necessary, because it is to be employed for

national purposes. It is necessary to be given to every government. This is not opinion, but fact. The highest authority may be given, that the want of such authority in the government protracted the late war, and prolonged its calamities.

He says that one ground of complaint, at the beginning of the revolution, was, that a standing army was quartered upon us. This was not the whole complaint. We complained because it was done without the local authority of this country — without the consent of the people of America. As to the exclusion of standing armies in the bill of rights of the states, we shall find that though, in one or two of them, there is something like a prohibition, yet, in most of them, it is only provided that no armies shall be kept without the legislative authority; that is, without the consent of the community itself. Where is the impropriety of saying that we shall have all army, if necessary? Does not the notoriety of this constitute security? If inimical nations were to fall upon us when defenceless, what would be the consequence? Would it be wise to say, that we should have no defence? Give me leave to say, that the only possible way to provide against standing armies is to make them unnecessary.

The way to do this is to organize and discipline our militia, so as to render them capable of defending the country against external invasions and internal insurrections. But it is urged that abuses may happen. How is it possible to answer objections against the possibility of abuses? It must strike every logical reasoner, that these cannot be entirely provided against. I really thought that the objection in the militia was at an end. Was there ever a constitution, in which if authority was vested, it must not have been executed by force, if resisted? Was it not in the contemplation of this state, when contemptuous proceedings were expected, to recur to something of this kind? How is it possible to have a more proper resource than this? That the laws of every country ought to be executed, cannot be denied. That force must be used if necessary, cannot be denied. Can any government be established, that will answer any put, pose whatever, unless force be provided for executing its {414} laws? The Constitution does not say that a standing army shall be called out to execute the laws. Is not this a more proper way? The militia ought to be called forth to suppress smugglers. Will this be denied? The case actually happened at Alexandria. There were a number of smugglers, who were too formidable for the civil power to overcome. The military quelled the sailors, who otherwise would have perpetrated their intentions. Should a number of smugglers have a number of ships, the militia ought to be called forth to quell them. We do not know but what there may be a combination of smugglers in Virginia hereafter. We all know the use made of the Isle of Man. It was a general depository of contraband goods. The Parliament found the evil so great, as to render it necessary to wrest it out of the hands of its possessor.

The honorable gentleman says that it is a government of force. If he means military force, the clause under consideration proves the contrary. There never was a government without force. What is the meaning of government? An institution to make people do their duty. A government leaving it to a man to do his duty or not, as he pleases, would be a new species of government, or rather no government at all. The ingenuity of the gentleman is remarkable in introducing the riot act of Great Britain. That act has no connection, or analogy, to any regulation of the militia; nor is there any thing in the Constitution to warrant the general government to make such an act. It never was a complaint, in Great Britain, that the militia could be called forth. If riots should happen, the militia are proper to quell it, to prevent a resort to another mode. As to the infliction

of ignominious punishments, we have no ground of alarm, if we consider the circumstances of the people at large. There will be no punishments so ignominious as have been inflicted already. The militia law of every state to the north of Maryland is less rigorous than the particular law of this state. If a change be necessary to be made by the general government, it will be in our favor. I think that the people of those states would not agree to be subjected to a more harsh punishment than their own militia laws inflict. An observation fell from a gentleman, on the same side with myself, which deserves to be attended to. If we be dissatisfied with the national government, if we should choose to renounce {415} it, this is an additional safeguard to our defence. I conceive that we are peculiarly interested in giving the general government as extensive means as possible to protect us. If there be a particular discrimination between places in America, the Southern States are, from their situation and circumstances, most interested in giving the national government the power of protecting its members.

[Here Mr. Madison made some other observations, but spoke so very low, that his meaning could not be comprehended.]

An act passed, a few years ago, in this state, to enable the government to call forth the militia to enforce the laws when a powerful combination should take place to oppose them. This is the same power which the Constitution is to have. There is a great deal of difference between calling forth the militia, when a combination is formed to prevent the execution of the laws, and the sheriff or constable carrying with him a body of militia to execute them in the first instance; which is a construction not warranted by the clause. There is an act, also, in this state, empowering the officers of the customs to summon any persons to assist them when they meet with obstruction in executing their duty. This shows the necessity of giving the government power to call forth the militia when the laws are resisted. It is a power vested in every legislature in the Union, and which is necessary to every government. He then moved that the clerk should read those acts — which were accordingly read.

## **Mr. GEORGE MASON**

asked to what purpose the laws were read. The objection was, that too much power was given to Congress — power that would finally destroy the state governments more effectually by insidious, underhanded means, than such as could be openly practised. This, said he, is the opinion of many worthy men, not only in this Convention, but in all parts of America. These laws could only show that the legislature of this state could pass such acts. He thought they militated against the cession of this power to Congress, because the state governments could call forth the militia when necessary, so as to compel a submission to the laws; and as they were competent to it, Congress ought not to have the power. The meeting of three or four persons might be called an insurrection, and the militia might be called out to disperse them. He was not satisfied with {416} the explanation of the word organization by the gentleman in the military line, (Mr. Lee.)

He thought they were not confined to the technical explanation, but that Congress could inflict severe and ignominious punishments on the militia, as a necessary incident to the power of organizing and disciplining them. The gentleman had said there was no danger, because the laws respecting the militia were less rigid in the other states than this. This was no conclusive

argument. His fears, as he had before expressed, were, that grievous punishments would be inflicted, in order to render the service disagreeable to the militia themselves, and induce them to wish its abolition, which would afford a pretence for establishing a standing army. He was convinced the state governments ought to have the control of the militia, except when they were absolutely necessary for general purposes. The gentleman had said that they would be only subject to martial law when in actual service. He demanded what was to hinder Congress from inflicting it always, and making a general law for the purpose. If so, said he, it must finally produce, most infallibly, the annihilation of the state governments. These were his apprehensions; but he prayed God they might be groundless.

## **Mr. MADISON**

replied, that the obvious explanation was, that the states were to appoint the officers, and govern all the militia except that part which was called into the actual service of the United States. He asked, if power were given to the general government, if we must not give it executive power to use it. The vice of the old system was, that Congress could not execute the powers nominally vested in them. If the contested clause were expunged, this system would have nearly the same defect.

## **Mr. HENRY**

wished to know what authority the state governments had over the militia.

## **Mr. MADISON**

answered, that the state governments might do what they thought proper with the militia, when they were not in the actual service of the United States. They might make use of them to suppress insurrections, quell riots, &c., and call on the general government for the militia of any other state, to aid them, if necessary.

## **Mr. HENRY**

replied that, as the clause expressly vested the general government with power to call them out to suppress {417} insurrections, &c., it appeared to him, most decidedly, that the power of suppressing insurrections was exclusively given to Congress. If it remained in the states, it was by implication.

## **Mr. CORBIN,**

after a short address to the chair, in which he expressed extreme reluctance to get up, said, that all contentions on this subject might be ended, by adverting to the 4th section of the 4th article, which provides, "that the United States shall guaranty to every state in the Union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic

violence." He thought this section gave the states power to use their own *militia*, and call on Congress for the militia of other states. He observed that our representatives were to return every second year to mingle with their fellow-citizens. He asked, then, how, in the name of God, they would make laws to destroy themselves. The gentleman had told us that nothing could be more humiliating than that the *state governments* could not control the general government. He thought the gentleman might as well have complained that one county could not control the state at large. Mr. Corbin then said that all confederate governments had the care of the national defence, and that Congress ought to have it. Animadverting on Mr. Henry's observations, that the French had been the instruments of their own slavery, that the Germans had enslaved the Germans, and the Spaniards the Spaniards, &c., he asked if those nations knew any thing of representation. The want of this knowledge was the principal cause of their bondage. He concluded by observing that the general government had no power but such as the state government had, and that arguments against the one held against the other.

## Mr. GRAYSON,

in reply to Mr. Corbin, said he was mistaken when he produced the 4th section of the 4th article, to prove that the state governments had a right to intermeddle with the militia. He was of opinion that a previous application must be made to the federal head, by the legislature when in session, or otherwise by the executive of any state, before they could interfere with the militia. In his opinion, no instance could be adduced where the states could employ the militia; for, in all the cases wherein they could be employed, Congress had the exclusive direction and control of them. Disputes, he observed, had happened in many countries, where this power should be lodged. In England, there was a dispute between the Parliament and King Charles who should have power over the militia. Were this government well organized, he would not object to giving it power over the militia. But as it appeared to him to be without checks, and to tend to the formation of an aristocratic body, he could not agree to it. Thus organized, his imagination did not reach so far as to know where this power should be lodged. He conceived the state governments to be at the mercy of the generality. He wished to be open to conviction, but he could see no case where the states could command the militia. He did not believe that it corresponded with the intentions of those who formed it, and it was altogether without an equilibrium. He humbly apprehended that the power of providing for organizing and disciplining the militia, enabled the government to make laws for regulating them, and inflicting punishments for disobedience, neglect, &c. Whether it would be the spirit of the generality to lay unusual punishments, he knew not; but he thought they had the power, if they thought proper to exercise it. He thought that, if there was a constructive implied power left in the states, yet, as the line was not clearly marked between the two governments, it would create differences. He complained of the uncertainty of the expression, and wished it to be so clearly expressed that the people might see where the states could interfere.

As the exclusive power of arming, organizing, &c., was given to Congress, they might entirely neglect them; or they might be armed in one part of the Union, and totally neglected in another. This he apprehended to be a probable circumstance. In this he might be thought suspicious; but he was justified by what had happened in other countries. He wished to know what attention had been paid to the militia of Scotland and Ireland since the union, and what laws had been made to regulate them. There is, says Mr. Grayson, an excellent militia law in England, and such as I

wish to be established by the general government. They have thirty thousand select militia in England. But the militia of Scotland and Ireland are neglected. I see the necessity of the concentration of the forces of the Union. {419} I acknowledge that militia are the best means of quelling insurrections, and that we have an advantage over the English government, for their regular forces answer the purpose. But I object to the want of checks, and a line of discrimination between the state governments and the generality.

## **Mr. JOHN MARSHALL**

asked if gentlemen were serious when they asserted that, if the state governments had power to interfere with the militia, it was by implication. If they were, he asked the committee whether the least attention would not show that they were mistaken. The state governments did not derive their powers from the general government; but each government derived its powers from the people, and each was to act according to the powers given it. Would any gentleman deny this? He demanded if powers not given were retained by implication. Could any man say so? Could any man say that this power was not retained by the states, as they had not given it away? For, says he, does not a power remain till it is given away? The state legislatures had power to command and govern their militia before, and have it still, undeniably, unless there be something in this Constitution that takes it away.

For Continental purposes Congress may call forth the militia, — as to suppress insurrections and repel invasions. But the power given to the states by the people is not taken away; for the Constitution does not say so. In the Confederation Congress had this power; but the state legislatures had it also. The power of legislating given them within the ten miles square is exclusive of the states, because it is expressed to be exclusive. The truth is, that when power is given to the general legislature, if it was in the state legislature before, both shall exercise it; unless there be an incompatibility in the exercise by one to that by the other, or negative words precluding the state governments from it. But there are no negative words here. It rests, therefore, with the states. To me it appears, then, unquestionable that the state governments can call forth the militia, in case the Constitution should be adopted, in the same manner as they could have done before its adoption. Gentlemen have said that the states cannot defend themselves without an application to Congress, because Congress can interpose! Does not every man feel a refutation of the argument in his own breast? I will show {420} that there could not be a combination, between those who formed the Constitution, to take away this power. All the restraints intended to be laid on the state governments (besides where an exclusive power is expressly given to Congress) are contained in the 10th section of the 1st article. This power is not included in the restrictions in that section. But what excludes every possibility of doubt, is the last part of it — that "no state shall engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." When invaded, they call engage in war, as also when in imminent danger. This clearly proves that the states can use the militia when they find it necessary. The worthy member last up objects to the Continental government's possessing the power of disciplining the militia, because, though all its branches be derived from the people, he says they will form an aristocratic government, unsafe and unfit to be trusted.

## **Mr. GRAYSON**

answered, that he only said it was so constructed as to form a great aristocratic body.

## **Mr. MARSHALL**

replied, that he was not certain whether he understood him; but he thought he had said so. He conceived that, as the government was drawn from the people, the feelings and interests of the people would be attended to, and that we should be safe in granting them power to regulate the militia. When the government is drawn from the people, continued Mr. Marshall, and depending on the people for its continuance, oppressive measures will not be attempted, as they will certainly draw on their authors the resentment of those on whom they depend. On this government, thus depending on ourselves for its existence, I will rest my safety, notwithstanding the danger depicted by the honorable gentleman. I cannot help being surprised that the worthy member thought this power so dangerous. What government is able to protect you in time of war? Will any state depend on its own exertions? The consequence of such dependence, and withholding this power from Congress, will be, that state will fall after state, and be a sacrifice to the want of power in the general government. *United we are strong, divided we fall.* Will you prevent the general government from drawing the militia of one state to another, when the consequence would be, that every state must depend on itself? The enemy, possessing {421} the water, can quickly go from one state to another. No state will spare to another its militia, which it conceives necessary for itself. It requires a Superintending power, in order to call forth the resources of all to protect all. If this be not done, each state will fall a sacrifice. This system merits the highest applause in this respect. The honorable gentleman said that a general regulation may be made to inflict punishments. Does he imagine that a militia law is to be ingrafted on the scheme of government, so as to render it incapable of being changed? The idea of the worthy member supposes that men renounce their own interests. This would produce general inconveniences throughout the Union, and would be equally opposed by all the states. But the worthy member fears, that in one part of the Union they will be regulated and disciplined, and in another neglected. This danger is enhanced by leaving this power to each state; for some states may attend to their militia, and others may neglect them. If Congress neglect our militia, we can arm them ourselves. Cannot Virginia import arms? Cannot she put them into the hands of her militia-men?

He then concluded by observing, that the power of governing the militia was not vested in the states by implication, because, being possessed of it antecedent to the adoption of the government, and not being divested of it by any grant or restriction in the Constitution, they must necessarily be as fully possessed of it as ever they had been. And it could not be said that the states derived any powers from that system, but retained them, though not acknowledged in any part of it.

## **Mr. GRAYSON**

acknowledged that all power was drawn from the people. But he could see none of those checks which ought to characterize a free government. It had not such checks as even the British government had. He thought it so organized as to form an aristocratic body. If we looked at the democratic branch, and the great extent of country, he said, it must be considered, in a great

degree, to be an aristocratic representation. As they were elected with craving appetites, and wishing for emoluments, they might unite with the other two branches. They might give reciprocally good offices to one another, and mutually protect each other; for he considered them all as united in interest, and as but one branch. There was no check to prevent such {422} a combination; nor, in cases of concurrent powers, was there a line drawn to prevent interference between the state governments and the generality.

## Mr. HENRY

still retained his opinion, that the states had no right to call forth the militia to suppress insurrections, &c. But the right interpretation (and such as the nations of the earth had put upon the concession of power) was that, when power was given, it was given exclusively. He appealed to the committee, if power was not confined in the hands of a *few* in almost all countries of the world. He referred to their candor, if the construction of conceded power was not an exclusive concession, in nineteen twentieth parts of the world. The nations which retained their liberty were comparatively few. America would add to the number of the oppressed nations, if she depended on constructive rights and argumentative implication. That the powers given to Congress were exclusively given, was very obvious to him. The rights which the states had must be founded on the restrictions on Congress. He asked, if the doctrine which had been so often circulated, that rights not given were retained, was true, why there were negative clauses to restrain Congress. He told gentlemen that these clauses were sufficient to shake all their implication; for, says he, if Congress had no power but that given to them, why restrict them by negative words? Is not the clear implication this — that, if these restrictions were not inserted, they could have performed what they prohibit?

The worthy member had said that Congress ought to have power to protect all, and had given this system the highest encomium. But he insisted that the power over the militia was concurrent. To obviate the futility of this doctrine, Mr. Henry alleged that it was not reducible to practice. Examine it, says he; reduce it to practice. Suppose an insurrection in Virginia, and suppose there be danger apprehended of an insurrection in another state, from the exercise of the government; or suppose a national war, and there be discontents among the people of this state, that produce, or threaten, an insurrection; suppose Congress, in either case, demands a number of militia, — will they not be obliged to go? Where are your reserved rights, when your militia go to a neighboring state? Which call is to be obeyed, the congressional call, or the call of the state legislature? The call of Congress must be obeyed. I need not remind this {423} committee that the sweeping clause will cause their demands to be submitted to. This clause enables them "to make all laws which shall be necessary and proper to carry into execution all the powers vested by this Constitution in the government of the United States, or in any department or officer thereof." Mr. Chairman, I will turn to another clause, which relates to the same subject, and tends to show the fallacy of their argument.

The 10th section of the 1st article, to which reference was made by the worthy member, militates against himself. It says, that "no state shall engage in war, unless actually invaded." If you give this clause a fair construction, what is the true meaning of it? What does this relate to? Not domestic insurrections, but war. If the country be invaded, a state may go to war, but cannot suppress insurrections. If there should happen an insurrection of slaves, the country cannot be

said to be invaded. They cannot, therefore, suppress it without the interposition of Congress. The 4th section of the 4th article expressly directs that, in case of domestic violence, Congress shall protect the states on application of the legislature or executive; and the 8th section of the 1st article gives Congress power to call forth the militia to quell insurrections: there cannot, therefore, be a concurrent power. The state legislatures ought to have power to call forth the efforts of the militia, when necessary. Occasions for calling them out may be urgent, pressing, and instantaneous. The states cannot now call them, let an insurrection be ever so perilous, without an application to Congress. So long a delay may be fatal.

There are three clauses which prove, beyond the possibility of doubt, that Congress, and *Congress only*, can call forth the militia. The clause giving Congress power to call them out to suppress insurrections, &c.; that which restrains a state from engaging in war except when actually invaded; and that which requires Congress to protect the states against domestic violence, — render it impossible that a state can have power to intermeddle with them. Will not Congress find refuge for their actions in these clauses? With respect to the concurrent jurisdiction, it is a political monster of absurdity. We have passed that clause which gives Congress an unlimited authority over the national wealth; and here is an unbounded control over the national strength. Notwithstanding {424} this clear, unequivocal relinquishment of the power of controlling the militia, you say the states retain it, for the very purposes given to Congress. Is it fair to say that you give the power of arming the militia, and at the same time to say you reserve it? This great national government ought not to be left in this condition. If it be, it will terminate in the destruction of our liberties.

## **Mr. MADISON.**

Mr. Chairman, let me ask this committee, and the honorable member last up, what we are to understand from this reasoning. The power must be vested in Congress, or in the state governments; or there must be a division or concurrence. He is against division. It is a political monster. He will not give it to Congress for fear of oppression. Is it to be vested in the state governments? If so, where is the provision for general defence? If ever America should be attacked, the states would fall successively. It will prevent them from giving aid to their sister states; for, as each state will expect to be attacked, and wish to guard against it, each will retain its own militia for its own defence. Where is this power to be deposited, then, unless in the general government, if it be dangerous to the public safety to give it exclusively to the states? If it must be divided, let him show a better manner of doing it than that which is in the Constitution. I cannot agree with the other honorable gentleman, that there is no check. There is a powerful check in that paper. The state governments are to govern the militia when not called forth for general national purposes; and Congress is to govern such part only as may be in the actual service of the Union. Nothing can be more certain and positive than this. It expressly empowers Congress to govern them when in the service of the United States. It is, then, clear that the states govern them when they are not. With respect to suppressing insurrections, I say that those clauses which were mentioned by the honorable gentleman are compatible with a concurrence of the power. By the first, Congress is to call them forth to suppress insurrections, and repel invasions of foreign powers. A concurrence in the former case is necessary, because a whole state may be in insurrection against the Union. What has passed may perhaps justify this apprehension. The safety of the Union and particular states requires that the general government

should have power to {425} repel foreign invasions. The 4th section of the 4th article is perfectly consistent with the exercise of the power by the states. The words are, "The United States shall guaranty to every state in this Union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence." The word invasion here, after power had been given in the former clause to repel invasions, may be thought tautologous, but it has a different meaning from the other. This clause speaks of a particular state. It means that it shall be protected from invasion by other states. A republican government is to be guarantied to each state, and they are to be protected from invasion from other states, as well as from foreign powers; and, on application by the legislature or executive, as the case may be, the militia of the other states are to be called to suppress domestic insurrections. Does this bar the states from calling forth their own militia? No; but it gives them a supplementary security to suppress insurrections and domestic violence.

The other clause runs in these words: "No state shall, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." They are restrained from making war, unless invaded, or *in imminent danger*. When in such danger, they are not restrained. I can perceive no competition in these clauses. They cannot be said to be repugnant to a concurrence of the power. If we object to the Constitution in this manner, and consume our time in verbal criticism, we shall never put an end to the business.

## **Mr. GEORGE MASON.**

Mr. Chairman, a worthy member has asked who are the militia, if they be not the *people* of this country, and if we are not to be protected from the fate of the Germans, Prussians, &c., by our representation? I ask, [Who are the militia? They consist now of the whole people, except a few public officers.](#) But I cannot say who will be the militia of the future day. If that paper on the table gets no alteration, the militia of the future day may not consist of all classes, high and low, and {426} rich and poor; but they may be confined to the lower and middle classes of the people, granting exclusion to the higher classes of the people. If we should ever see that day, the most ignominious punishments and heavy fines may be expected. Under the present government, all ranks of people are subject to militia duty. Under such a full and equal representation as ours, there can be no ignominious punishment inflicted. But under this national, or rather consolidated government, the case will be different. The representation being so small and inadequate, they will have no fellow-feeling for the people. They may discriminate people in their own predicament, and exempt from duty all the officers and lowest creatures of the national government. If there were a more particular definition of their powers, and a clause exempting the militia from martial law except when in actual service, and from fines and punishments of an unusual nature, then we might expect that the militia would be what they are. But, if this be not the case, we cannot say how long all classes of people will be included in the militia. There will not be the same reason to expect it, because the government will be administered by different people. We know what they are now, but know not how soon they may be altered.

## Mr. GEORGE NICHOLAS.

Mr. Chairman, I feel apprehensions lest the subject of our debates should be misunderstood. Every one wishes to know the true meaning of the system; but I fear those who hear us will think we are captiously quibbling on words. We have been told, in the course of this business, that the government will operate like a screw. Give me leave to say that the exertions of the opposition are like that instrument. They catch at every thing, and take it into their vortex. The worthy member says that this government is defective, because it comes from the people. Its greatest recommendation, with me, is putting the power in the hands of the people. He disapproves of it because it does not say in what particular instances the militia shall be called out to execute the laws. This is a power of the Constitution, and particular instances must be defined by the legislature. But, says the worthy member, those laws which have been read are arguments against the Constitution, because they show that the states are now in possession of the power, and competent to its execution. {427} Would you leave this power in the states, and by that means deprive the general government of a power which will be necessary for its existence? If the state governments find this power necessary, ought not the general government to have a similar power? But, sir, there is no state check in this business. The gentleman near me has shown that there is a very important check.

Another worthy member says there is no power in the states to quell an insurrection of slaves. Have they it now? If they have, does the Constitution take it away? If it does, it must be in one of the three clauses which have been mentioned by the worthy member. The first clause gives the general government power to call them out when necessary. Does this take it away from the states? No. But it gives an additional security; for, besides the power in the state governments to use their own militia, it will be the duty of the general government to aid them with the strength of the Union when called for. No part of this Constitution can show that this power is taken away.

But an argument is drawn from that clause which says "that no state shall engage in war unless actually invaded, or in such imminent danger as will not admit of delay." What does this prohibition amount to? It must be a war with a foreign enemy that the states are prohibited from making; for the exception to the restriction proves it. The restriction includes only offensive hostility, as they are at liberty to engage in war when invaded, or in imminent danger. They are, therefore, not restrained from quelling domestic insurrections, which are totally different from making war with a foreign power. But the great thing to be dreaded is that, during an insurrection, the militia will be called out from the state. This is his kind of argument. Is it possible that, at such a time, the general government would order the militia to be called? It is a groundless objection, to work on gentlemen's apprehensions within these walls. As to the 4th article, it was introduced wholly for the particular aid of the states. A republican form of government is guaranteed, and protection is secured against invasion and domestic violence on application. Is not this a guard as strong as possible? Does it not exclude the unnecessary interference of Congress in business of this sort?

The gentleman over the way cannot tell who will be the {428} militia at a future day, and enumerates dangers of select militia. Let me attend to the nature of gentlemen's objections. One objects because there will be select militia; another objects because there will be no select

militia; and yet both oppose it on these contradictory principles. If you deny the general government the power of calling out the militia, there must be a recurrence to a standing army. If you are really jealous of your liberties, confide in Congress.

## **Mr. MASON**

rose, and said that he was totally misunderstood. The contrast between his friend's objection and his was improper. His friend had mentioned the propriety of having select militia, like those of Great Britain, who should be more thoroughly exercised than the militia at large could possibly be. But he, himself, had not spoken of a selection of militia, but of the exemption of the highest classes of the people from militia service; which would justify apprehensions of severe and ignominious punishments.

## **Mr. NICHOLAS**

wished to know whether the representatives of the people would consent to such exemptions, as every man who had twenty-five acres of land could vote for a federal representative.

## **Mr. GRAYSON.**

Mr. Chairman, I conceive that the power of providing and maintaining a navy is at present dangerous, however warmly it may be urged by gentlemen that America ought to become a maritime power. If we once give such power, we put it in the hands of men whose interest it will be to oppress us. It will also irritate the nations of Europe against us. Let us consider the situation of the maritime powers of Europe: they are separated from us by the Atlantic Ocean. The riches of all those countries come by sea. Commerce and navigation are the principal sources of their wealth. If we become a maritime power, we shall be able to participate in their most beneficial business. Will they suffer us to put ourselves in a condition to rival them? I believe the first step of any consequence, which will be made towards it, will bring war upon us. Their ambition and avarice most powerfully impel them to prevent our becoming a naval nation. We should, on this occasion, consult our ability. Is there any gentleman here who can say that America can support a navy? The riches of America are not sufficient to bear the enormous expense it must certainly occasion. I may be supposed to exaggerate, {429} but I leave it to the committee to judge whether my information be right or not.

It is said that shipwrights can be had on better terms in America than in Europe; but necessary materials are so much dearer in America than in Europe, that the aggregate sum would be greater. A seventy-four gun ship will cost you ninety-eight thousand pounds, including guns, tackle, &c. According to the usual calculation in England, it will cost you the further sum of forty-eight thousand pounds to mail it, furnish provisions, and pay officers and men. You must pay men more here than in Europe, because, their governments being arbitrary, they can command the services of their subjects without an adequate compensation; so that, in all, the expenses of such a vessel would be one hundred and forty thousand pounds in one year. Let gentlemen consider, then, the extreme difficulty of supporting a navy, and they will concur with me, that America cannot do it. I have no objection to such a navy as will not excite the jealousy

of the European countries. But I would have the Constitution to say, that no greater number of ships should be had than would be sufficient to protect our trade. Such a fleet would not, probably, offend the Europeans. I am not of a jealous disposition; but when I consider that the welfare and happiness of my country are in danger, I beg to be excused for expressing my apprehensions. Let us consider how this navy shall be raised. What would be the consequence under those general words, "to provide and maintain a navy"? All the vessels of the intended fleet would be built and equipped in the Northern States, where they have every necessary material and convenience for the purpose. Will any gentleman say that any ship of war can be raised to the south of Cape Charles? The consequence will be that the Southern States will be in the power of the Northern States.

We should be called upon for our share of the expenses, without having equal emoluments. Can it be supposed, when this question comes to be agitated in Congress, that the Northern States will not take such measures as will throw as much circulating money among them as possible, without any consideration as to the other states? If I know the nature of man, (and I believe I do,) they will have no consideration for us. But, supposing it were not so, America {430} has nothing at all to do with a fleet. Let us remain for some time in obscurity, and rise by degrees. Let us not precipitately provoke the resentment of the maritime powers of Europe. A well-regulated militia ought to be the defence of this country. In some of our constitutions it is said so. This Constitution should have inculcated the principle, Congress ought to be under some restraint in this respect. Mr. Grayson then added, that the Northern States would be principally benefited by having a fleet; that a majority of the states could vote the raising a great navy, or enter into any commercial regulation very detrimental to the other states. In the United Netherlands there was much greater security, as the commercial interest of no state could be sacrificed without its own consent. The raising a fleet was the daily and favorite subject of conversation in the Northern States. He apprehended that, if attempted, it would draw us into a war with Great Britain or France. As the American fleet would not be competent to the defence of all the states, the Southern States would be most exposed. He referred to the experience of the late war, as a proof of what he said. At the period the Southern States were most distressed, the Northern States, he said, were most happy. They had privateers in abundance, whereas we had but few. Upon the whole, he thought we should depend on our troops on shore, and that it was very impolitic to give this power to Congress without any limitation.

## **Mr. NICHOLAS**

remarked that the gentleman last up had made two observations — the one, that we ought not to give Congress power to raise a navy; and the other, that we had not the means of supporting it. Mr. Nicholas thought it a false doctrine. Congress, says he, has a discretionary power to do it when necessary. They are not bound to do it in five or ten years, or at any particular time. It is presumable, therefore, that they will postpone it until it be proper.

## **Mr. GRAYSON**

had no objection to giving Congress the power of raising such a fleet as suited the circumstances of the country. But he could not agree to give that unlimited power which was delineated in that paper.

Adverting to the clause investing Congress with the power of exclusive legislation in a district not exceeding ten miles square, he said he had before expressed his doubts that this district would be the favorite of the generality, and that it would be possible for them to give exclusive privileges of commerce to those residing within it. He had illustrated what he said by European examples. It might be said to be impracticable to exercise this power in this manner. Among the various laws and customs which pervaded Europe, there were exclusive privileges and immunities enjoyed in many places. He thought that this ought to be guarded against; for should such exclusive privileges be granted to merchants residing within the ten miles square, it would be highly injurious to the inhabitants of other places.

## Mr. GEORGE MASON

### EXCLUSIVE

thought that there were few clauses in the Constitution so dangerous as that which gave Congress exclusive power of legislation within ten miles square. Implication, he observed, was capable of any extension, and would probably be extended to augment the congressional powers. But here there was no need of implication. This clause gave them an unlimited authority, in every possible case, within that district. This ten miles square, says Mr. Mason, may set at defiance the laws of the surrounding states, and may, like the custom of the superstitious days of our ancestors, become the sanctuary of the blackest crimes. Here the federal courts are to sit. We have heard a good deal said of justice.

It has been doubted whether jury trial be secured in civil cases. But I will suppose that we shall have juries in civil cases. What sort of a jury shall we have within the ten miles square? The immediate creatures of the government. What chance will poor men get, where Congress have the power of legislating in all cases whatever, and where judges and juries may be under their influence, and bound to support their operations? Even with juries the chance of justice may here be very small, as Congress have unlimited authority, legislative, executive, and judicial. Lest this power should not be sufficient, they have it in every case. Now, sir, if an attempt should be made to establish tyranny over the people, here are ten miles square where the greatest offender may meet protection. If any of their officers, or creatures, should attempt to oppress the people, or should actually perpetrate the blackest deed, he has nothing to do but get into the ten miles square. Why was this dangerous power given? Felons may receive an asylum there and in {432} their strongholds. Gentlemen have said that it was dangerous to argue against possible abuse, because there could be no power delegated but might be abused. It is an incontrovertible axiom, that, when the dangers that may arise from the *abuse* are greater than the benefits that may result from the use, the power ought to be withheld. I do not conceive that this power is at all necessary, though capable of being greatly abused.

We are told by the honorable gentleman that Holland has its Hague. I confess I am at a loss to know what inference he could draw from that observation. This is the place where the deputies

of the United Provinces meet to transact the public business. But I do not recollect that they have any exclusive jurisdiction whatever in that place, but are subject to the laws of the province in which the Hague is. To what purpose the gentleman mentioned that Holland has its Hague, I cannot see.

## **Mr. MASON**

then observed that he would willingly give them exclusive power, as far as respected the police and good government of the place; but he would give them no more, because he thought it unnecessary. He was very willing to give them, in this as well as in all other cases, those powers which he thought indispensably necessary.

## **Mr. MADISON.**

### **EXCLUSIVE**

Mr. Chairman: I did conceive, sir, that the clause under consideration was one of those parts which would speak its own praise. It is hardly necessary to say any thing concerning it. Strike it out of the system, and let me ask whether there would not be much larger scope for those dangers. I cannot comprehend that the power of legislating over a small district, which cannot exceed ten miles square, and may not be more than one mile, will involve the dangers which he apprehends. If there be any knowledge in my mind of the nature of man, I should think it would be the last thing that would enter into the mind of any man to grant exclusive advantages, in a very circumscribed district, to the prejudice of the community at large. We make suppositions, and afterwards deduce conclusions from them, as if they were established axioms. But, after all, bring home this question to ourselves. Is it probable that the members from Georgia, New Hampshire, &c., will concur to sacrifice the privileges of their friends? I believe that, whatever state may become the seat of the general {433} government, it will become the object of the jealousy and envy of the other states. Let me remark, if not already remarked, that there must be a cession, by particular states, of the district to Congress, and that the states may settle the terms of the cession. The states may make what stipulation they please in it, and, if they apprehend any danger, they may refuse it altogether. How could the general government be guarded from the undue influence of particular states, or from insults, without such exclusive power? If it were at the pleasure of a particular state to control the session and deliberations of Congress, would they be secure from insults, or the influence of such state? If this commonwealth depended, for the freedom of deliberation, on the laws of any state where it might be necessary to sit, would it not be liable to attacks of that nature (and with more indignity) which have been already offered to Congress? With respect to the government of Holland, I believe the States General have no jurisdiction over the Hague; but I have heard that mentioned as a circumstance which gave undue influence to Holland over the rest. We must limit our apprehensions to certain degrees of probability. The evils which they urge must result from this clause are extremely improbable; nay, almost impossible.

## **Mr. GRAYSON.**

Mr. Chairman, one answer which has been given is, the improbability of the evil — that it will never be attempted, and that it is almost impossible. This will not satisfy us, when we consider the great attachments men have to a great and magnificent capital. It would be the interest of the citizens of that district to aggrandize themselves by every possible means in their power, to the great injury of the other states. If we travel all over the world, we shall find that people have aggrandized their own capitals. Look at Russia and Prussia. Every step has been taken to aggrandize their capitals. In what light are we to consider the ten miles square? It is not to be a fourteenth state. The inhabitants will in no respect whatever be amenable to the laws of any state. A clause in the 4th article, highly extolled for its wisdom, will be rendered nugatory by this exclusive legislation. This clause runs thus: "No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on the claim of the party to whom such labor or service may be due." Unless you consider the ten miles square as a state, persons bound to labor, who shall escape thither, will not be given up; for they are only to be delivered up after they shall have escaped into a state. As my honorable friend mentioned, felons, who shall have fled from justice to the ten miles square, cannot be apprehended. The executive of a state is to apply to that of another for the delivery of a felon. He cannot apply to the ten miles square. It was often in contemplation of Congress to have power of regulating the police of the seat of government; but they never had an idea of exclusive legislation in all cases. The power of regulating the police and good government of it will secure Congress against insults. What originated the idea of the exclusive legislation was, some insurrection in Pennsylvania, whereby Congress was insulted, — on account of which, it is supposed, they left the state.

It is answered that the consent of the state must be required, or else they cannot have such a district, or places for the erecting of forts, &c. But how much is already given them! Look at the great country to the north-west of the Ohio, extending to and commanding the lakes.

Look at the other end of the Ohio, towards South Carolina, extending to the Mississippi. See what these, in process of time, may amount to. They may grant exclusive privileges to any particular part of which they have the possession. But it may be observed that those extensive countries will be formed into independent states, and that their consent will be necessary. To this I answer, that they may still grant such privileges as, in that country, are already granted to Congress by the states. The grants of Virginia, South Carolina, and other states, will be subservient to Congress in this respect. Of course, it results from the whole, that requiring the consent of the states will be no guard against this abuse of power.

[A desultory conversation ensued.]

## **Mr. NICHOLAS**

insisted that as the state, within which the ten miles square might be, could prescribe the terms on which Congress should hold it, no danger could arise, as no state would consent to injure itself: there was the same {435} security with respect to the places purchased for the erection of forts, magazines, &c.; and as to the territory of the United States, the power of Congress only extended to make needful rules and regulations concerning it, without prejudicing the claim of

any particular state, the right of territory not being given up; that the grant of those lands to the United States was for the general benefit of all the states, and not to be perverted to their prejudice; that, consequently, whether that country were formed into new states or not, the danger apprehended could not take place; that the seat of government was to be still a part of the state, and, as to general regulations, was to be considered as such.

## **Mr. GRAYSON,**

on the other hand, contended that the ten miles square could not be viewed as a state; that the state within which it might be would have no power of legislating over it; that, consequently, persons bound to labor, and felons, might receive protection there; that exclusive emoluments might be granted to those residing within it; that the territory of the United States, being a part of no state or states, might be appropriated to what use Congress pleased, without the consent of any state or states; and that, consequently, such exclusive privileges and exemptions might be granted, and such protection afforded to fugitives, within such places, as Congress should think proper; that, after mature consideration, he could not find that the ten miles square was to be looked upon even as a part of a state, but to be totally independent of all, and subject to the exclusive legislation of Congress.

## **Mr. LEE**

strongly expatiated on the impossibility of securing any human institution from possible abuse. He thought the powers conceded in the paper on the table not so liable to be abused as the powers of the state governments. Gentlemen had suggested that the seat of government would become a sanctuary for state villains, and that, in a short time, ten miles square would subjugate a country of eight hundred miles square. This appeared to him a most improbable possibility; nay, he might call it impossibility. Were the place crowded with rogues, he asked if it would be an agreeable place of residence for, the members of the general government, who were freely chosen by the people and the state governments. Would the people be so lost to honor and virtue, as to select men who would willingly {436} associate with the most abandoned characters? He thought the honorable gentleman's objections against remote possibility of abuse went to prove that government of no sort was eligible, but that a state of nature was preferable to a state of civilization. He apprehended no danger; and thought that persons bound to labor, and felons, could not take refuge in the ten miles square, or other places exclusively governed by Congress, because it would be contrary to the Constitution, and a palpable usurpation, to protect them.

## **Mr. HENRY**

entertained strong suspicions that great dangers must result from the clause under consideration. They were not removed, but rather confirmed, by the remarks of the honorable gentleman, in saying that it was extremely improbable that the members from New Hampshire and Georgia would go and legislate exclusively for the ten miles square. If it was so improbable, why ask the power? Why demand a power which was not to be exercised? Compare this power, says he, with the next clause, which gives them power to make all laws which shall be necessary to carry their laws into execution. By this they have a right to pass any law that may facilitate the execution of

their acts. They have a right, by this clause, to make a law that such a district shall be set apart for any purpose they please, and that any man who shall act contrary to their commands, within certain tell miles square, or any place they may select, and strongholds, shall be hanged without benefit of clergy. If they think any law necessary for their personal safety, after perpetrating the most tyrannical and oppressive deeds, cannot they make it by this sweeping clause? If it be necessary to provide, not only for this, but for any department or officer of Congress, does not this clause enable them to make a law for the purpose? And will not these laws, made for those purposes, be paramount to the laws of the states? Will not this clause give them a right to keep a powerful army continually on foot, if they think it necessary to aid the execution of their laws? Is there any act, however atrocious, which they cannot do by virtue of this clause? Look at the use which has been made, in all parts of the world, of that human thing called power. Look at the predominant thirst of dominion which has invariably and uniformly prompted rulers to abuse their powers. Can you say that you will be safe when you give such unlimited powers, {437} without any real responsibility? Will you be safe when you trust men at Philadelphia with power to make any law that will enable them to carry their acts into execution? Will not the members of Congress have the same passions which other rulers have had? They will not be superior to the frailties of human nature. However cautious you may be in the selection of your representatives, it will be dangerous to trust them with such unbounded powers. Shall we be told, when about to grant such illimitable authority, that it will never be exercised!

I conjure you once more to remember the admonition of that sage man who told you that, when you give power, you know not what you give. I know the absolute necessity of an energetic government. But is it consistent with any principle of prudence or good policy to grant unlimited, unbounded authority, which is so totally unnecessary that gentlemen say it will never be exercised? But gentlemen say that we must make experiments. A wonderful and unheard-of experiment it will be, to give unlimited power unnecessarily! I admit my inferiority in point of historical knowledge; but I believe no man can produce an instance of an unnecessary and unlimited power, given to a body independent of the legislature, within a particular district. Let any man in this Convention show me an instance of such separate and different powers of legislation in the same country — show me an instance where a part of the community was independent of the whole.

The people within that place, and the strongholds, may be excused from all the burdens imposed on the rest of the society, and may enjoy exclusive emoluments, to the great injury of the rest of the people. But gentlemen say that the power will not be abused. They ought to show that it is necessary. All their powers may be fully carried into execution, without this exclusive authority in the ten miles square. The sweeping clause will fully enable them to do what they please. What could the most extravagant and boundless imagination ask, but power to do every thing? I have reason to suspect ambitious grasps at power. The experience of the world teaches me the jeopardy of giving enormous power. Strike this clause out of the form of the government, and how will it stand? Congress will still have power, by the sweeping clause, to make laws within that {438} place and the strongholds, independently of the local authority of the state. I ask you, if this clause be struck out, whether the sweeping clause will not enable them to protect themselves from insult. If you grant them these powers, you destroy every degree of responsibility. They will fully screen them from justice, and preclude the possibility of punishing

them. No instance can be given of such a wanton grasp of power as an exclusive legislation in all cases whatever.

## **Mr. MADISON.**

Mr. Chairman, I am astonished that the honorable member should launch out into such strong descriptions without any occasion. Was there ever a legislature in existence that held their sessions at a place where they had not jurisdiction? I do not mean such a legislature as they have in Holland; for it deserves not the name. Their powers are such as Congress have now, which we find not reducible to practice. If you be satisfied with the shadow and form, instead of the substance, you will render them dependent on the local authority. Suppose the legislature of this country should sit in Richmond, while the exclusive jurisdiction of the place was in some particular county; would this country think it safe that the general good should be subject to the paramount authority of a part of the community?

### **NOTE**

The honorable member asks, Why ask for this power, and if the subsequent clause be not fully competent for the same purpose. If so, what new terrors can arise from this particular clause? It is only a superfluity. If that latitude of construction which he contends for were to take place with respect to the sweeping clause, there would be room for those horrors. But it gives no supplementary power. It only enables them to execute the delegated powers. If the delegation of their powers be safe, no possible inconvenience can arise from this clause. It is at most but explanatory. For when any power is given, its delegation necessarily involves authority to make laws to execute it. Were it possible to delineate on paper all those particular cases and circumstances in which legislation by the general legislature would be necessary, and leave to the states all the other powers, I imagine no gentleman would object to it. But this is not within the limits of human capacity. The particular powers which are found necessary to be given are therefore delegated generally, and particular and minute specification is left to the legislature.

[Here Mr. Madison spoke of the distinction between regulation of police and legislation, but so low he could not be heard.]

When the honorable member objects to giving the general government jurisdiction over the place of their session, does he mean that it should be under the control of any particular state, that might, at a critical moment, seize it? I should have thought that this clause would have met with the most cordial approbation. As the consent of the state in which it may be must be obtained, and as it may stipulate the terms of the grant, should they violate the particular stipulations it would be an usurpation; so that, if the members of Congress were to be guided by the laws of their country, none of those dangers could arise.

[Mr. Madison made several other remarks, which could not be heard]

## **Mr. HENRY**

replied that, if Congress were vested with supreme power of legislation, paramount to the constitution and laws of the states, the dangers he had described might happen; for that Congress would not be confined to the enumerated powers. This construction was warranted, in his opinion, by the addition of the word *department*, at the end of the clause, and that they could make any laws which they might think necessary to execute the powers of any department or officer of the government.

## Mr. PENDLETON.

### EXCLUSIVE

Mr. Chairman, this clause does not give Congress power to impede the operation of any part of the Constitution, or to make any regulation that may affect the interests of the citizens of the Union at large. But it gives them power over the local police of the place, so as to be secured from any interruption in their proceedings. Notwithstanding the violent attack upon it, I believe, sir, this is the fair construction of the clause. It gives them power of exclusive legislation in any case within that district. What is the meaning of this? What is it opposed to? Is it opposed to the general powers of the federal legislature, or to those of the state legislatures? I understand it as opposed to the legislative power of that state where it shall be. What, then, is the power? It is, that Congress shall exclusively legislate there, in order to preserve serve the police of the place and their own personal independence, that they may not be overawed or insulted, and of course to preserve them in opposition to any attempt by the state where it shall be. This is the fair construction. Can we suppose that, in order to effect these salutary ends, Congress will make it an asylum for villains and the vilest characters from all parts of the world? Will it not degrade their own dignity to make it a sanctuary for villains? I hope that no man that will ever compose that Congress will associate with the most profligate characters.

Why oppose this power? Suppose it was contrary to the sense of their constituents to grant exclusive privileges to citizens residing within that place; the effect would be directly in opposition to what he says. It could have no operation without the limits of that district. Were Congress to make a law granting them an exclusive privilege of trading to the East Indies, it could have no effect the moment it would go without that place; for their exclusive power is confined to that district. Were they to pass such a law, it would be nugatory; and every member of the community at large could trade to the East Indies as well as the citizens of that district. This exclusive power is limited to that place solely, for their own preservation, which all gentlemen allow to be necessary.

Will you pardon me when I observe that their construction of the preceding clause does not appear to me to be natural, or warranted by the words.

They say that the state governments have no power at all over the militia. The power of the general government to provide for arming and organizing the militia is to introduce a uniform system of discipline to pervade the United States of America. But the power of *governing* the militia, so far as it is in Congress, extends only to such parts of them as may be employed in the service of the United States. When not in their service, Congress has no power to govern them. The states then have the sole government of them; and though Congress *may* provide for arming

them, and prescribe the mode of discipline, yet the states have the authority of training them, according to the uniform discipline prescribed by Congress. But there is nothing to preclude them from arming and disciplining them, should Congress neglect to, do it. As to calling the militia to execute the laws of the {441} Union, I think the fair construction is directly opposite to what the honorable member says. The 4th section of the 4th article contains nothing to warrant the supposition that the states cannot call them forth to suppress domestic insurrections. [*Here he read the section.*] All the restraint here contained is, that Congress may, at their pleasure, on application of the state legislature, or (in vacation) of the executive, protect each of the states against domestic violence. This is a restraint on the general government not to interpose. The state is in full possession of the power of using its own militia to protect itself against domestic violence; and the power in the general government cannot be exercised, or interposed, without the application of the state itself. This appears to me to be the obvious and fair construction.

With respect to the necessity of the ten miles square being superseded by the subsequent clause, which gives them power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof, I understand that clause as not going a single step beyond the delegated powers. What can it act upon? Some power given by this Constitution. If they should be about to pass a law in consequence of this clause, they must pursue some of the delegated powers, but can by no means depart from them, or arrogate any new powers; for the plain language of the clause is, to give them power to pass laws in order to give effect to the delegated powers.

## **Mr. GEORGE MASON.**

### **Note**

Mr. Chairman, gentlemen say there is no new power given by this clause. Is there any thing in this Constitution which secures to the states the powers which are said to be retained? Will powers remain to the states which are not expressly guarded and reserved? I will suppose a case. Gentlemen may call it an impossible case, and suppose that Congress will act with wisdom and integrity. Among the enumerated powers, Congress are to lay and collect taxes, duties, imposts, and excises, and to pay the debts, and to provide for the general welfare and common defence; and by that clause (so often called the *sweeping clause*) they are to make all laws necessary to execute those laws. Now, suppose oppressions {442} should arise under this government, and any writer should dare to stand forth, and expose to the community at large the abuses of those powers; could not Congress, under the idea of providing for the general welfare, and under their own construction, say that this was destroying the general peace, encouraging sedition, and poisoning the minds of the people? And could they not, in order to provide against this, lay a dangerous restriction on the press? Might they not even bring the trial of this restriction within the ten miles square, when there is no prohibition against it? Might they not thus destroy the trial by jury? Would they not extend their implication? It appears to me that they may and will. And shall the support of our rights depend on the bounty of men whose interest it may be to oppress us? That Congress should have power to provide for the general welfare of the Union, I grant. But I wish a clause in the Constitution, with respect to all powers which are not granted, that they

are retained by the states. Otherwise, the power of providing for the general welfare may be perverted to its destruction.

## Jurisdiction

Many gentlemen, whom I respect, take different sides of this question. We wish this amendment to be introduced, to remove our apprehensions. There was a clause in the Confederation reserving to the states respectively every power, jurisdiction, and right, not expressly delegated to the United States. This clause has never been complained of, but approved by all. Why not, then, have a similar clause in this Constitution, in which it is the more indispensably necessary than in the Confederation, because of the great augmentation of power vested in the former? In my humble apprehension, unless there be some such clear and finite expression, this clause now under consideration will go to any thing our rulers may think proper. Unless there be some express declaration that every thing not given is retained, it will be carried to any power Congress may please.

## Mr. HENRY

moved to read from the 8th to the 13th article of the declaration of rights; which was done.

## Mr. GEORGE NICHOLAS,

### NOTE

in reply to the gentlemen opposed to the clause under debate, went over the same grounds, and developed the same principles, which Mr. Pendleton and Mr. Madison had done. The opposers of the {443} clause, which gave the power of providing for the general welfare, supposed its dangers to result from its connection with, and extension of, the powers granted in the other clauses. He endeavored to show the committee that it only empowered Congress to make such laws as would be necessary to enable them to pay the public debts and provide for the common defence; that this general welfare was united, not to the general power of legislation, but to the particular power of laying and collecting taxes, imposts, and excises, for the purpose of paying the debts and providing for the common defence, — that is, that they could raise as much money as would pay the debts and provide for the common defence, in consequence of this power. The clause which was affectedly called the *sweeping* clause contained no new grant of power. To illustrate this position, he observed that, if it had been added at the end of every one of the enumerated powers, instead of being inserted at the end of all, it would be obvious to any one that it was no augmentation of power. If, for instance, at the end of the clause granting power to lay and collect taxes, it had been added that they should have power to make necessary and proper laws to lay and collect taxes, who could suspect it to be an addition of power? As it would grant no new power if inserted at the end of each clause, it could not when subjoined to the whole.

He then proceeded thus: But, says he, who is to determine the extent of such powers? I say, the same power which, in all well-regulated communities, determines the extent of legislative

powers. If they exceed these powers, the judiciary will declare it void, or else the people will have a right to declare it void. Is this depending on any man? But, says the gentleman, it may go to any thing. It may destroy the trial by jury; and they may say it is necessary for providing for the general defence. The power of providing for the general defence only extends to raise any sum of money they may think necessary, by taxes, imposts, &c. But, says he, our only defence against oppressive laws consists in the virtue of our representatives. This was misrepresented. If I understand it right, no new power can be exercised. As to those which are actually granted, we trust to the fellow-feelings of our representatives; and if we are deceived, we then trust to altering our {444} government. It appears to me, however, that we can confide in their discharging their powers rightly, from the peculiarity of their situation, and connection with us. If, sir, the powers of the former Congress were very inconsiderable, that body did not deserve to have great powers.

It was so constructed that it would be dangerous to invest it with such. But why were the articles of the bill of rights read? Let him show us that those rights are given up by the Constitution. Let him prove them to be violated. He tells us that the most worthy characters of the country differ as to the necessity of a bill of rights. It is a simple and plain proposition. It is agreed upon by all that the people have all power. If they part with any of it, is it necessary to declare that they retain the rest? Liken it to any similar case. If I have one thousand acres of land, and I grant five hundred acres of it, must I declare that I retain the other five hundred? Do I grant the whole thousand acres, when I grant five hundred, unless I declare that the five hundred I do not give belong to me still? It is so in this case. After granting some powers, the rest must remain with the people.

## **Gov. RANDOLPH**

observed that he had some objections to the clause. He was persuaded that the construction put upon it by the gentlemen, on both sides, was erroneous; but he thought any construction better than going into anarchy.

## **Mr. GEORGE MASON**

still thought that there ought to be some express declaration in the Constitution, asserting that rights not given to the general government were retained by the states. He apprehended that, unless this was done, many valuable and important rights would be concluded to be given up by implication. All governments were drawn from the people, though many were perverted to their oppression. The government of Virginia, he remarked, was drawn from the people; yet there were certain great and important rights, which the people, by their bill of rights, declared to be paramount to the power of the legislature. He asked, Why should it not be so in this Constitution? Was it because we were more substantially represented in it than in the state government? If, in the state government, where the people were substantially and fully represented, it was necessary that the great rights of human nature should {445} be secure from the encroachments of the legislature, he asked if it was not more necessary in this government, where they were but inadequately represented? He declared that artful sophistry and evasions could not satisfy him. He could see no clear distinction between rights relinquished by a positive

grant, and lost by implication. Unless there were a bill of rights, implication might swallow up all our rights.

## **Mr. HENRY.**

Mr. Chairman, the necessity of a bill of rights appears to me to be greater in this government than ever it was in any government before. I have observed already, that the sense of the European nations, and particularly Great Britain, is against the construction of rights being retained which are not expressly relinquished. I repeat, that all nations have adopted this construction — that all rights not expressly and unequivocally reserved to the people are impliedly and incidentally relinquished to rulers, as necessarily inseparable from the delegated powers. It is so in Great Britain; for every possible right, which is not reserved to the people by some express provision or compact, is within the king's prerogative. It is so in that country which is said to be in such full possession of freedom. It is so in Spain, Germany, and other parts of the world. Let us consider the sentiments which have been entertained by the people of America on this subject. At the revolution, it must be admitted that it was their sense to set down those great rights which ought, in all countries, to be held inviolable and sacred. Virginia did so, we all remember. She made a compact to reserve, expressly, certain rights.

When fortified with full, adequate, and abundant representation, was she satisfied with that representation? No. She most cautiously and guardedly reserved and secured those invaluable, inestimable rights and privileges, which no people, inspired with the least glow of patriotic liberty, ever did, or ever can, abandon. She is called upon now to abandon them, and dissolve that compact which secured them to her. She is called upon to accede to another compact, which most infallibly supersedes and annihilates her present one. Will she do it? This is the question. If you intend to reserve your unalienable rights, you must have the most express stipulation; for, if implication be allowed, you are ousted of those rights. If the people do not think it necessary to {446} reserve them, they will be supposed to be given up. How were the congressional rights defined when the people of America united by a confederacy to defend their liberties and rights against the tyrannical attempts of Great Britain? The states were not then contented with implied reservation. No, Mr. Chairman. It was expressly declared in our Confederation that every right was retained by the states, respectively, which was not given up to the government of the United States. But there is no such thing here. You, therefore, by a natural and unavoidable implication, give up your rights to the general government.

## **Common Law**

Your own example furnishes an argument against it. If you give up these powers, without a bill of rights, you will exhibit the most absurd thing to mankind that ever the world saw — government that has abandoned all its powers — the powers of direct taxation, the sword, and the purse. You have disposed of them to Congress, without a bill of rights — without check, limitation, or control. And still you have checks and guards; still you keep barriers — pointed where? Pointed against your weakened, prostrated, enervated state government! You have a bill of rights to defend you against the state government, which is bereaved of all power, and yet you have none against Congress, though in full and exclusive possession of all power! You arm yourselves against the weak and defenceless, and expose yourselves naked to the armed and

powerful. Is not this a conduct of unexampled absurdity? What barriers have you to oppose to this most strong, energetic government? To that government you have nothing to oppose. All your defence is given up. This is a real, actual defect. It must strike the mind of every gentleman. When our government was first instituted in Virginia, we declared the **common law** of England to be in force.

That system of law which has been admired, and has protected us and our ancestors, is excluded by that system. Added to this, we adopted a bill of rights. By this Constitution, some of the best barriers of human rights are thrown away. Is there not an additional reason to have a bill of rights? By the ancient **common law**, the trial of all facts is decided by a jury of impartial men from the immediate vicinage. This paper speaks of different juries from the **common law** in criminal cases; and in civil controversies {447} excludes trial by jury altogether. There is, therefore, more occasion for the supplementary check of a bill of rights now than then. Congress, from their general powers, may fully go into business of human legislation. They may legislate, in criminal cases, from treason to the lowest offence — petty larceny. They may define crimes and prescribe punishments. In the definition of crimes, I trust they will be directed by what wise representatives ought to be governed by. But when we come to punishments, no latitude ought to be left, nor dependence put on the virtue of representatives. What says our bill of rights? — "that excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Are you not, therefore, now calling on those gentlemen who are to compose Congress, to prescribe trials and define punishments without this control? Will they find sentiments there similar to this bill of rights? You let them loose; you do more you depart from the genius of your country. That paper tells you that the trial of crimes shall be by jury, and held in the state where the crime shall have been committed. Under this extensive provision, they may proceed in a manner extremely dangerous to liberty: a person accused may be carried from one extremity of the state to another, and be tried, not by an impartial jury of the vicinage, acquainted with his character and the circumstances of the fact, but by a jury unacquainted with both, and who may be biased against him. Is not this sufficient to alarm men? How different is this from the immemorial practice of your British ancestors, and your own! I need not tell you that, by the **common law**, a number of hundredors were required on a jury, and that afterwards it was sufficient if the jurors came from the same county. With less than this the people of England have never been satisfied. That paper ought to have declared the **common law** in force.

In this business of legislation, your members of Congress will loose the restriction of not imposing excessive fines, demanding excessive bail, and inflicting cruel and unusual punishments. These are prohibited by your declaration of rights. What has distinguished our ancestors? — That they would not admit of tortures, or cruel and barbarous punishment. But Congress may introduce the practice of the civil law, in preference to that of the **common law**. They may {448} introduce the practice of France, Spain, and Germany — of torturing, to extort a confession of the crime. They will say that they might as well draw examples from those countries as from Great Britain, and they will tell you that there is such a necessity of strengthening the arm of government, that they must have a criminal equity, and extort confession by torture, in order to punish with still more relentless severity. We are then lost and undone. And can any man think it troublesome, when we can, by a small interference, prevent our rights from being lost? If you will, like the Virginian government, give them knowledge of the extent of the rights retained by the people, and the powers of themselves, they will, if they be

honest men, thank you for it. Will they not wish to go on sure grounds? But if you leave them otherwise, they will not know how to proceed; and, being in a state of uncertainty, they will assume rather than give up powers by implication.

A bill of rights may be summed up in a few words. What do they tell us? — That our rights are reserved. Why not say so? Is it because it will consume too much paper? Gentlemen's reasoning against a bill of rights does not satisfy me. Without saying which has the right side, it remains doubtful. A bill of rights is a favorite thing with the Virginians and the people of the other states likewise. It may be their prejudice, but the government ought to suit their geniuses; otherwise, its operation will be unhappy. A bill of rights, even if its necessity be doubtful, will exclude the possibility of dispute; and, with great submission, I think the best way is to have no dispute. In the present Constitution, they are restrained from issuing general warrants to search suspected places, or seize persons not named, without evidence of the commission of a fact, &c. There was certainly some celestial influence governing those who deliberated on that Constitution; for they have, with the most cautious and enlightened circumspection, guarded those indefeasible rights which ought ever to be held sacred! The officers of Congress may come upon you now, fortified with all the terrors of paramount federal authority. Excisemen may come in multitudes; for the limitation of their numbers no man knows. They may, unless the general government be restrained by a bill of rights, or some similar restriction, go into your cellars and rooms, and search, ransack, and {449} measure, every thing you eat, drink, and wear. They ought to be restrained Within proper bounds. With respect to the freedom of the press, I need say nothing; for it is hoped that the gentlemen who shall compose Congress will take care to infringe as little as possible the rights of human nature. This will result from their integrity. They should, from prudence, abstain from violating the rights of their constituents. They are not, however, expressly restrained. But whether they will intermeddle with that palladium of our liberties or not, I leave you to determine.

## Mr. GRAYSON

thought it questionable whether rights not given up were reserved. A majority of the states, he observed, had expressly reserved certain important rights by bills of rights, and that in the Confederation there was a clause declaring expressly that every power and right not given up was retained by the states. It was the general sense of America that such a clause was necessary; other, wise, why did they introduce a clause which was totally unnecessary? It had been insisted, he said, in many parts of America, that a bill of rights was only necessary between a prince and people, and not in such a government as this, which was a compact between the people themselves. This did not satisfy his mind; for so extensive was the power of legislation, in his estimation, that he doubted whether, when it was once given up, *any thing* was retained. He further remarked, that there were some negative clauses in the Constitution, which refuted the doctrine contended for by the other side. For instance; the 2d clause of the 9th section of the 1st article provided that "the privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it." And, by the last clause of the same section, "no title of nobility shall be granted by the United States." Now, if these restrictions had not been here inserted, he asked whether Congress would not most clearly have had a right to suspend that great and valuable right, and to grant titles of nobility. When, in addition to these considerations, he saw they had an indefinite power to provide for the general

welfare, he thought there were great reasons to apprehend great dangers. He thought, therefore, that there ought to be a bill of rights.

## Mr. GEORGE NICHOLAS,

### NOTE

in answer to the two gentlemen {450} last up, observed that, though there was a declaration of rights in the government of Virginia, it was no conclusive reason that there should be one in this Constitution; for, if it was unnecessary in the former, its omission in the latter could be no defect. They ought, therefore, to prove that it was essentially necessary to be inserted in the Constitution of Virginia. There were five or six states in the Union which had no bill of rights, separately and distinctly as such; but they annexed the substance of a bill of rights to their respective constitutions. These states, he further observed, were as free as this state, and their liberties as secure as ours. If so, gentlemen's arguments from the precedent were not good. In Virginia, all powers were given to the government without any exception. It was different in the general government, to which certain special powers were delegated for certain purposes. He asked which was the more safe. Was it safer to grant general powers than certain limited powers? This much as to the theory, continued he. What is the practice of this invaluable government? Have your citizens been bound by it? They have not, sir. You have violated that maxim, "that no man shall be condemned without a fair trial." That man who was killed, not *secundum artem*, was deprived of his life without the benefit of law, and in express violation of this declaration of rights, which they confide in so much. But, sir, this bill of rights was no security. It is but a paper check. It has been violated in many other instances. Therefore, from theory and practice, it may be concluded that this government, with special powers, without any express exceptions, is better than a government with general powers and special exceptions. But the practice of England is against us. The rights there reserved to the people are to limit and check the king's prerogative. It is easier to enumerate the exceptions to his prerogative, than to mention all the cases to which it extends. Besides, these reservations, being only formed in acts of the legislature, may be altered by the representatives of the people when they think proper. No comparison can be made of this with the other governments he mentioned. There is no stipulation between the king and people. The former is possessed of absolute, unlimited authority.

### Common Law

But, sir, this Constitution is defective because the common {451} law is not declared to be in force! What would have been the consequence if it had? It would be immutable. But now it can be changed or modified as the legislative body may find necessary for the community. But the **common law** is not excluded. There is nothing in that paper to warrant the assertion. As to the exclusion of a jury from the vicinage, he has mistaken the fact. The legislature may direct a jury to come from the vicinage. But the gentleman says that, by this Constitution, they have power to make laws to define crimes and prescribe punishments; and that, consequently, we are not free from torture. Treason against the United States is defined in the Constitution, and the forfeiture limited to the life of the person attainted. Congress have power to define and punish piracies and felonies committed on the high seas, and offences against the laws of nations; but they cannot define or prescribe the punishment of any other crime whatever, without violating the

Constitution. If we had no security against torture but our declaration of rights, we might be tortured to-morrow; for it has been repeatedly infringed and disregarded. A bill of rights is only an acknowledgment of the preëxisting claim to rights in the people. They belong to us as much as if they had been inserted in the Constitution. But it is said that, if it be doubtful, the possibility of dispute ought to be precluded. Admitting it was proper for the Convention to have inserted a bill of rights, it is not proper here to propose it as the condition of our accession to the Union. Would you reject this government for its omission, dissolve the Union, and bring miseries on yourselves and posterity? I hope the gentleman does not oppose it on this ground solely. Is there another reason? He said that it is not only the general wish of this state, but all the states, to have a bill of rights. If it be so, where is the difficulty of having this done by way of subsequent amendment? We shall find the other states willing to accord with their own favorite wish. The gentleman last up says that the power of legislation includes every thing. A general power of legislation does. But this is a special power of legislation. Therefore, it does not contain that plenitude of power which he imagines. They cannot legislate in any case but those particularly enumerated. No gentleman, who is a friend to the government, ought to withhold his assent from it for this reason.

## **Mr. GEORGE MASON**

replied that the worthy gentleman was mistaken in his assertion that the bill of rights did not prohibit torture; for that one clause expressly provided that no man can give evidence against himself; and that the worthy gentleman must know that, in those countries where torture is used, evidence was extorted from the criminal himself. Another clause of the bill of rights provided that no cruel and unusual punishments shall be inflicted; therefore, torture was included in the prohibition.

## **Mr. NICHOLAS**

acknowledged the bill of rights to contain that prohibition, and that the gentleman was right with respect to the practice of extorting confession from the criminal in those countries where torture is used; but still he saw no security arising from the bill of rights as separate from the Constitution, for that it had been frequently violated with impunity.

---

[1. Elliot misprinted this as Monday, June 14, 1788.]

---

**TUESDAY, *June 17, 1788.***<sup>[1]</sup>

## **Mr. GEORGE MASON.**

Mr. Chairman, this is a fatal section, which has created more dangers than any other. The first clause allows the importation of slaves for twenty years. Under the royal government, this evil

was looked upon as a great oppression, and many attempts were made to prevent it; but the interest of the African merchants prevented its prohibition. No sooner did the revolution take place, than it was thought of. It was one of the great causes of our separation from Great Britain. Its exclusion has been a principal object of this state, and most of the states in the Union. The augmentation of slaves weakens the states; and such a trade is diabolical in itself, and disgraceful to mankind; yet, by this Constitution, it is continued for twenty years. As much as I value a union of all the states, I would not admit the Southern States into the Union unless they agree to the discontinuance of this disgraceful trade, because it would bring weakness, and not strength, to the Union. And, though this infamous traffic be continued, we have no security for the property of that kind which we have already. There is no clause in this Constitution to secure it; for they may lay such a tax as will amount to manumission. And should the government be amended, still this detestable kind of commerce cannot be discontinued till after the expiration of twenty years; for the 5th article, {453} which provides for amendments, expressly excepts this clause. I have ever looked upon this as a most disgraceful thing to America. I cannot express my detestation of it. Yet they have not secured us the property of the slaves we have already. So that "they have done what they ought not to have done, and have left undone what they ought to have done."

## **Mr. MADISON.**

Mr. Chairman, I should conceive this clause to be impolitic, if it were one of those things which could be excluded without encountering greater evils. The Southern States would not have entered into the Union of America without the temporary permission of that trade; and if they were excluded from the Union, the consequences might be dreadful to them and to us. We are not in a worse situation than before. That traffic is prohibited by our laws, and we may continue the prohibition. The Union in general is not in a worse situation. Under the Articles of Confederation, it might be continued forever; but, by this clause, an end may be put to it after twenty years. There is, therefore, an amelioration of our circumstances. A tax may be laid in the mean time; but it is limited; otherwise Congress might lay such a tax as would amount to a prohibition. From the mode of representation and taxation, Congress cannot lay such a tax on slaves as will amount to manumission. Another clause secures us that property which we now possess. At present, if any slave elopes to any of those states where slaves are free, he becomes emancipated by their laws; for the laws of the states are uncharitable to one another in this respect. But in this Constitution, "no person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor shall be due." This clause was expressly inserted, to enable owners of slaves to reclaim them.

This is a better security than any that now exists. No power is given to the general government to interpose with respect to the property in slaves now held by the states. The taxation of this state being equal only to its representation, such a tax cannot be laid as he supposes. They cannot prevent the importation of slaves for twenty years; but after that period, they can. The gentlemen from South Carolina and {454} Georgia argued in this manner: "We have now liberty to import this species of property, and much of the property now possessed had been purchased, or otherwise acquired, in contemplation of improving it by the assistance of imported slaves. What would be the consequence of hindering us from it? The slaves of Virginia would rise in value,

and we should be obliged to go to your markets. I need not expatiate on this subject. Great as the evil is, a dismemberment of the Union would be worse. If those states should disunite from the other states for not indulging them in the temporary continuance of this traffic, they might solicit and obtain aid from foreign powers.

## **Mr. TYLER**

warmly enlarged on the impolicy, iniquity, and disgracefulness of this wicked traffic. He thought the reasons urged by gentlemen in defence of it were inconclusive and ill founded. It was one cause of the complaints against British tyranny, that this trade was permitted. The revolution had put a period to it; but now it was to be revived. He thought nothing could justify it. This temporary restriction on Congress militated, in his opinion, against the arguments of gentlemen on the other side, that what was not given up was retained by the states; for that, if this restriction had not been inserted, Congress could have prohibited the African trade. The power of prohibiting it was not expressly delegated to them; yet they would have had it by implication, if this restraint had not been provided. This seemed to him to demonstrate most clearly the necessity of restraining them, by a bill of rights, from infringing our unalienable rights. It was immaterial whether the bill of rights was by itself, or included in the Constitution. But he contended for it one way or the other. It would be justified by our own example and that of England. His earnest desire was, that it should be handed down to posterity that he had opposed this wicked clause. He then adverted to the clauses which enabled Congress to legislate exclusively in the ten miles square, and other places purchased for forts, magazines, &c., to provide for the general welfare, to raise a standing army, and to make any law that may be necessary to carry their laws into execution. From the combined operation of these unlimited powers he dreaded the most fatal consequences. If any acts of violence, should be committed on persons or property, the perpetrators of such acts might {455} take refuge in the sanctuary of the ten miles square and the strongholds. They would thus escape with impunity, as the states had no power to punish them. He called to the recollection of the committee the history of the Athenian who, from small beginnings, had enslaved his country. He begged them to remember that Cæsar, who prostrated the liberties of his country, did not possess a powerful army at first. Suppose, says he, that the time should come that a king should be proposed by Congress. Will they not be able, by the sweeping clause, to call in foreign assistance, and raise troops, and do whatever they think proper to carry this proposition into effect? He then concluded that, unless this clause were expunged, he would vote against the Constitution.

## **Mr. MADISON**

### **EXCLUSIVE**

was surprised that any gentleman should return to the clauses which had already been discussed. He begged the gentleman to read the clauses which gave the power of exclusive legislation, and he might see that nothing could be done without the consent of the states. With respect to the supposed operation of what was denominated the sweeping clause, the gentleman, he said, was mistaken; for it only extended to the enumerated powers. Should Congress attempt to extend it to any power not enumerated, it would not be warranted by the clause. As to the restriction in the

clause under consideration, it was a restraint on the exercise of a power expressly delegated to Congress; namely, that of regulating commerce with foreign nations.

## **Mr. HENRY**

insisted that the insertion of these restrictions on Congress was a plain demonstration that Congress could exercise powers by implication. The gentleman had admitted that Congress could have interdicted the African trade, were it not for this restriction. If so, the power, not having been expressly delegated, must be obtained by implication. He demanded where, then, was their doctrine of reserved rights. He wished for negative clauses to prevent them from assuming any powers but those expressly given. He asked why it was omitted to secure us that property in slaves which we held now. He feared its omission was done with design. They might lay such heavy taxes on slaves as would amount to emancipation; and then: the Southern States would be the only sufferers. His opinion was confirmed by the mode of levying money. Congress, he {456} observed, had power to lay and collect taxes, imposts, and excises. Imposts (or duties) and excises were to be uniform; but this uniformity did not extend to taxes. This might compel the Southern States to liberate their negroes. He wished this property, therefore, to be guarded. He considered the clause, which had been adduced by the gentleman as a security for this property, as no security at all. It was no more than this — that a runaway negro could be taken up in Maryland or New York. This could not prevent Congress from interfering with that property by laying a grievous and enormous tax on it, so as to compel owners to emancipate their slaves rather than pay the tax. He apprehended it would be productive of much stock-jobbing, and that they would play into one another's hands in such a manner as that this property would be lost to the country.

## **Mr. GEORGE NICHOLAS**

### **NOTE**

wondered that gentlemen who were against slavery should be opposed to this clause; as, after that period, the slave trade would be done away. He asked if gentlemen did not see the inconsistency of their arguments. They object, says he, to the Constitution, because the slave trade is laid open for twenty odd years; and yet they tell you that, by some latent operation of it, the slaves who are so now will be manumitted. At the same moment it is opposed for being promotive and destructive of slavery. He contended that it was advantageous to Virginia that it should be in the power of Congress to prevent the importation of slaves after twenty years, as it would then put a period to the evil complained of.

As the Southern States would not confederate without this clause, he asked if gentlemen would rather dissolve the confederacy than to suffer this temporary inconvenience, admitting it to be such. Virginia might continue the prohibition of such importation during the intermediate period, and would be benefited by it, as a tax of ten dollars on each slave might be laid, of which she would receive a share. He endeavored to obviate the objection of gentlemen, that the restriction on Congress was a proof that they would have powers not given them, by remarking, that they would only have had a general superintendency of trade, if the restriction had not been inserted.

But the Southern States insisted on this exception to that general superintendency for twenty years. It could not, therefore, have been a power {457} by implication, as the restriction was an exception from a delegated power. The taxes could not, as had been suggested, be laid so high on negroes as to amount to emancipation; because taxation and representation were fixed according to the census established in the Constitution. The exception of taxes from the uniformity annexed to duties and excises could not have the operation contended for by the gentleman, because other clauses had clearly and positively fixed the census. Had taxes been uniform, it would have been universally objected to; for no one object could be selected without involving great inconveniences and oppressions. But, says Mr. Nicholas, is it from the general government we are to fear emancipation? Gentlemen will recollect what I said in another house, and what other gentlemen have said, that advocated emancipation. Give me leave to say, that clause is a great security for our slave tax. I can tell the committee that the people of our country are reduced to beggary by the taxes on negroes. Had this Constitution been adopted, it would not have been the case. The taxes were laid on all our negroes. By this system, two fifths are exempted. He then added, that he had not imagined gentlemen would support here what they had opposed in another place.

## **Mr. HENRY**

replied that, though the proportion of each was to be fixed by the census, and three fifths of the slaves only were included in the enumeration, yet the proportion of Virginia, being once fixed, might be laid on blacks and blacks only; for, the mode of raising the proportion of each state being to be directed by Congress, they might make slaves the sole object to raise it of. Personalities he wished to take leave of: they had nothing to do with the question, which was solely whether that paper was wrong or not.

## **Mr. NICHOLAS**

replied, that negroes must be considered as persons or property. If as property, the proportion of taxes to be laid on them was fixed in the Constitution. If he apprehended a poll tax on negroes, the Constitution had prevented it; for, by the census, where a white man paid ten shillings, a negro paid but six shillings; for the exemption of two fifths of them reduced it to that proportion.

[The 2d, 3d, and 4th clauses were then read.]

## **Mr. GEORGE MASON**

said, that gentlemen might think themselves secured by the restriction, in the 4th clause, that {458} no capitation or other direct tax should be laid but in proportion to the census before directed to be taken; but that, when maturely considered, it would be found to be no security whatsoever. It was nothing but a direct assertion, or mere confirmation of the clause which fixed the ratio of taxes and representation. It only meant that the quantum to be raised of each state should be in proportion to their numbers, in the manner therein directed. But the general government was not precluded from laying the proportion of any particular state on any one species of property they might think proper.

For instance, if five hundred thousand dollars were to be raised, they might lay the whole of the proportion of the Southern States on the blacks, or any one species of property; so that, by laying taxes too heavily on slaves, they might totally annihilate that kind of property. No real security could arise from the clause which provides that persons held to labor in one state, escaping into another, shall be delivered up. This only meant that runaway slaves should not be protected in other states. As to the exclusion of *ex post facto* laws, it could not be said to create any security in this case; for laying a tax on slaves would not be *ex post facto*.

## **Mr. MADISON**

replied, that even the Southern States, which were most affected, were perfectly satisfied with this provision, and dreaded no danger to the property they now hold. It appeared to him that the general government would not intermeddle with that property for twenty years, but to lay a tax on every slave imported not exceeding ten dollars; and that, after the expiration of that period, they might prohibit the traffic altogether. The census in the Constitution was intended to introduce equality in the burdens to be laid on the community. No gentleman objected to laying duties, imposts, and excises, uniformly. But uniformity of taxes would be subversive of the principles of equality; for it was not possible to select any article which would be easy for one state but what would be heavy for another; that, the proportion of each state being ascertained, it would be raised by the general government in the most convenient manner for the people, and not by the selection of any one particular object; that there must be some degree of confidence put in agents, or else we must reject a state of civil society {459} altogether. Another great security to this property, which he mentioned, was, that five states were greatly interested in that species of property, and there were other states which had some slaves, and had made no attempt, or taken any step, to take them from the people. There were a few slaves in New York, New Jersey, and Connecticut: these states would, probably, oppose any attempts to annihilate this species of property. He concluded by observing that he should be glad to leave the decision of this to the committee.

[The 5th and 6th clauses were then read.]

## **Mr. GEORGE MASON**

apprehended the loose expression of "publication from time to time" was applicable to any time. It was equally applicable to monthly and septennial periods. It might be extended ever so much. The reason urged in favor of this ambiguous expression was, that there might be some matters which require secrecy. In matters relative to military operations and foreign negotiations, secrecy was necessary sometimes; but he did not conceive that the receipts and expenditures of the public money ought ever to be concealed. The people, he affirmed, had a right to know the expenditures of their money; but that this expression was so loose, it might be concealed forever from them, and might afford opportunities of misapplying the public money, and sheltering those who did it. He concluded it to be as exceptionable as any clause, in so few words, could be.

## **Mr. LEE (of Westmoreland)**

thought such trivial argument as that just used by the honorable gentleman would have no weight with the committee. He conceived the expression to be sufficiently explicit and satisfactory. It must be supposed to mean, in the common acceptation of language, short, convenient periods. It was as well as if it had said one year, or a shorter term. Those who would neglect this provision would disobey the most pointed directions. As the Assembly was to meet next week, he hoped gentlemen would confine themselves to the investigation of the principal parts of the Constitution.

## **Mr. MASON**

begged to be permitted to use that mode of arguing to which he had been accustomed. However desirous he was of pleasing that worthy gentleman, his duty would not give way to that pleasure.

## **{460} Mr. GEORGE NICHOLAS**

said it was a better direction and security than was in the state government. No appropriation shall be made of the public money but by law. There could not be any misapplication of it. Therefore, he thought, instead of censure it merited applause; being a cautious provision, which few constitutions, or none, had ever adopted.

## **Mr. CORBIN**

concurred in the sentiments of Mr. Nicholas on this subject.

## **Mr. MADISON**

thought it much better than if it had mentioned any specified period; because, if the accounts of the public receipts and expenditures were to be published at short, stated periods, they would not be so full and connected as would be necessary for a thorough comprehension of them, and detection of any errors. But by giving them an opportunity of publishing them from time to time, as might be found easy and convenient, they would be more full and satisfactory to the public, and would be sufficiently frequent. He thought, after all, that this provision went farther than the constitution of any state in the Union, or perhaps in the world.

## **Mr. MASON**

replied, that, in the Confederation, the public proceedings were to be published monthly., which was infinitely better than depending on men's virtue to publish them or not, as they might please. If there was no such provision in the Constitution of Virginia, gentlemen ought to consider the difference between such a full representation, dispersed and mingled with every part of the community, as the state representation was, and such an inadequate representation as this was. One might he safely trusted, but not the other.

## Mr. MADISON

replied, that the inconveniences which had been experienced from the Confederation, in that respect, had their weight with him in recommending this in preference to it; for that it was impossible, in such short intervals, to adjust the public accounts in any satisfactory manner.

[The 7th clause was then read.]

## Mr. HENRY.

Mr. Chairman, we have now come to the 9th section, and I consider myself at liberty to take a short view of the whole. I wish to do it very briefly. Give me leave to remark that there is a bill of rights in that government.

{461} There are express restrictions, which are in the shape of a bill of rights; but they bear the name of the 9th section. The design of the negative expressions in this section is to prescribe limits beyond which the powers of Congress shall not go. These are the sole bounds intended by the American government. Whereabouts do we stand with respect to a bill of rights? Examine it, and compare it to the idea manifested by the Virginian bill of rights, or that of the other states. The restraints in this congressional bill of rights are so feeble and few, that it would have been infinitely better to have said nothing about it. The fair implication is, that they can do every thing they are not forbidden to do. What will be the result if Congress, in the course of their legislation, should do a thing not restrained by this 9th section? It will fall as an incidental power to Congress, not being prohibited expressly in the Constitution. The first prohibition is, that the privilege of the writ of *habeas corpus* shall not be suspended but when, in case of rebellion or invasion, the public safety may require it. It results clearly that, if it had not said so, they could suspend it in all cases whatsoever. It reverses the position of the friends of this Constitution, that every thing is retained which is not given up; for, instead of this, every thing is given up which is not expressly reserved. It does not speak affirmatively, and say that it shall be suspended in those cases; but that it shall not be suspended but in certain cases; going on a supposition that every thing which is not negated shall remain with Congress. If the power remains with the people, how can Congress supply the want of an affirmative grant? They cannot do it but by implication, which destroys their doctrine. The Virginia bill of rights interdicts the relinquishment of the sword and purse without control. That bill of rights secures the great and principal rights of mankind. But this bill of rights extends to but very few cases, and is destructive of the doctrine advanced by the friends of that paper.

If *ex post facto* laws had not been interdicted, they might also have been extended by implication at pleasure. Let us consider whether this restriction be founded in wisdom or good policy. If no *ex post facto* laws be made, what is to become of the old Continental paper dollars? Will not this country be forced to pay in gold and silver, shilling for shilling? Gentlemen may think that this does not deserve {462} an answer. But it is an all-important question, because the property of this country is not commensurate to the enormous demand. Our own government triumphs, with infinite superiority, when put in contrast with that paper. The want of a bill of rights will render all their laws, however oppressive, constitutional.

If the government of Virginia passes a law in contradiction to our bill of rights, it is nugatory. By that paper the national wealth is to be disposed of under the veil of secrecy; for the publication from time to time will amount to nothing, and they may conceal what they may think requires secrecy. How different it is in your own government! Have not the people seen the journals of our legislature every day during every session? Is not the *lobby* full of people every day? Yet gentlemen say that the publication from time to time is a security unknown in our state government! Such a regulation would be nugatory and vain, or at least needless, as the people see the journals of our legislature, and hear their debates, every day. If this be not more secure than what is in that paper, I will give up that I have totally misconceived the principles of the government. You are told that your rights are secured in this new government. They are guarded in no other part but this 9th section. The few restrictions in that section are your only safeguards. They may control your actions, and your very words, without being repugnant to that paper. The existence of your dearest privileges will depend on the consent of Congress, for they are not within the restrictions of the 9th section.

If gentlemen think that securing the slave trade is a capital object; that the privilege of the *habeas corpus* is sufficiently secured; that the exclusion of *ex post facto* laws will produce no inconvenience; that the publication from time to time will secure their property; in one word, that this section alone will sufficiently secure their liberties, — I have spoken in vain. Every word of mine, and of my worthy coadjutor, is lost. I trust that gentlemen, on this occasion, will see the great objects of religion, liberty of the press, trial by jury, interdiction of cruel punishments, and every other sacred right, secured, before they agree to that paper. These most important human rights are not protected by that section, which is the only safeguard in the Constitution. My mind will not be quieted till I see something substantial come forth in the shape of a bill of rights.

## Gov. RANDOLPH.

Mr. Chairman, the general review which the gentleman has taken of the 9th section is so inconsistent, that, in order to answer him, I must, with your permission, who are the *custos* of order here, depart from the rule of the house in some degree. I declared, some days ago, that I would give my suffrage for this Constitution, not because I considered it without blemish, but because the critical situation of our country demanded it. I invite those who think with me to vote for the Constitution. But where things occur in it which I disapprove of, I shall be candid in exposing my objections.

Permit me to return to that clause which is called by gentlemen the *sweeping clause*. I observed, yesterday, that I conceived the construction which had been put on this clause by the advocates of the Constitution was too narrow, and that the construction put upon it by the other party was extravagant. The immediate explanation appears to me most rational. The former contend that it gives no supplementary power, but only enables them to make laws to execute the delegated powers — or, in other words, that it only involves the powers incidental to those expressly delegated. By *incidental powers* they mean those which are necessary for the principal thing. That the incident is inseparable from the principal, is a maxim in the construction of laws. A constitution differs from a law; for a law only embraces one thing, but a constitution embraces a number of things, and is to have a more liberal construction. I need not recur to the constitutions of Europe for a precedent to direct my explication of this clause, because, in Europe, there is no

constitution wholly in writing. The European constitutions sometimes consist in detached statutes or ordinances, sometimes they are on record, and sometimes they depend on immemorial tradition. The American constitutions are singular, and their construction ought to be liberal. On this principle, what should be said of the clause under consideration? (*the sweeping clause.*) If incidental powers be those only which are necessary for the principal thing, the clause would be superfluous.

Let us take an example of a single department; for instance, that of the President, who has certain things annexed to his office. Does it not reasonably follow that he must have some incidental powers? The principle of incidental {464} powers extends to all parts of the system. If you then say that the President has incidental powers, you reduce it to tautology. I cannot conceive that the fair interpretation of these words is as the honorable member says.

## NOTE

Let me say that, in my opinion, the adversaries of the Constitution wander equally from the true meaning. If it would not fatigue the house too far, I would go back to the question of reserved rights. The gentleman supposes that complete and unlimited legislation is vested in the Congress of the United States. This supposition is founded on false reasoning. What is the present situation of this state? She has possession of all rights of sovereignty, except those given to the Confederation. She *must* delegate powers to the confederate government. It is necessary for her public happiness. Her weakness compels her to confederate with the twelve other governments. She trusts certain powers to the general government, in order to support, protect, and defend the Union. Now, is there not a demonstrable difference between the principle of the state government and of the general government? There is not a word said, in the state government, of the powers given to it, because they are general. But in the general Constitution, its powers are enumerated. Is it not, then, fairly deducible, that it has no power but what is expressly given it? — for if its powers were to be general, an enumeration would be needless.

But the insertion of the negative *restrictions* has given cause of triumph, it seems, to gentlemen. They suppose that it demonstrates that Congress are to have powers by implication. I will meet them on that ground. I persuade myself that every exception here mentioned is an exception, not from general powers, but from the particular powers therein vested. To what power in the general government is the exception made respecting the importation of negroes? Not from a general power, but from a particular power expressly enumerated. This is an exception from the power given them of regulating commerce. He asks, Where is the power to which the prohibition of suspending the *habeas corpus* is an exception? I contend that, by virtue of the power given to Congress to regulate courts, they could suspend the writ of *habeas corpus*. This is therefore an exception to that power.

The 3d restriction is, that no bill of attainder, or *ex* {465} *post facto* law, shall be passed. This is a manifest exception to another power. We know well that attainders and *ex post facto* laws have always been the engines of criminal jurisprudence. This is, therefore, an exception to the criminal jurisdiction vested in that body.

The 4th restriction is, that no capitation, or other direct tax, shall be laid, unless in proportion to the census before directed to be taken. Our debates show from what power this is an exception.

The restrictions in the 5th clause are an exception to the power of regulating commerce.

The restriction in the 6th clause, that no money should be drawn from the treasury but in consequence of appropriations made by law, is an exception to the power of paying the debts of the United States; for the power of drawing money from the treasury is consequential of that of paying the public debts.

The next restriction is, that no titles of nobility shall be granted by the United States. If we cast our eyes to the manner in which titles of nobility first originated, we shall find this restriction founded on the same principles. These sprang from military and civil offices. Both are put in the hands of the United States, and therefore I presume it to be an exception to that power.

The last restriction restrains any person in office from accepting of any present or emolument, title or office, from any foreign prince or state. It must have been observed before, that, though the Confederation had restricted Congress from exercising any powers not given them, yet they inserted it, not from any apprehension of usurpation, but for greater security. This restriction is provided to prevent corruption. All men have a natural inherent right of receiving emoluments from any one, unless they be restrained by the regulations of the community. An accident which actually happened operated in producing the restriction. A box was presented to our ambassador by the king of our allies. It was thought proper, in order to exclude corruption and foreign influence, to prohibit any one in office from receiving or holding any *emoluments* from foreign states, I believe that if, at that moment, when we were in harmony with the king of France, we had supposed that he was corrupting our ambassador, it might have disturbed that {466} confidence, and diminished that mutual friendship, which contributed to carry us through the war.

The honorable gentlemen observe that Congress might define punishments, from petty larceny to high treason. This is an unfortunate quotation? or the gentleman, because treason is expressly defined in the 3d section of the 3d article, and they can add no feature to it. They have not cognizance over any other crime except piracies, felonies committed on the high seas, and offences against the law of nations.

But the rhetoric of the gentleman has highly colored the dangers of giving the general government an indefinite power of providing for the general welfare. I contend that no such power is given. They have power "to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States." Is this an independent, separate, substantive power, to provide for the general welfare of the United States? No, sir. They can lay and collect taxes, &c. For what? To pay the debts and provide for the general welfare. Were not this the case, the following part of the clause would be absurd. It would have been treason against common language. Take it altogether, and let me ask if the plain interpretation be not this — a power to lay and collect taxes, &c., in order to provide for the general welfare and pay debts.

On the subject of a bill of rights, the want of which has been complained of, I will observe that it has been sanctified by such reverend authority, that I feel some difficulty in going against it. I shall not, however, be deterred from giving my opinion on this occasion, let the consequence be what it may. At the beginning of the war, we had no certain bill of rights; for our charter cannot be considered as a bill of rights; it is nothing more than an investiture, in the hands of the Virginia citizens, of those rights which belonged to British subjects. When the British thought, proper to infringe our rights, was it not necessary to mention, in our Constitution, those rights which ought to be paramount to the power of the legislature? Why is the bill of rights distinct from the Constitution? I consider bills of rights in this view — that the government should use them, when there is a departure from its fundamental principles, in order to restore them.

{467} This is the true sense of a bill of rights. If it be consistent with the Constitution, or contain additional rights, why not put it in the Constitution? If it be repugnant to the Constitution, here will be a perpetual scene of warfare between them. The honorable gentleman has praised the bill of rights of Virginia, and called it his guardian angel, and vilified this Constitution for not having it. Give me leave to make a distinction between the representatives of the people of a particular country, who are appointed as the ordinary legislature, having no limitation to their powers, and another body arising from a compact, and with certain delineated powers. Were a bill of rights necessary in the former, it would not be in the latter; for the best security that can be in the latter is the express enumeration of its powers. But let me ask the gentleman where his favorite rights are violated. They are not violated by the 10th section, which contains restrictions on the states. Are they violated by the enumerated powers? [Here his excellency read from the 8th to the 12th article of the bill of rights.] Is there not provision made, in this Constitution, for the trial by jury in criminal cases? Does not the 3d article provide that the trial of all crimes shall be by jury, and held where the said crimes shall have been committed? Does it not follow that the cause and nature of the accusation must be produced? — because, otherwise, they cannot proceed on the cause. Every one knows that the witnesses must be brought before the jury, or else the prisoner will be discharged. Calling of evidence in his favor is coincident to his trial. There is no suspicion that less than twelve jurors will be thought sufficient. The only defect is, that there is no speedy trial. Consider how this could have been amended. We have heard complaints against it because it is supposed the jury is to come from the state at large. It will be in their power to have juries from the vicinage. And would not the complaints have been louder if they had appointed a federal court to be had in every county in the state? Criminals are brought, in this state, from every part of the country to the general court, and jurors from the vicinage are summoned to the trials. There can be no reason to prevent the general government from adopting a similar regulation.

As to the exclusion of excessive bail and fines, and cruel {468} and unusual punishments, this would follow of itself, without a bill of rights. Observations have been made about watchfulness over those in power which deserve our attention. There must be a combination; we must presume corruption in the House of Representatives, Senate, and President, before we can suppose that excessive fines can be imposed or cruel punishments inflicted. Their number is the highest security. Numbers are the highest security in our own Constitution, which has attracted so many eulogiums from the gentlemen. Here we have launched into a sea of suspicions. How shall we check power? By their numbers. Before these cruel punishments can be inflicted, laws must be passed, and judges must judge contrary to justice. This would excite universal discontent and

detestation of the members of the government. They might involve their friends in the calamities resulting from it, and could be removed from office. I never desire a greater security than this, which I believe to be absolutely sufficient.

That general warrants are grievous and oppressive, and ought not to be granted, I fully admit. I heartily concur in expressing my detestation of them. But we have sufficient security here also. We do not rely on the integrity of any one particular person or body, but on the number and different orders of the members of the government — some of them having necessarily the same feelings with ourselves. Can it be believed that the federal judiciary would not be independent enough to prevent such oppressive practices? If they will not do justice to persons injured, may they not go to our own state judiciaries, and obtain it?

Gentlemen have been misled, to a certain degree, by a general declaration that the trial by jury was gone. We see that, in the most valuable cases, it is reserved. Is it abolished in civil cases? Let him put his finger on the part where it is abolished. The Constitution is silent on it. What expression would you wish the Constitution to use, to establish it? Remember we were not making a constitution for Virginia alone, or we might have taken Virginia for our directory. But we were forming a constitution for thirteen states. The trial by jury is different in different states. In some states it is excluded in cases in which it is admitted in others. In admiralty causes it is not used. Would you have a jury to determine the case of a capture? {469} The Virginia legislature thought proper to make an exception of that case. These depend on the law of nations, and no twelve men that could be picked up could be equal to the decision of such a matter.

Then, sir, the freedom of the press is said to be insecure. God forbid that I should give my voice against the freedom of the press. But I ask, (and with confidence that it cannot be answered,) Where is the page where it is restrained? If there had been any regulation about it, leaving it insecure, then there might have been reason for clamors. But this is not the case. If it be, I again ask for the particular clause which gives liberty to destroy the freedom of the press.

He has added religion to the objects endangered, in his conception. Is there any power given over it? Let it be pointed out. Will he not be contented with the answer that has been frequently given to that objection? The variety of sects which abounds in the United States is the best security for the freedom of religion. No part of the Constitution, even if strictly construed, will justify a conclusion that the general government can take away or impair the freedom of religion.

The gentleman asks, with triumph, Shall we be deprived of these valuable rights? Had there been an exception, or an express infringement of those rights, he might object; but I conceive every fair reasoner will agree that there is no just cause to suspect that they will be violated.

## Common Law

But he objects that the **common law** is not established by the Constitution. The wisdom of the Convention is displayed by its omission, because the **common law** ought not to be immutably fixed. Is it established in our own Constitution, or the bill of rights, which has been resounded through the house? It is established only by an act of the legislature, and can therefore be changed as circumstances may require it. Let the honorable gentleman consider what would be

the destructive consequences of its establishment in the Constitution. Even in England, where the firmest opposition has been made to encroachments upon it, it has been frequently changed. What would have been our dilemma if it had been established? Virginia has declared that children shall have equal portions of the real estate of their intestate parents, and it is consistent with the principles of a republican government.

{470} The immutable establishment of the **common law** would have been repugnant to that regulation. It would, in many respects; be destructive to republican principles, and productive of great inconveniences. I might indulge myself by showing many parts of the **common law** which would have this effect. I hope I shall not be thought to speak ludicrously, when I say the *writ of burning heretics* would have been revived by it. It would tend to throw real property into few hands, and prevent the introduction of many Salutory regulations. Thus, were the **common law** adopted in that system, it would destroy the principles of republican government. But this is not excluded. It may be established by an act of legislature. Its defective parts may be altered, and it may be changed and modified as the convenience of the public may require it.

I said, when I opened my observations, that I thought the friends of the Constitution were mistaken when they supposed the powers granted by the last clause of the 8th section to be merely incidental; and that its enemies were equally mistaken when they put such an extravagant construction upon it.

My objection is, that the clause is ambiguous, and that the ambiguity may injure the states. My fear is, that it will, by gradual accessions, gather to a dangerous length. This is my apprehension, and I disdain to disown it. I will praise it where it deserves it, and censure it where it appears defective. But, sir, are we to reject it, because it is ambiguous in some particular instances? I cast my eyes to the actual situation of America. I see the dreadful tempest, to which the present calm is a prelude, if disunion takes place. I see the anarchy which must happen if no energetic government be established. In this situation, I would take the Constitution, were it more objectionable than it is; for, if anarchy and confusion follow disunion, an enterprising man may enter into the American throne. I conceive there is no danger. The representatives are chosen by and from among the people; They will have a fellow-feeling for the farmers and planters. The twenty-six senators, representatives of the states, will not be those desperadoes and horrid adventurer, which they are represented to be. The state legislatures I trust, will not forget the duty they owe to their country so far as to choose such men to manage their federal {471} interests. I trust that the members of Congress themselves will explain the ambiguous parts; and if not, the states can combine in order to insist on amending the ambiguities. I would depend on the present actual feeling of the people of America, to introduce any amendment which may be necessary. I repeat it again, though I do not reverence the Constitution, that its adoption is necessary to avoid the storm which is hanging over America, and that no greater curse can befall her than the dissolution of the political connection between the states. Whether we shall propose previous or subsequent amendments, is now the only dispute. It is supererogation to repeat again the arguments in support of each; but I ask gentlemen whether, as eight states have adopted it, it be not safer to adopt it, and rely on the probability of obtaining amendments, than, by a rejection, to hazard a breach of the Union? I hope to be excused for the breach of order which I have **committed.**

Mr. HENRY

lamented that he could not see with that perspicuity which other gentlemen were blessed with. But the 9th section struck his mind still in an unfavorable light. He hoped, as the gentleman had been indulged in speaking of the Constitution in general, that he should be allowed to answer him before they adopted or rejected it.

[The 1st clause of the 10th section was next read.]

## Mr. HENRY

apologized for repeatedly troubling the committee with his fears. But he apprehended the most serious consequences from these restrictions on the states. As they could not emit bills of credit, make any thing but gold and silver coin a tender in payment of debts, pass *ex post facto* laws, or impair the obligation of contracts, — though these restrictions were founded on good principles, yet he feared they would have this effect; that this state would be obliged to pay for her share of the Continental money, shilling for shilling. He asked gentlemen who had been in high authority, whether there were not some state speculations on this matter. He had been informed that some states had acquired vast quantities of that money, which they would be able to recover in its nominal value of the other states.

## Mr. MADISON

admitted there might be some speculations on the subject. He believed the old Continental money was settled in a very disproportionate manner. It {472} appeared to him, however, that it was unnecessary to say any thing on this point, for there was a clause in the Constitution which cleared it up. The first clause of the 6th article provides that "all debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the Confederation." He affirmed that it was meant there should be no change with respect to Claims by this political alteration; and that the public would stand, with respect to their creditors, as before. He thought that the validity of claims ought not to diminish by the adoption of the Constitution. But, however, it could not increase the demands on the public.

## Mr. GEORGE MASON

declared he had been informed that some states had speculated most enormously in this matter. Many individuals had speculated so as to make great fortunes on the ruin of their fellow-citizens. The clause which has been read, as a sufficient security, seemed to him to be satisfactory as far as it went; that is, that the Continental money ought to stand on the same ground as it did previously, or that the claim should not be impaired. Under the Confederation, there were means of settling the old paper money, either in Congress or in the state legislatures. The money had at last depreciated to a thousand for one. The intention of state speculation, as well as individual speculation, was to get as much as possible of that money, in order to recover its nominal value. The means, says he, of settling this money, were in the hands of the old Congress. They could

discharge it at its depreciated value. Is there that means here? No, sir, we must pay it shilling for shilling, or at least at the rate of one for forty. The amount will surpass the value of the property of the United States. Neither the state legislatures nor Congress can make an *ex post facto* law. The nominal value must therefore be paid. Where is the power in the new government to settle this money so as to prevent the country from being ruined? When they prohibit the making *ex post facto* laws, they will have no authority to prevent our being ruined by paying that money at its nominal value.

Without some security against it, we shall be compelled to pay it to the last particle of our property. Shall we ruin our people by taxation, from generation to generation, to pay {473} that money? Should any *ex post facto* law be made to relieve us from such payments, it would not be regarded, because *ex post facto* laws are interdicted in the Constitution; We may be taxed for centuries, to give advantage to a few particular states in the Union, and a number of rapacious speculators. If there be any real security against this misfortune, let gentlemen show it. I can see none. The clause under consideration does away the pretended security in the clause which was adduced by the honorable gentleman. This enormous mass of worthless money, which has been offered at a thousand for one, must be paid in actual gold and silver at the nominal value.

## Mr. MADISON.

Mr. Chairman, it appears to me immaterial who holds those great quantities of paper money which were in circulation before the peace, or at what value they acquired it; for it will not be affected by this Constitution. What would satisfy gentlemen more than that the new Constitution would place us in the same situation with the old? In this respect, it has done so. The claims against the United States are declared to be as *valid* as they were, but *not more so*. Would they have a particular specification of these matters? Where can there be any danger? Is there any reason to believe that the new rulers, one branch of which will be drawn from the mass of the people, will neglect or violate our interests more than the old? It rests on the obligation of public faith only, in the Articles of Confederation. It will be so in this Constitution, should it be adopted. If the new rulers should wish to enhance its value, in order to gratify its holders, how can they compel the states to pay it if the letter of the Constitution be observed? Do gentlemen wish the public creditors should be put in a worse situation? Would the people at large wish to satisfy creditors in such a manner as to ruin them? There cannot be a majority of the people of America that would wish to defraud their public creditors. I consider this as well guarded as possible. It rests on plain and honest principles. I cannot conceive how it could be more honorable or safe. [Mr. Madison made some other observations, which could not be heard.]

## Mr. HENRY.

Mr. Chairman, I am convinced, and I see clearly, that this paper money must be discharged, shilling for shilling. The honorable gentleman must see better {474} than I can, from his particular situation and judgment; but this has certainly escaped his attention. The question arising on the clause before you is, whether an act of the legislature of this state, for scaling money, will be of sufficient validity to exonerate you from paying the nominal value, when such a law, called *ex post facto*, and impairing the obligation of contracts, is expressly interdicted by

it. Your hands are tied up by this clause, and you must pay shilling for shilling; and, in the last section, there is a clause that prohibits the general legislature from passing any *ex post facto* law; so that the hands of Congress are tied up, as well as the hands of the state legislatures.

How will this thing operate, when ten or twenty millions are demanded as the quota of this state? You will cry out that speculators have got it at one for a thousand, and that they ought to be paid so. Will you then have recourse, for relief, to legislative interference? They cannot relieve you, because of that clause. The expression includes public contracts, as well as private contracts between individuals. Notwithstanding the sagacity of the gentleman, he cannot prove its exclusive relation to private contracts. Here is an enormous demand, which your children, to the tenth generation, will not be able to pay. Should we ask if there be any obligation in justice to pay more than the depreciated value, we shall be told that contracts must not be impaired. Justice may make a demand of millions, but the people cannot pay them.

I remember the clamors and public uneasiness concerning the payments of British debts put into the treasury. Was not the alarm great and general lest these payments should be laid on the people at large? Did not the legislature interfere, and pass a law to prevent it? Was it not reechoed every where, that the people of this country ought not to pay the debts of their great ones? And though some urged their patriotism and merits in putting money, on the faith of the public, into the treasury, yet the outcry was so great that it required legislative interference. Should those enormous demands be made upon us, would not legislative interference be more necessary than it was in that case? Let us not run the risk of being charged with carelessness, and neglect of the interests of our constituents and posterity. I would ask the number of millions. It is, without exaggeration, {475} immense. I ask gentlemen if they can pay one hundred millions, or two hundred millions? Where have they the means of paying it? Still they would make us proceed to tie the hands of the states and of Congress.

A gentleman has said, with great force, that there is a contest for empire. There is also a contest for money. The states of the north wish to secure a superiority of interest and influence. In one part their deliberation is marked with wisdom, and in the other with the most liberal generosity. When we have paid all the gold and silver we could to replenish the congressional coffers, here they ask for confidence. Their hands will be tied up. They cannot merit confidence. Here is a transfer from the old to the new government, without the means of relieving the greatest distresses which can befall the people. This money might be scaled, sir; but the exclusion of *ex post facto* laws, and laws impairing the obligation of contracts, steps in and prevents it. These were admitted by the old Confederation. There is a contest for money as well as empire, as I have said before. The Eastern States have speculated chiefly in this money. As there can be no congressional scale, their speculations will be extremely profitable. Not satisfied with a majority in the legislative councils, they must have all our property. I wish the southern genius of America had been more watchful.

This state may be sued in the federal court for those enormous demands, and judgment may be obtained, unless *ex post facto* laws be passed. To benefit whom are we to run this risk? I have heard there were vast quantities of that money packed up in barrels: those formidable millions are deposited in the Northern States, and whether in public or private hands makes no odds. They have acquired it for the most inconsiderable trifle. If you accord to this part, you are bound hand

and foot. Judgment must be rendered against you for the whole. Throw all pride out of the question, this is a most nefarious business. Your property will be taken from you to satisfy this most infamous speculation. It will destroy your public peace, and establish the ruin of your citizens. Only general resistance will remedy. You will shut the door against every ray of hope, if you allow the holders of this money, by this clause, to recover their formidable demands. I hope gentlemen will see the absolute necessity {476} of amending it, by enabling the state legislatures to relieve their people from such nefarious oppressions.

## **Mr. GEORGE NICHOLAS.**

Mr. Chairman, I beg gentlemen to consider most attentively the clause under consideration, and the objections against it. He says there exists the most dangerous prospect. Has the legislature of Virginia any right to make a law or regulation to interfere with the Continental debts? Have they a right to make ex post facto laws, and laws impairing the obligation of contracts, for that purpose? No, sir. If his fears proceed from this clause, they are without foundation. This clause does not hinder them from doing it, because the state never could do it; the jurisdiction of such general objects being exclusively vested in Congress.

But, says he, this clause will hinder the general government from preventing the nominal value of those millions from being paid. On what footing does this business stand, if the Constitution be adopted? By it all contracts will be as valid, and only as valid, as under the old Confederation. The new government will, give the holders the same power of recovery as the old one. There is no law under the existing system which gives power to any tribunal to enforce the payment of such claims. On the will of Congress alone the payment depends. The Constitution expressly says that they shall be only as binding as under the present Confederation. Cannot they decide according to real equity? Those who have this money must make application to Congress for payment. Some positive regulation must be made to redeem it. It cannot be said that they have power of passing a law to enhance its value. They cannot make a law that that money shall no longer be but one for one; for, though they have power to pay the debts of the United States, they can only pay the real debts; and this is no further a debt than it was before. Application must, therefore, be made by the holders of that money to Congress, who will make the most proper regulation to discharge its real and equitable, and not its nominal, value.

We are told of the act passed to exonerate the public from the payments of the British debts put into the treasury. That has no analogy to this: those payments were opposed because they were unjust. But he supposes that Congress may be sued by those speculators. Where is the clause that {477} gives that power? It gives no such power. This, according to my idea, is inconsistent. Can the supreme legislature be sued in their own subordinate courts, by their own citizens, in cases where they are not a party? They may be plaintiffs, but not defendants. But the individual states, perhaps, may be sued. Pennsylvania or Virginia may be sued. How is this? Do I owe the man in New England any thing? Does Virginia owe any thing to the Pennsylvanian holder of such money? Who promised to pay it? Congress, sir. Congress are answerable to the individual holders of this money, and individuals are answerable over to Congress. Therefore, no individual can call on any state.

But the Northern States struggle for money as well as for empire. Congress cannot make such a regulation as they please at present. If the Northern States wish to injure us, why do they not do it now? What greater dangers are there to be dreaded from the new government, since there is no alteration? If they have a majority in the one case, they have in the other. The interests of those states would be as dangerous for us under the old as under the new government, which leaves this business where it stands, because the conclusion says that all debts contracted, or engagements entered into, shall be only as valid in the one case as the other.

## Gov. RANDOLPH.

Mr. Chairman, this clause, in spite of the invective of the gentleman, is a great favorite of mine, because it is essential to justice. I shall reserve my answer respecting the safety of the people till the objection be urged; but I must make a few observations. He says this clause will be injurious, and that no scale can be made, because there is a prohibition on Congress of passing *ex post facto* laws. If the gentleman did not make such strong objections to logical reasoning, I could prove, by such reasoning, that there is no danger. *Ex post facto* laws, if taken technically, relate solely to criminal cases; and my honorable colleague tells you it was so interpreted in Convention. What greater security can we have against arbitrary proceedings in criminal jurisprudence than this? In addition to the interpretation of the Convention, let me show him still greater authority. The same clause provides that no bill of attainder shall be passed. It shows that the attention of the Convention was drawn to criminal matters alone. {478} Shall it be complained, against this government, that it prohibits the passing of a law annexing a punishment to an act which was lawful at the time of committing it? With regard to retrospective laws, there is no restraint.

Let us examine the cause of the clamors which are made with regard to the Continental money. A friend has mentioned a clause which shows there is no danger from the new Congress. Does it not manifestly appear that they are precisely in the same predicament as under the old Confederation? And do gentlemen wish that this should be put in a worse condition? If they have equity under the old Confederation, they have equity still. There is no tribunal to recur to by the old government. There is none in the new for that purpose. If the old Congress can scale that money, they have this power still. But he says not, because the states cannot impair the obligation of contracts. What is to be done by the states with regard to it? Congress, and not they, have contracted to pay it. It is not affected by this clause at all. I am still a warm friend to the prohibition, because it must be promotive of virtue and justice, and preventive of injustice and fraud. If we take a review of the calamities which have befallen our reputation as a people, we shall find they have been produced by frequent interferences of the state legislatures with private contracts. If you inspect the great corner-stone of republicanism, you will find it to be justice and honor.

I come now to what will be agitated by the judiciary. They are to enforce the performance of private contracts. The British debts, which are withheld contrary to treaty, ought to be paid. Not only the law of nations, but justice and honor, require that they be punctually discharged. I fear their payment may press on my country; but we must retrench our superfluities, and profuse and idle extravagance, and become more economical and industrious. Let me not be suspected of being interested in this respect; for, without a sad reverse of my fortune, I shall never be in a

situation to be benefited by it. I am confident the honest Convention of Virginia will not oppose it. Can any society exist without a firm adherence to justice and virtue? The federal judiciary cannot intermeddle with those public claims without violating the letter of the Constitution. Why, then, such opposition to the clause? His excellency then concluded {479} that he would, if necessary, display his feelings more fully on the subject another time.

## **Mr. GEORGE MASON.**

Mr. Chairman, the debt is transferred to Congress, but not the means of paying it. They cannot pay it any other way than according to the nominal value; for they are prohibited from making *ex post facto* laws; and it would be *ex post facto*, to all intents and purposes, to pay off creditors with less than the nominal sum which they were originally promised. But the honorable gentleman has called to his aid technical definitions. He says, that *ex post facto* laws relate solely to criminal matters, I beg leave to differ from him. Whatever it may be at the bar, or in a professional line, I conceive that, according to the common acceptance of the words, *ex post facto* laws and retrospective laws are synonymous terms. Are we to trust business of this sort to technical definition? The contrary is the plain meaning of the words. Congress has no power to scale this money. The states are equally precluded. The debt is transferred without the means of discharging it. Implication will not do. The means of paying it are expressly withheld. When this matter comes before the federal judiciary, they must determine according to this Constitution. It says, expressly, that they shall not make *ex post facto* laws. Whatever may be the professional meaning, yet the general meaning of *ex post facto* law is an act having a retrospective operation. This construction is agreeable to its primary etymology. Will it not be the duty of the federal court to say that such laws are prohibited? This goes to the destruction and annihilation of all the citizens of the United States, to enrich a few. Are we to part with every shilling of our property, and be reduced to the lowest insignificance, to aggrandize a few speculators? Let me mention a remarkable effect this Constitution will have. How stood our taxes before this Constitution was introduced? Requisitions were made on the state legislatures, and, if they were unjust, they could be refused. If we were called upon to pay twenty millions, shilling for shilling, or at the rate of one for forty, our legislature could refuse it and remonstrate against the injustice of the demand. But now this could not be done; for direct taxation is brought home to us. The federal officer collects immediately of the planters. When it withholds the only possible means of discharging {480} those debts, and by direct taxation prevents any opposition to the most enormous and unjust demand, where are you? Is there a ray of hope? As the law has never been my profession, if I err, I hope to be excused. I spoke from the general sense of the words. The worthy gentleman has told you that the United States can be plaintiffs, but never defendants. If so, it stands on very unjust grounds. The United States cannot be come at for any thing they may owe, but may get what is due to them. There is therefore no reciprocity. The thing is so incomprehensible that it cannot be explained. As an express power is given to the federal court to take cognizance of such controversies, and to declare null all *ex post facto* laws, I think gentlemen must see there is danger, and that it ought to be guarded against.

## **Mr. MADISON.**

Mr. Chairman, I did expect, from the earnestness he has expressed, that he would cast some light upon it; but the ingenuity of the honorable member could make nothing of this objection. He argues from a supposition that the state legislatures, individually, might have passed laws to affect the value of the Continental debt. I believe he did not well consider this, before he hazarded his observations. He says that the United States, being restrained in this case, will be obliged to pay at an unjust rate. It has been so clearly explained by the honorable gentleman over the way that there could be no danger, that it is unnecessary to say more on the subject. The validity of these claims will neither be increased nor diminished by this change. There must be a law made by Congress respecting their redemption. The states cannot interfere. Congress will make such a regulation as will be just. There is, in my opinion, but one way of scaling improperly and unjustly; and that is, by acceding to the favorite mode of the honorable gentleman — by requisitions. Is it to be presumed any change can be made in the system inconsistent with reason or equity? Strike the clause out of the Constitution — what will it be then? The debt will be as valid only as it was before the adoption. Gentlemen will not say that obligations are varied. This is merely a declaratory clause, that things are to exist in the same manner as before.

But I fear the very extensive assertions of the gentleman may have misled the committee. The whole of that Continental money amounted to but little more than one hundred {481} millions. A considerable quantity of it has been destroyed: At the time when no share of it had been destroyed, the quota of this state did not amount to more than twenty-six millions. At forty for one, this is but five hundred thousand dollars at most. In every point of view it appears to me that it cannot be on a more reasonable, equitable, or honorable footing than it is. Do gentlemen suppose that they will agree to any system or alteration that will place them in a worse situation than before? Let us suppose this commonwealth was possessed of the same money that the Northern States have; and suppose an objection was made by them to its redemption at its real value — what would be the consequence? We should pronounce them to be unreasonable, and on good grounds. This case is so extremely plain, that it was unnecessary to say as much as has been said.

## **Mr. MASON**

was still convinced of the rectitude of his former opinion. He thought it might be put on a safer footing by three words. By continuing the restriction of *ex post facto* laws to crimes, it would then stand under the new government as it did under the old.

## **Gov. RANDOLPH**

could not coincide with the construction put by the honorable gentleman on *ex post facto* laws. The technical meaning which confined such laws solely to criminal cases was followed in the interpretation of treaties between nations, and was concurred in by all civilians. The prohibition of bills of attainder he thought a sufficient proof that *ex post facto* laws related to criminal cases only, and that such was the idea of the Convention.

[The next clause of the 10th section was read.]

## **Mr. GEORGE MASON.**

Mr. Chairman, if gentlemen attend to this clause, they will see we cannot make any inspection law but what is subject to the control and revision of Congress. Hence gentlemen who know nothing of the business will make rules concerning it which may be detrimental to our interests. For forty years we have laid duties on tobacco, to defray the expenses of the inspection, and to raise an incidental revenue for the state. Under this clause, that incidental *revenue* which is calculated to pay for the inspection, and to defray contingent charges, is to be put into the federal treasury. But if any tobacco-house is burnt, we cannot make up the loss. I conceive this to be unjust and unreasonable. When any profit arises from it, it goes {482} into the federal treasury. But when there is any loss or deficiency from damage, it cannot be made up. Congress are to make regulations for our tobacco. Are men, in the states where no tobacco is made, proper judges of this business? They may perhaps judge as well, but surely no better than our own immediate legislature, who are accustomed and familiar with this business. This is one of the most wanton powers of the general government. I would concede any power that was essentially necessary for the interests of the Union; but this, instead of being necessary, will be extremely oppressive.

## **Mr. GEORGE NICHOLAS.**

Mr. Chairman, I consider this clause as a good regulation. It will be agreed to that they will impose duties in the most impartial manner, and not throw the burdens on a part of the community. Every man who is acquainted with our laws must know that the duties on tobacco were as high as sixteen shillings a hogshead. The consequence was, that the tobacco-makers have paid upwards of twenty thousand pounds, annually, more than the other citizens; because they paid every other kind of tax, as well as the rest of the community. We have every reason to believe that this clause will prevent injustice and partiality. Tobacco-makers will be benefited by it. But the gentleman says that our tobacco regulations will be subject to the control of Congress, who will be unacquainted with the subject. The clause says that all such laws shall be subject to the revision and control of Congress. What laws are meant by this? It means laws imposing duties on the exports of tobacco. But it does not follow that laws made for the regulation of the inspection shall be subject to the revision of Congress; He may say that the laws for imposing duties on the exports of tobacco, and laws regulating the inspection, must be blended in the same acts. Give me leave to say that they need not be so; for the duties on exports might be in one law, and the regulation of the inspection in another. The states may easily make them separately. But, he says, we shall lose the profit. We shall, then, find equity in our legislature which we have not found heretofore; for, as they will lay it not for their own exclusive advantages, but partly for the benefit of others, they will not be interested in laying it partially. As to the effect of warehouses being burnt, I differ from him. A tax may be laid to make up this loss. Though the amount of the duties go into the federal treasury, yet a tax may be laid for that purpose. Is it not necessary and just, if the inspection law obliges the planter to carry his tobacco to a certain place, that he should receive a compensation for the loss, if it be destroyed? The legislature must defray the expenses and contingent charges by laying a tax for that purpose; for such a tax is not prohibited. The net amounts only go into the federal treasury, after paying the expenses. Gentlemen must be pleased with this part, especially those who are tobacco-makers.

## **Mr. GEORGE MASON**

replied, that the state legislatures could make no law but what would come within the general control given to Congress; and that the regulation of the inspection, and the imposition of duties, must be inseparably blended together.

## **Mr. MADISON.**

Mr. Chairman, let us take a view of the relative situation of the states. Some states export the produce of other states. Virginia exports the produce of North Carolina; Pennsylvania, that of New Jersey and Delaware; and Rhode Island, that of Connecticut and Massachusetts. The exporting states wished to retain the Power of laying duties on exports, to enable them to pay the expenses incurred. The states whose produce is exported by other states were extremely jealous, lest a contribution should be raised of them by the exporting states, by laying heavy duties on their commodities. If this clause be fully considered, it will be found to be more consistent with justice and equity than any other practicable mode; for, if the states had the exclusive imposition of duties on exports, they might raise a heavy contribution from other states, for their own exclusive emolument. The honorable member who spoke in defence of the clause has fairly represented it. As to the reimbursement of the loss that may be sustained by individuals, a tax may be laid on tobacco, when brought to the warehouses, for that purpose. The sum arising therefrom may be appropriated to it consistently with the clause; for it only says that "the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States," which necessarily implies that all contingent charges shall have been previously paid.

[The 1st section of the 2d article was then read.]

## **Mr. GEORGE MASON.**

Mr. Chairman, there is not a {484} more important article in the Constitution than this. The great fundamental principle of responsibility in republicanism is here sapped. The President is elected without rotation. It may be said that a new election may remove him, and place, another in his stead. If we judge from the experience of all other countries, and even our own, we may conclude that, as the President of the United States may be reëlected, so he will. How is it in every government where rotation is not required? Is there a single instance of a great man not being reëlected? Our governor is obliged to return, after a given period, to a private station. It is so in most of the states. This President will be elected time after time: he will be continued in office for life. If we wish to change him, the great powers in Europe will not allow us.

The honorable gentleman, my colleague in the late federal Convention, mentions, with applause, those parts of which he had expressed his disapprobation, he says not a word. If I am mistaken, let me be put right. I shall not make use of his name; but, in the course of this investigation, I shall use the arguments of that gentleman against it.

Will not the great powers of Europe, as France and Great Britain, be interested in having a friend in the President of the United States? and will they not be more interested in his election than in that of the king of Poland? The people of Poland have a right to displace their king. But do they ever do it? No. Prussia and Russia, and other European powers, would not suffer it. This clause will open a door to the dangers and misfortunes which the people of Poland undergo. The powers of Europe will interpose, and we shall have a civil war in the bowels of our country, and be subject to all the horrors and calamities of an elective monarchy. This very executive officer may, by consent of Congress, receive a stated pension from European potentates. This is not an idea altogether new in America. It is not many years ago — since the revolution — that a foreign power offered emoluments to persons holding offices under our government. It will, moreover, be difficult to know whether he receives emoluments from foreign powers or not. The electors, who are to meet in each state to vote for him, may be easily influenced. To prevent the certain evils of attempting to elect a new President, it will be necessary to continue the {485} old one. The only way to alter this would be to render him ineligible after a certain number of years, and then no foreign nation would interfere to keep in a man who was utterly ineligible. Nothing is so essential to the preservation of a republican government as a periodical rotation. Nothing so strongly impels a man to regard the interest of his constituents as the certainty of returning to the general mass of the people, from whence he was taken, where he must participate their burdens. It is a great defect in the Senate that they are not ineligible at the end of six years. The biennial exclusion of one third of them will have no effect, as they can be reëlected. Some stated time ought to be fixed when the President ought to be reduced to a private station. I should be contented that he might be elected for eight years; but I would wish him to be capable of holding the office only eight years out of twelve or sixteen years. But, as it now stands, he may continue in office for life; or, in other words, it will be an elective monarchy.

## **Gov. RANDOLPH.**

Mr. Chairman, the honorable gentleman last up says that I do not mention the parts to which I object. I have hitherto mentioned my objections with freedom and candor. But, sir, I considered that our critical situation rendered adoption necessary, were it even more defective than it is. I observed that if opinions ought to lead the committee on one side, they ought on the other. Every gentleman who has turned his thoughts to the subject of politics, and has considered the most eligible mode of republican government, agrees that the greatest difficulty arises from the executive — as to the time of his election, mode of his election, quantum of power, &c. I will acknowledge that, at one stage of this business, I had embraced the idea of the honorable gentleman, that the reëligibility of the President was improper. But I will acknowledge that, on a further consideration of the subject, and attention to the lights which were thrown upon it by others, I altered my opinion of the limitation of his eligibility. When we consider the advantages arising to us from it, we cannot object to it. That which has produced my opinion against the limitation of his eligibility is this — that it renders him more independent in his place, and more solicitous of promoting the interest of his constituents; for, unless you put it in his power to be reëlected, instead of being attentive to their interests, he will {486} lean to the augmentation of his private emoluments. This subject will admit of high coloring and plausible arguments; but, on considering it attentively and coolly, I believe it will be found less exceptionable than any other mode. The mode of election here excludes that faction which is productive of those hostilities and confusion in Poland. It renders it unnecessary and impossible for foreign force or aid to

interpose. The electors must be elected by the people at large. To procure his reëlection, his influence must be coextensive with the continent. And there can be no combination between the electors, as they elect him on the same day in every state. When this is the case, how can foreign influence or intrigue enter? There is no reason to conclude, from the experience of these states, that he will be continually ally reëlected. There have been several instances where officers have been displaced, where they were reëligible. This has been the case with the executive of Massachusetts, and I believe of New Hampshire. It happens, from the mutation of sentiments, though the officers be good.

There is another provision against the danger, mentioned by the honorable member, of the President receiving emoluments from foreign powers. If discovered, he may be impeached. If he be not impeached, he may be displaced at the end of the four years. By the 9th section of the 1st article, "no person, holding an office of profit or trust, shall accept of any present or emolument whatever, from any foreign power, without the consent of the representatives of the people;" and by the 1st section of the 2d article, his compensation is neither to be increased nor diminished during the time for which he shall have been elected; and he shall not, during that period, receive any emolument from the United States or any of them. I consider, therefore, that he is restrained from receiving any present or emolument whatever. It is impossible to guard better against corruption. The honorable member seems to think that he may hold his office without being reëlected. He cannot hold it over four years, unless he be reëlected, any more than if he were prohibited. As to forwarding and transmitting the certificates of the electors, I think the regulation as good as could be provided.

## **Mr. GEORGE MASON.**

Mr. Chairman, the Vice President appears to me to be not only an unnecessary but dangerous officer. He is, contrary to the usual course of {487} parliamentary proceedings, to be president of the Senate. The state from which he comes may have two votes, when the others will have but one. Besides, the legislative and executive are hereby mixed and incorporated together. I cannot, at this distance of time, foresee the consequences; but I think that, in the course of human affairs, he will be made a tool of in order to bring about his own interest, and aid in overturning the liberties of his country. There is another part which I disapprove of, but which perhaps I do not understand. "In case of removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected." The power of Congress is right and proper so far as it enables them to provide what officer shall act, in case both the President and Vice-President be dead or disabled. But gentlemen ought to take notice that the election of this officer is only for four years. There is no provision for a speedy election of another President, when the former is dead or removed. The influence of the Vice President may prevent the election of the President. But perhaps I may be mistaken.

## **Mr. MADISON.**

Mr. Chairman, I think there are some peculiar advantages incident to this office, which recommend it to us. There is, in the first place, a great probability this officer will be taken from one of the largest states; and, if so, the circumstance of his having an eventual vote will be so far favorable. The consideration which recommends it to me is, that he will be the choice of the people at large. There are to be ninety-one electors, each of whom has two votes: if he have one fourth of the whole number of votes, he is elected Vice-President. There is much more propriety in giving this office to a person chosen by the people at large, than to one of the Senate, who is only the choice of the legislature of one state. His eventual vote is an advantage too obvious to comment upon. I differ from the honorable member in the case which enables Congress to make a temporary appointment. When the President and Vice {488} President die, the election of another President will immediately take place; and suppose it would not, — all that Congress could do would be to make an appointment between the expiration of the four years and the last election, and to continue only to such expiration. This can rarely happen. This power continues the government in motion, and is well guarded.

---

[1. Elliot misprinted this as Tuesday, June 15, 1788.]

---

**W**<sub>EDNESDAY</sub>, *June 18, 1788.*

[The 1st section of article 2 still under consideration.]

**Mr. MONROE,**

after a brief exordium, in which he insisted that, on the judicious organization of the executive power, the security of our interest and happiness greatly depended; that, in the construction of this part of the government, we should be cautious in avoiding the defects of other governments; and that our circumspection should be commensurate to the extent of the powers delegated, — proceeded as follows: The President ought to act under the strongest impulses of rewards and punishments, which are the strongest incentives to human actions. There are two ways of securing this point. He ought to depend on the people of America for his appointment and continuance in office; he ought also to be responsible, in an equal degree, to all the states, and to be tried by dispassionate judges; his responsibility ought further to be direct and immediate. Let us consider, in the first places then, how far he is dependent on the people of America. He is to be elected by electors, in a manner perfectly dissatisfactory to my mind. I believe that he will owe his election, in fact, to the state governments, and not to the people at large. It is to be observed that Congress have it in their power to appoint the time of choosing the electors, and of electing the President. Is it not presumable they will appoint the times of choosing the electors, and electing the President, at a considerable distance from each other, so as to give an opportunity to the electors to form a combination? If they know that such a man as they wish — for instance, the actual President — cannot possibly be elected by a majority of the whole number of electors appointed, yet if they can prevent the election, by such majority, of any one

they disapprove of, and if they can procure such a number of votes as will be sufficient to make their favorite one of the five highest on the list, they may ultimately carry the election into the general Congress, {489} where the votes, in choosing him, shall be taken by states, each state having one vote. Let us see how far this is compatible with the security of republicanism.

Although this state is to have ten, and Massachusetts eight representatives, and Delaware and Rhode Island are to have but one each, yet the vote is to be by states only. The consequence will be that a majority of the states, and these consisting of the smallest, may elect him; this will give an advantage to the small states. He will depend, therefore, on the states for his reëlection and continuance in office, and not on the people. Does it not bear the complexion of the late Confederation? He will conduct himself in accommodation to them, since by them he is chosen, and may be again. If he accommodates himself to the interest of particular states, will they not be obliged, by state policy, to support him afterwards? Let me inquire into his responsibility if he does not depend on the people. To whom is he responsible? To the Senate, his own council. If he makes a treaty, bartering the interests of his country, by whom is he to be tried? By the very persons who advised him to perpetrate the act. Is this any security? I am persuaded that the gentleman who will be the first elected may continue in the office for life.

The situation of the United States, as it applies to the European states, demands attention. We may hold the balance among those states. Their western territories are contiguous to us. What we may do, without any offensive operations, may have considerable influence. Will they not, then, endeavor to influence his general councils? May we not suppose that they will endeavor to attach him to their interest, and support him, in order to make him serve their purposes? If this be the case, does not the mode of election present a favorable opportunity to continue in office the person that shall be President? I am persuaded they may, by their power and intrigues, influence his reëlection. There being nothing to prevent his corruption but his virtue, which is but precarious, we have not sufficient security. If there be a propriety in giving him a right of making leagues, he ought not to be connected with the Senate. If the Senate have a right to make leagues, there ought to be a majority of the states.

The Vice-President is an unnecessary officer. I can see {490} no reason for such an officer. The Senate might of their own body elect a president who would have no dangerous influence. He is to succeed the President, in case of removal, disability, &c., and is to have the casting vote in the Senate. This gives an undue advantage to the state he comes from, and will render foreign powers desirous of securing his favor, to obtain which they will exert themselves in his behalf. I am persuaded that the advantage of his information will not counterbalance the disadvantages attending his office.

The President might be elected by the people, dependent upon them, and responsible for maladministration. As this is not the case, I must disapprove of this clause in its present form.

## **Mr. GRAYSON.**

Mr. Chairman, one great objection with me is this: If we advert to this democratical, aristocratical, or executive branch, we shall find their powers are perpetually varying and fluctuating throughout the whole. Perhaps the democratic branch would be well constructed, were it not for this defect. The executive is still worse, in this respect, than the democratic

branch. He is to be elected by a number of electors in the country; but the principle is changed when no person has a majority of the whole number of electors appointed, or when more than one have such a majority, and have an equal number of votes; for then the lower house is to vote by states. It is thus changing throughout the whole. It seems rather founded on accident than any principle of government I ever heard of. We know that there scarcely ever was an election of such an officer without the interposition of foreign powers. Two causes prevail to make them intermeddle in such cases: — one is, to preserve the balance of power; the other, to preserve their trade. These causes have produced interferences of foreign powers in the election of the king of Poland. All the great powers of Europe have interfered in an election which took place not very long ago, and would not let the people choose for themselves. We know how much the powers of Europe have interfered with Sweden. Since the death of Charles XII., that country has been a republican government. Some powers were willing it should be so; some were willing her imbecility should continue; others wished the contrary; and at length the court of France {491} brought about a revolution, which converted it into an absolute government. Can America be free from these interferences? France, after losing Holland, will wish to make America entirely her own. Great Britain will wish to increase her influence by a still closer connection. It is the interest of Spain, from the contiguity of her possessions in the western hemisphere to the United States, to be in an intimate connection with them, and influence their deliberations, if possible. I think we have every thing to apprehend from such interferences. It is highly probable the President will be continued in office for life. To gain his favor, they will support him. Consider the means of importance he will have by creating officers. If he has a good understanding with the Senate, they will join to prevent a discovery of his misdeeds.

Whence comes this extreme confidence, that we disregard the example of ancient and modern nations? We find that aristocracies never invested their officers with such immense powers. Rome had not only an aristocratical, but also a democratical branch; yet the consuls were in office only two years. This quadrennial power cannot be justified by ancient history. There is hardly an instance where a republic trusted its executive so long with much power; nor is it warranted by modern republics. The delegation of power is, in most of them, only for one year.

When you have a strong democratical and a strong aristocratical branch, you may have a strong executive. But when those are weak, the balance will not be preserved, if you give the executive extensive powers for so long a time. As this government is organized, it would be dangerous to trust the President with such powers. How will you punish him if he abuse his power? Will you call him before the Senate? They are his counsellors and partners in crime. Where are your checks? We ought to be extremely cautious in this country. If ever the government be changed, it will probably be into a despotism. The first object in England was to destroy the monarchy; but the aristocratic branch restored him, and of course the government was organized on its ancient principles. But were a revolution to happen here, there would be no means of restoring the government to its former organization. This is a caution to us not to trust extensive powers. I have an extreme objection {492} to the mode of his election. I presume the seven Eastern States will always elect him. As he is vested with the power of making treaties, and as there is a material distinction between the carrying and productive states, the former will be disposed to have him to themselves. He will accommodate himself to their interests in forming treaties, and they will continue him perpetually in office. Thus mutual interest will lead them reciprocally to support one another. It will be a government of a faction, and this observation will apply to every

part of it; for, having a majority, they may do what they please. I have made an estimate which shows with what facility they will be able to reëlect him. The number of electors is equal to the number of representatives and senators; viz., ninety-one. They are to vote for two persons. They give, therefore, one hundred and eighty-two votes. Let there be forty-five votes for four different candidates, and two for the President. He is one of the five highest, if he have but two votes, which he may easily purchase. In this case, by the 3d clause of the 1st section of the 2d article, the election is to be by the representatives, according to states. Let New Hampshire be for him, — a majority of its

	3 representatives is - -	2
Rhode Island, - - -	1	1
Connecticut, - - - -	5	3
New Jersey, - - - -	4	3
Delaware, - - - - -	1	1
Georgia, - - - - -	3	2
North Carolina, - -	5	<u>3</u>
A majority of seven states is - - - - -		15
Thus the majority of seven states is but 15, while the minority amounts to 50.		
The total number of voices (91 electors and 65 representatives) is		
		156
Voices in favor of the President are, 2 state electors and 15 representatives,		
		<u>17</u>
		139

So that the President may be reëlected by the voices of 17 against 139.

It may be said that this is an extravagant case, and will never happen. In my opinion, it will often happen. A {493} person who is a favorite of Congress, if he gets but two votes of electors, may, by the subsequent choice of 15 representatives, be elected President. Surely the possibility of such a case ought to be excluded. I shall postpone mentioning in what manner he ought to be elected, till we come to offer amendments.

## Mr. GEORGE MASON

contended that this mode of election was a mere deception, — a mere *ignis fatuus* on the American people, — and thrown out to make them believe they were to choose him; whereas it would not be once out of fifty times that he would be chosen by them in the first instance, because a majority of the whole number of votes was required. If the localities of the states were considered, and the probable diversity of the opinions of the people attended to, he thought it would be found that so many persons would be voted for, that there seldom or never could be a majority in favor of one, except one great name, who, he believed, would be unanimously elected. He then continued thus: — A majority of the whole number of electors is necessary, to

elect the President. It is not the greatest number of votes that is required, but a majority of the whole number of electors. If there be more than one having such majority, and an equal number, one of them is to be chosen by ballot of the House of Representatives. But if no one have a majority of the actual number of electors appointed, how is he to be chosen? From the five highest on the list, by ballot of the lower house, and the votes to be taken by states. I conceive he ought to be chosen from the two highest on the list. This would be simple and easy; then, indeed, the people would have some agency in the election. But when it is extended to the five highest, a person having a very small number of votes may be elected. This will almost constantly happen. The states may choose the man in whom they have most confidence. This, in my opinion, is a very considerable defect. The people will, in reality, have no hand in the election.

It has been wittily observed that the Constitution has *married* the President and Senate — has made them man and wife. I believe the consequence that generally results from marriage will happen here. They will be continually supporting and aiding each other: they will always consider their interest as united. We know the advantage the few have over {494} the many. They can with facility act in concert, and on a uniform system: they may join, scheme, and plot, against the people without any chance of detection. The Senate and President will form a combination that cannot be prevented by the representatives. The executive and legislative powers, thus connected, will destroy all balances: this would have been prevented by a constitutional council, to aid the President in the discharge of his office, vesting the Senate, at the same time, with the power of impeaching them. Then we should have real responsibility. In its present form, the guilty try themselves. The President is tried by his counsellors. He is not removed from office during his trial. When he is arraigned for treason, he has the command of the army and navy, and may surround the Senate with thirty thousand troops. It brings to my recollection the remarkable trial of Milo at Rome. We may expect to see similar instances here. But I suppose that the cure for all evils — the virtue and integrity of our representatives — will be thought a sufficient security. On this great and important subject, I am one of those (and ever shall be) who object to it.

## **Mr. MADISON.**

Mr. Chairman, I will take the liberty of making a few observations, which may place this in such a light as may obviate objections. It is observed that none of the honorable members objecting to this have pointed out the right mode of election. It was found difficult in the Convention, and will be found so by any gentleman who will take the liberty of delineating a mode of electing the President that would exclude those inconveniences which they apprehend. I would not contend against some of the principles laid down by some gentlemen, if the interests of some states only were to be consulted. But there is a great diversity of interests. The choice of the people ought to be attended to. I have found no better way of selecting the man in whom they place the highest confidence, than that delineated in the plan of the Convention; nor has the gentleman told us. Perhaps it will be found impracticable to elect him by the immediate suffrages of the people. Difficulties would arise from the extent and population of the states. Instead of this, the people choose the electors.

This can be done with ease and convenience, and will render the choice more judicious. As to the eventual voting {495} by states, it has my approbation. The lesser states, and some large states,

will be generally pleased by that mode. The deputies from the small states argued (and there is some force in their reasoning) that, when the people voted, the large states evidently had the advantage over the rest, and, without varying the mode, the interest of the little states might be neglected or sacrificed. Here is a compromise; for in the eventual election, the small states will have the advantage. In so extensive a country, it is probable that many persons will be voted for, and the lowest of the five highest on the list may not be so inconsiderable as he supposes. With respect to the possibility that a small number of votes may decide his election, I do not know how, nor do I think that a bare calculation of possibility ought to govern us. One honorable gentleman has said that the Eastern States may, in the eventual election, choose him. But, in the extravagant calculation he has made, he has been obliged to associate North Carolina and Georgia with the five smallest Northern States. There can be no union of interest or sentiments between states so differently situated.

The honorable member last up has committed a mistake in saying there must be a majority of the whole number of electors appointed. A majority of votes, equal to a majority of the electors appointed, will be sufficient. Forty-six is a majority of ninety-one, and will suffice to elect the President.

## **Mr. MASON**

arose, and insisted that the person having the greatest number of votes would not be elected, unless such majority was one of the whole number of electors appointed; that it would rarely happen that any one would have such a majority, and, as he was then to be chosen from the five highest on the list, his election was entirely taken from the people.

## **Mr. MADISON**

expressed astonishment at the construction of the honorable member, and insisted that nothing was necessary but a number of votes equal to a majority of the electors, which was forty-six; for the clause expressly said that "the person having the greatest number of votes shall be President, if such number be a majority of the whole number of electors appointed." Each had two votes, because one vote was intended for the Vice-President. I am surprised, continued Mr. Madison, that the honorable member {496} has not pointed out a more proper mode, since he objects to this.

But the honorable gentleman tells us that the President and Senate will be in alliance against the representatives, and that, from the advantage of the few over the many, they may seduce or overrule the representatives. But if this be the case, how can he contend for the augmentation of the number of the latter? for the more you increase their number, the more danger in the disproportion. The diversity of circumstances, situation, and extent, of the different states, will render previous combination, with respect to the election of the President, impossible.

[The 1st clause of the 2d section was read.]

## **Mr. GEORGE MASON,**

animadverting on the magnitude of the powers of the President, was alarmed at the additional power of commanding the army in person. He admitted the propriety of his being commander-in-chief, so far as to give orders and have a general superintendency; but he thought it would be dangerous to let him command in person, without any restraint, as he might make a bad use of it. He was, then, clearly of opinion that the consent of a majority of both houses of Congress should be required before he could take the command in person. If at any time it should be necessary that he should take the personal command, either on account of his superior abilities or other cause, then Congress would agree to it; and all dangers would be obviated by requiring their consent. He called to gentlemen's recollection the extent of what the late commander-in-chief might have done, from his great abilities, and the strong attachment of both officers and soldiers towards him, if, instead of being disinterested, he had been an ambitious man. So disinterested and amiable a character as General Washington might never command again. The possibility Of danger ought to be guarded against. Although he did not disapprove of the President's consultation with the principal executive officers, yet he objected to the want of an executive council, which he conceived to be necessary to any regular free government. There being none such, he apprehended a council would arise out of the Senate, which, for want of real responsibility, he thought dangerous. You will please, says he, to recollect that removal from office, and future disqualification to hold any {497} office, are the only consequences of conviction on impeachment. Now, I conceive that the President ought not to have the power of pardoning, because he may frequently pardon crimes which were advised by himself. It may happen, at some future day, that he will establish a monarchy, and destroy the republic. If he has the power of granting pardons before indictment, or conviction, may he not stop inquiry and prevent detection? The case of treason ought, at least, to be excepted. This is a weighty objection with me.

## **Mr. LEE**

reminded his honorable friend that it did not follow, of necessity, that the President should command in person; that he was to command as a civil officer, and might only take the command when he was a man of military talents, and the public safety required it. He thought the power of pardoning, as delineated in the Constitution, could be nowhere so well placed as in the President. It was so in the government of New York, and had been found safe and convenient.

## **Mr. MASON**

replied, that he did not mean that the President was of necessity to command, but he might if he pleased; and if he was an ambitious man, he might make a dangerous use of it.

## **Mr. GEORGE NICHOLAS**

hoped the committee would not advert to this; that the army and navy were to be raised by Congress, and not by the President. It was on the same footing with our state government; for the governor, with the council, was to embody the militia, but, when actually embodied, they were under the sole command of the governor. The instance adduced was not similar. General Washington was not a President. As to possible danger, any commander might attempt to pervert

what was intended for the common defence of the community to its destruction. The President, at the end of four years, was to relinquish all his offices. But if any other person was to have the command, the time would not be limited.

## **Mr. MASON**

answered, that it did not resemble the state Constitution, because the governor did not possess such extensive powers as the President, and had no influence over the navy. The liberty of the people had been destroyed by those who were military commanders only. The danger here was greater by the junction of great civil powers to the {498} command of the army and fleet. Although Congress are to raise the army, said he, no security arises from that; for, in time of war, they must and ought to raise an army, which will be numerous, or otherwise, according to the nature of the war, and then the President is to command without any control.

## **Mr. MADISON,**

adverting to Mr. Mason's objection to the President's power of pardoning, said it would be extremely improper to vest it in the House of Representatives, and not much less so to place it in the Senate; because numerous bodies were actuated more or less by passion, and might, in the moment of vengeance, forget humanity. It was an established practice in Massachusetts for the legislature to determine in such cases. It was found, says he, that two different sessions, before each of which the question came with respect to pardoning the delinquents of the rebellion, were governed precisely by different sentiments: the one would execute with universal vengeance, and the other would extend general mercy.

There is one security in this case to which gentlemen may not have adverted: if the President be connected, in any suspicious manner, with any person, and there be grounds to believe he will shelter him, the House of Representatives can impeach him; they can remove him if found guilty; they can suspend him when suspected, and the power will devolve on the Vice-President. Should he be suspected, also, he may likewise be suspended till he be impeached and removed, and the legislature may make a temporary appointment. This is a great security.

## **Mr. MASON**

vindicated the conduct of the assemblies mentioned by the gentleman last up. He insisted they were both right; for, in the first instance, when such ideas of severity prevailed, a rebellion was in existence: in such circumstance, it was right to be rigid. But after it was over, it would be wrong to exercise unnecessary severity.

## **Mr. MADISON**

replied, that the honorable member had misunderstood the fact; for the first assembly was after the rebellion was over. The decision must have been improper in one or the other case. It marks

this important truth, says he, that numerous bodies of men are improper to exercise this power. The universal experience of mankind proves it.

{499} [The 2d clause of the 2d section was then read.]

## **Mr. GEORGE MASON**

thought this a most dangerous clause, as thereby five states might make a treaty; ten senators — the representatives of five states — being two thirds of a quorum. These ten might come from the five smallest states. By the Confederation, nine states were necessary to concur in a treaty. This secured justice and moderation. His principal fear, however, was not that five, but that seven, states — a bare majority — would make treaties to bind the Union.

## **Mr. GEORGE NICHOLAS,**

in answer to Mr. Mason, insisted that we were on a safer footing in this Constitution than in the Confederation. The possibility of five states making treaties was founded on a supposition of the non-attendance of the senators from the other states. This non-attendance, he observed, might be reciprocated. It was presumable that, on such important occasions, they would attend from all the states, and then there must be a concurrence of nine states. The approbation of the President, who had no local views, being elected by no particular state, but the people at large, was an additional security.

## **Mr. MASON**

differed widely from the gentleman. He conceived that the contiguity of some states, and remoteness of others, would prevent that reciprocity which he had mentioned. Some states were near the seat of government; others far from it; for instance, Georgia was eight or nine hundred miles from it. Suppose, says he, a partial treaty is made by the President, and is to be ratified by the Senate. They do not always sit. Who is to convene them? The President. Is it presumable that he would call distant states to make the ratification, or those states whose interest he knew to be injured by the treaty he had proposed? This, I conceive, will have a contrary effect from what the gentleman says.

A desultory conversation took place.

## **Mr. NICHOLAS**

asked if it was presumable that the President, who depended on the people for his political existence, would sacrifice the interest of the eight largest states, to accommodate the five smallest. The gentleman had said once that the Senate would be always sitting, and yet five states were now to effect the business, because the rest were away.

## **{500} Mr. LEE**

compared the possibility of non-attendance of the senators to that in our state legislature. It consisted of one hundred and seventy members: a majority of these was forty-four, which were competent to pass any law. He demanded if all our laws were bad because forty-four might pass them. The case was similar. Although two thirds of the senators present could form a treaty, it was not presumable it could often happen that there should be but a bare quorum present on so important an occasion, when the consequence of non-attendance was so well known.

## **Mr. MADISON**

thought it astonishing that gentlemen should think that a treaty could be got up with surprise, or that foreign nations should be solicitous to get a treaty only ratified by the senators of a few states. Were the President to commit any thing so atrocious as to summon only a few states, he would be impeached and convicted, as a majority of the states would be affected by his misdemeanor.

## **Mr. HENRY**

begged gentlemen to consider the condition this country would be in if two thirds of a quorum should be empowered to make a treaty: they might relinquish and alienate territorial rights, and our most valuable commercial advantages. In short, if any thing should be left us, it would be because the President and senators were pleased to admit it. The power of making treaties, by this Constitution, ill-guarded as it is, extended farther than it did in any country in the world. Treaties were to have more force here than in any part of Christendom; for he defied any gentleman to show any thing so extensive in any strong, energetic government in Europe. Treaties rest, says he, on the laws and usages of nations. To say that they are municipal is, to me, a doctrine totally novel. To make them paramount to the Constitution and laws of the states, is unprecedented. I would give them the same force and obligation they have in Great Britain, or any other country in Europe. Gentlemen are going on in a fatal career; but I hope they will stop before they concede this power unguarded and unaltered.

## **Mr. MADISON,**

instead of being alarmed, had no doubt but the Constitution would increase, rather than decrease, the security of territorial rights and commercial advantages, as it would augment the strength and respectability of the country. The honorable gentleman, says he, has said we are making {501} great innovations in extending the force of treaties. Are not treaties the law of the land in England? I will refer you to a book which is in every man's hand — Blackstone's Commentaries. It will inform you that the treaties made by the king are to be the supreme law of the land. If they are to have any efficacy, they must be the law of the land: they are so in every country. He thinks that, by the power of making treaties, the empire may be dismembered in time of peace. The king of Great Britain has the power of making peace, but he has no power of dismembering the empire, or alienating any part of it. Nay, the king of France has no right of alienating part of his dominions to any power whatsoever. The power of making treaties does not involve a right of dismembering the Union.

## **Mr. HENRY**

asked how the power of the king of Great Britain, with respect to dismembering the empire, would stand, if the constitution had declared that treaties would be effectual, notwithstanding any thing in the constitution or laws of the country. He would confess his error, if the gentleman could prove that the power of the king of Great Britain, and that of Congress, in making treaties, were similar.

## **Mr. MADISON**

conceived that, as far as the king of Great Britain had a constitutional power of making a treaty, such a treaty was binding. He did not say that his power was unlimited. One exception was, that he could not dismember the empire.

## **Mr. GRAYSON,**

after discriminating the difference of what was called the law of nations in different countries, and its different operations, said he was exceedingly alarmed about this clause. His apprehensions were increased from what he had seen. He went over the grounds which had been before developed, of the dangers to which the right of navigating the Mississippi would be exposed, if two thirds of the senators present had a right to make a treaty to bind the Union. Seven states had already discovered a determined resolution of yielding it to Spain. There was every reason, in his opinion, to believe they would avail themselves of the power as soon as it was given them. The prevention of emigrations to the westward, and consequent superiority of the southern power and influence, would be a powerful motive to impel them to relinquish that river. He warmly expatiated on the utility of that navigation, and the {502} impolicy of surrendering it up. The consent of the President he considered as a trivial check, if, indeed, it was any; for the election would be so managed that he would always come from a particular place, and he would pursue the interest of such place. Gentlemen had said that the senators would attend from all the states. This, says he, is impracticable, if they be not nailed to the floor. If the senators of the Southern States be gone but one hour, a treaty may be made by the rest, yielding that inestimable right. This paper will be called the law of nations in America; it will be the Great Charter of America; it will be paramount to every thing. After having once consented to it, we cannot recede from it. Such is my repugnance to the alienation of a right which I esteem so important to the happiness of my country, that I would object to this Constitution if it contained no other defect.

## **Mr. NICHOLAS,**

in answer to the observations of the gentleman last up, on the law of nations, said he thought it was dictated by no particular nation; that there was no such thing as a particular law of nations, but that the law of nations was permanent and general. It was superior to any act or law of any nation; it implied the consent of all, and was mutually binding on all, being acquiesced in for the common benefit of all. Gentlemen recurred to their favorite business again — their scuffle for

Kentucky votes. He compared the king of England's power to make treaties to that given by this clause. He insisted they resembled each other. If a treaty was to be the supreme law of the land here, it was so in England. The power was as unlimited in England as it was here. Let gentlemen, says he, show me that the king can go so far, and no farther, and I will show them a like limitation in America. But, say they, the President has no check. The worthy member says the weight of power ought to be in this part of the continent, because the number of inhabitants will be greater here. If so, every freeholder having a right to vote for the President, by the interposition of electors, will attend to his interests. This is a sufficient check.

## Mr. HENRY.

### Common Law

Mr. Chairman, gentlemen say that the king of Great Britain has the same right of making treaties that our President has here. I will have no objection to this, if you make your president a king. But I will adduce {503} a difference between an American treaty and an English treaty. Recollect the case of the Russian ambassador: he was arrested contrary to the rights of his master. The Russian emperor demanded the man, at whose instance his ambassador was arrested, to be given up to him, to be put to instant death. What did the queen say? She wrote him that that was something paramount to what she could do; that it exceeded her power to comply with his demand, because it was contrary to the constitution and laws. But how is it here? Treaties are binding, notwithstanding our laws and constitutions. Let us illustrate this fatal instance. Suppose the case of the Russian ambassador to happen here. The President can settle it by a treaty, and have the man arrested, and punished according to the Russian manner. The constitutions of these states may be most flagrantly violated without remedy. And still will gentlemen compare the two cases? So great was the anxiety of Queen Anne, that she wrote a letter to the Russian prince with her own hand, apologizing for her inability to comply with his demands. The Parliament was consulted, and a law made to prevent such arrests for the future. I say again that, if you consent to this power, you depend on the justice and equity of those in power. We may be told that we shall find ample refuge in the law of nations. When you yourselves have your necks so low that the President may dispose of your rights as he pleases, the law of nations cannot be applied to relieve you. Sure I am, if treaties are made infringing our liberties, it will be too late to say that our constitutional rights are violated. We are in contact with two powers — Great Britain and Spain. They may claim our most valuable territories, and treaties may be made to yield them. It is easy on our part to define our unalienable rights, and expressly secure them, so as to prevent future claims and disputes. Suppose you be arraigned as offenders and violators of a treaty made by this government. Will you have that fair trial which offenders are entitled to in your own government? Will you plead a right to the trial by jury? You will have no right to appeal to your own Constitution. You must appeal to your Continental Constitution. A treaty may be made giving away your rights, and inflicting unusual punishments on its violators. It is contended that, if the king of Great Britain makes a treaty {504} within the line of his prerogative, it is the law of the land. I agree that this is proper, and, if I could see the same cheeks in that paper which I see in the British government, I would consent to it. Can the English monarch make a treaty which shall subvert the **common law** of England, and the constitution? Dare he make a treaty that shall violate Magna Charta, or the bill of rights? Dare he do any thing derogatory to the honor, or

subversive of the great privileges, of his people? No, sir. If he did, it would be nugatory, and the attempt would endanger his existence.

The king of France calls his Parliament to give him power to make what regulations, with regard to treaties, they may think conducive to the interest of the nation. In the time of Henry IV., a treaty with Sigismund, king of Poland, was ratified by the Parliament. You have not even as much security as that. You prostrate your rights to the President and Senate. This power is therefore dangerous and destructive.

## **Gov. RANDOLPH.**

Mr. Chairman, I conceive that neither the life nor property of any citizen, nor the particular right of any state, can be affected by a treaty. The lives and properties of European subjects are not affected by treaties, which are binding on the aggregate community in its political, social capacity.

### **NOTE**

The honorable gentleman says that, if you place treaties on the same footing here as they are in England, he will consent to the power, because the king is restrained in making treaties. Will not the President and Senate be restrained? Being creatures of that Constitution, can they destroy it? Can any particular body, instituted for a particular purpose, destroy the existence of the society for whose benefit it is created? It is said there is no limitation of treaties. I defy the wisdom of that gentleman to show how they ought to be limited. When the Constitution marks out the powers to be exercised by particular departments, I say no innovation can take place. An honorable gentleman says that this is the Great Charter of America. If so, will not the last clause of the 4th article of the Constitution secure against dismemberment? It provides that "nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state." And if this did not constitute security, it {505} follows, from the nature of civil association, that no particular part shall sacrifice the whole.

---

**THURSDAY, *June 19, 1788.***<sup>[1]</sup>

## **Mr. GRAYSON,**

after recapitulating the dangers of losing the Mississippi, if the power of making treaties, as delineated in the Constitution, were granted, insisted, most strenuously, that the clause which the honorable gentleman had cited as a security against a dismemberment of the empire was no real security; because it related solely to the back lands claimed by the United States and different states. This clause was inserted for the purpose of enabling Congress to dispose of, and make all needful rules and regulations respecting, the territory, or other property, belonging to the United States, and to ascertain clearly that the claims of particular states, respecting territory, should not

be prejudiced by the alteration of government, but be on the same footing as before; that it could not be construed to be a limitation of the power of making treaties. Its sole intention was to obviate all the doubts and disputes which existed, under the Confederation, concerning the western territory and other places in controversy in the United States. He defended his former position with respect to a particular law of nations. I insist, says he, that the law of nations is founded on particular laws of different nations. I have mentioned some instances: I will mention some more. It is the part of the laws of several Oriental nations to receive no ambassadors, and to burn their prisoners. It is a custom with the grand seignior to receive, but not to send ambassadors. It is a particular custom with him, in time of war with Russia, to put the Russian ambassador in the Seven Towers. But the worthy member said that it was odd there should be a particular law of nations. I beg leave to tell him that the United States are entering into a particular law of nations now. I do not deny the existence of a general law of nations; but I contend that, in different nations, there are certain laws or customs, regulating their conduct towards other nations, which are as permanently and immutably observed as the general law of nations. Of course there was a law of nations incident to the Confederation. Any person may renounce a right secured to him by any particular law or custom of a nation. If Congress have no right, by the law of nations, to give away a part of the empire, yet, by this {506} compact, they may give it up. I look on that compact to be a part of the law of nations. The treaty of Munster formed a great part of the law of nations. How is the Scheldt given up? By that treaty, though contrary to the law of nations. Cannot Congress give the Mississippi also by treaty, though such cession would deprive us of a right to which, by the law of nations, we are inalienably and indefeasibly entitled? I lay it down as a principle that nations can, as well as individuals, renounce any particular right. Nations who inhabit on the sources of rivers have a right to navigate them, and go down, as well as the waters themselves.

## Mr. GEORGE NICHOLAS

again drew a parallel between the power of the king of Great Britain and that of Congress, with respect to making treaties. He contended that they were on the same foundation, and that every possible security which existed in the one instance was to be found in the other. To prove that there was no constitutional limit to the king's power of making treaties, and that treaties, when once by him made, were the supreme law of the land, he quoted the following lines in Blackstone's Commentaries, vol. i. page 257: "It is also the king's prerogative to make treaties, leagues, and alliances, with foreign states and princes; for it is, by the law of nations, essential to the goodness of a league, that it be made by the sovereign power; and then it is binding upon the whole community; and in England the sovereign power, *quoad hoc*, is vested in the person of the king. Whatever contracts, therefore, he engages in, no other power in the kingdom can legally delay, resist, or annul." A further proof, says Mr. Nicholas, that there is no limitation in this respect, is afforded by what he adds: "And yet, lest this plenitude of authority should be abused, to the detriment of the public, the constitution has interposed a check, by the means of parliamentary impeachment, for the punishment of such ministers as, from criminal motives, advise or conclude any treaty which shall afterwards be judged to derogate from the honor and interest of the nation." How does this apply to this Constitution? The President and Senate have the same power of making treaties; and when made, they are to have the same force and validity. They are to be the supreme law of the land here. This book shows us they are so in England.

{507} Have we not seen, in America, that treaties were violated, though they are, in all countries, considered as the supreme law of the land? Was it not, therefore, necessary to declare, in explicit terms, that they should be so here? How, then, is this Constitution on a different footing from the government of Britain? The worthy member says, that they can make a treaty relinquishing our rights, and inflicting punishments; because all treaties are declared paramount to the constitutions and laws of the states. An attentive consideration of this will show the committee that they can do no such thing. The provision of the 6th article is, that this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all the treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land. They can, by this, make no treaty which shall be repugnant to the spirit of the Constitution, or inconsistent with the delegated powers. The treaties they make must be under the authority of the United States, to be within their province. It is sufficiently secured, because it only declares that, in pursuance of the powers given, they shall be the supreme law of the land, notwithstanding any thing in the constitution or laws of particular states.

The fact which he has adduced from the English history respecting the Russian ambassador, does not apply to this part of the Constitution. The arrest of that ambassador was an offence against the law of nations. There was no tribunal to punish it before. An act was therefore made to prevent such offences for the future; appointing a court to try offenders against it, and pointing out their punishment. That act acknowledges the arrest to have been a violation of the law of nations, and that it was a defect in their laws that no remedy had been provided against such violations before. I think it must appear, to the satisfaction of the committee, that this power is similar to what it is in England.

## **Mr. GEORGE MASON.**

Mr. Chairman, it is true that this is one of the greatest acts of sovereignty, and therefore ought to be most strongly guarded. The cession of such a power, without such checks and guards, cannot be justified: yet I acknowledge such a power must rest somewhere. It is so in all governments. If, in the course of an unsuccessful {508} war, we should be compelled to give up part of our territories, or undergo subjugation if the general government could not make a treaty to give up such a part for the preservation of the residue, the government itself, and consequently the rights of the people, must fall. Such a power must, therefore, rest somewhere. For ray own part, I never heard it denied that such a power must be vested in the government. Our complaint is, that it is not sufficiently guarded, and that it requires much more solemnity and caution than are delineated in that system. It is more guarded in England. Will any gentleman undertake to say that the king, by his prerogative, can dismember the British empire? Could the king give Portsmouth to France? He could not do this without an express act of Parliament — without the consent of the legislature in all its branches. There are other things which the king cannot do, which may be done by the President and Senate in this case. Could the king, by his prerogative, enable foreign subjects to purchase lands, and have an hereditary indefeasible title? This would require an express act of Parliament.

Though the king can make treaties, yet he cannot make a treaty contrary to the constitution of his country. Where did their constitution originate? It is founded on a number of maxims, which, by long time, are rendered sacred and inviolable. Where are there such maxims in the American

Constitution? In that country, which we formerly called our mother country, they have had, for many centuries, certain fundamental maxims, which have secured their persons and properties, and prevented a dismemberment of their country. The **common law**, sir, has prevented the power of the crown from destroying the immunities of the people. We are placed in a still better condition — in a more favorable situation than perhaps any people ever were before. We have it in our power to secure our liberties and happiness on the most unshaken, firm, and permanent basis. We can establish what government we please. But by that paper we are consolidating the United States into one great government, and trusting to constructive security. You will find no such thing in the English government. The **common law** of England is not the **common law** of these states. I conceive, therefore, that there is nothing in that Constitution to hinder a dismemberment of the empire.

{509} Will any gentleman say that they may not make a treaty, whereby the subjects of France, England, and other powers, may troy what lands they please in this country? This would violate those principles which we have received from the mother country. The indiscriminate admission of all foreigners to the first rights of citizenship, without any permanent security for their attachment to the country, is repugnant to every principle of prudence and good policy. The President and Senate can make any treaty whatsoever. We wish not to refuse, but to guard, this power, as it is done in England. The empire there cannot be dismembered without the consent of the national Parliament. We wish an express and explicit declaration, in that paper, that the power which can make other treaties cannot, without the consent of the national Parliament — the national legislature — dismember the empire. The Senate alone ought not to have this power; much less ought a few states to have it. No treaty to dismember the empire ought to be made without the consent of three fourths of the legislature in all its branches. Nor ought such a treaty to be made but in case of the most urgent and unavoidable necessity. When such necessity exists, there is no doubt but there will be a general and uniform vote of the Continental Parliament.

## Mr. CORBIN

largely expatiated on the propriety of vesting this power in the general government, in the manner proposed by the plan of the Convention. He also contended that the empire could not be dismembered without the consent of the part dismembered. To obviate the force of the observations made by an honorable gentleman respecting the relinquishment of the Scheldt, he adduced the late complaints and efforts of the emperor of Germany respecting that river. He insisted that no part of the Constitution was less exceptionable than this. If, says he, there be any sound part in this Constitution, it is in this clause. The representatives are excluded from interposing in making treaties, because large popular assemblies are very improper to transact such business, from the impossibility of their acting with sufficient secrecy, despatch, and decision, which can only be found in small bodies, and because such numerous bodies are ever subject to factions and party animosities. It would be dangerous to give this power to the President alone, as the concession of such power to one individual is repugnant to {510} republican principles. It is, therefore, given to the President and the Senate (who represent the states in their individual capacities) conjointly. In this it differs from every government we know. It steers with admirable dexterity between the two extremes, neither leaving it to the executive, as in most other governments, nor to the legislative, which would too much retard such negotiation.

The honorable gentleman said that treaties are not the supreme law of the land in England. My honorable friend proved the contrary by the Commentaries of Blackstone. Let me confirm it by a circumstance fresh in the memory of every body. When the treaty was made by us with England, it was disapproved of by the English Parliament, and the administration was turned out: yet the treaty was good. Does not this prove that it was binding on the nation, and that the king has such a power? What other proof do gentlemen wish? In England, it is a maxim that the king can do no wrong, yet they have sufficient responsibility, as the ministry can do wrong; for if they advise him to make a treaty derogatory to the honor and interest of the nation, they do it at the risk of their heads. If the king were to make such a treaty himself, contrary to the advice of his ministry, an honest or prudent minister would resign. The President of the United States is responsible in person himself, as well as the senators.

But, say gentlemen, all treaties made under this Constitution are to be the supreme law of nations; that is, in their way of construction, paramount to the Constitution itself, and the laws of Congress. It is as clear as that two and two make four, that the treaties made are to be binding on the states only. Is it not necessary that they should be binding on the states? Fatal experience has proved that treaties would never be complied with, if their observance depended on the will of the states; and the consequences would be constant war. For if any one state could counteract any treaty, how could the United States avoid hostility with foreign nations? Do not gentlemen see the infinite dangers that would result from it, if a small part of the community could drag the whole confederacy into war?

The honorable gentleman on the other side tells us that this doctrine is not founded, because, in England, it is declared that the consent of Parliament is necessary. Had the honorable {511} gentleman used his usual discernment and penetration, he would see the difference between a commercial treaty and other treaties. A commercial treaty must be submitted to the consideration of Parliament, because such treaties will render it necessary to alter some laws, add new clauses to some, and repeal others. If this be not done, the treaty is void, quoad hoc. The Mississippi cannot be dismembered but in two ways — by a common treaty, or a commercial treaty. If the interest of Congress will lead them to yield it by the first, the law of nations would justify the people of Kentucky to resist, and the cession would be nugatory. It cannot, then, be surrendered by a common treaty, Can it be done by a commercial treaty? If it should, the consent of the House of Representatives would be requisite, because of the correspondent alterations that must be made in the laws.

[Here Mr. Corbin illustrated his position by reading the last clause of the treaty with France, which gives certain commercial privileges to the subjects of France; to give full effect to which, certain correspondent alterations were necessary in the commercial regulations.]

This, continues he, secures legislative interference. Some of the most extraordinary calculations that ever were made have been adduced to prove that the navigation of the Mississippi is on a worse ground than it was before. We are told that five states can make a treaty. This is on a supposition that the senators from the other states will be absent, which is wild and extravagant. On this ground, three states can prevent it; and if Kentucky become a state, two other states, with it, can prevent the making such a treaty. I wish not to assert, but to prove. Suppose there be fourteen members, and the members from Kentucky be of the number. Two thirds, which are ten, are necessary to make a treaty. Three members, together with the two members from Kentucky,

will be sufficient to prevent its being made, But suppose all the other states to be present, (which is the fair conclusion, for it is fair to conclude that men will be attentive to their own interest;) what would be the consequence? There would be twenty-eight; two thirds of which are nineteen, which is one member more than the senators of nine states; so that, in such a case, ten states must concur in the treaty; whereas, by the old Confederation, only nine states were necessary. I defy any man to {512} confute this doctrine. The argument of gentlemen is therefore disingenuous. I am more forcibly led to this conclusion when I hear gentlemen go to barbarous nations to adduce proofs of the requisites of a social government.

## Mr. HENRY.

Mr. Chairman, this great national concern is handled in a manner quite new to me. When arguments are used which are calculated in their nature to mislead men, — when I reflect on the subject, I dread that our rights are about to be given away, though I may possibly be mistaken. I said yesterday, and not without thinking much on the subject, that my mind would be at ease were we on the same grounds, in this respect, as the English are. Gentlemen think that Great Britain was adduced by me, in this instance, unfortunately for myself, because the learned Judge Blackstone says that treaties are binding on the nation, and the king can make treaties. That learned judge says there is one thing which operates as a guard. That thing we have not in this paper — it is responsibility. He tells you that the minister who will sacrifice the interest of the nation is subject to parliamentary impeachment. This has been ever found to be effectual. But I beg gentlemen to consider the American impeachment. What is it? It is a mere sham — a mere farce. When they do any thing derogatory to the honor or interest of their country, they are to try themselves. Is it so in England? The history of that country shows that they have blocks and gibbets. The violators of the public interest have been tried justly and impartially, and perished by those necessary instruments of justice. Can there be any security where offenders mutually try one another? I hope gentlemen will consider the necessity of amendment in this clause.

We are told that the state rights are preserved. Suppose the state right to territory be preserved; I ask and demand, How do the rights of persons stand, when they have power to make any treaty, and that treaty is paramount to constitutions, laws, and every thing? When a person shall be treated in the most horrid manner, and most cruelly and inhumanly tortured, will the security of territorial rights grant him redress? Suppose an unusual punishment in consequence of an arrest similar to that of the Russian ambassador; can it be said to be contrary to the state rights?

## Common Law

I might go on in this discrimination; but it is too obvious {513} that the security of territory is no security of individual safety. I ask, How are the state rights, individual rights, and national rights, secured? Not as in England; for the authority quoted from Blackstone would, if stated right, prove, in a thousand instances, that, if the king of England attempted to take away the rights of individuals, the law would stand against him. The acts of Parliament would stand in his way. The bill and declaration of rights would be against him. The **common law** is fortified by the bill of rights. The rights of the people cannot be destroyed, even by the paramount operation of the law of nations, as the case of the Russian ambassador evinces. If you look for a similar security in the paper on your table, you look in vain. That paper is defective without such a declaration of

rights. It is unbounded without such restrictions. If the Constitution be paramount, how are the constitutions and laws of the states to stand? Their operation will be totally controlled by it; for it is paramount to every thing, unless you can show some guard against it. The rights of persons are exposed as it stands now.

The calculation of the honorable gentleman (Mr. Corbin) was wrong. I am sure he spoke from the best of his recollection, when he referred to our treaty of peace with Great Britain, and said that it was binding on the nation, though disapproved of by Parliament. Did not an act of Parliament pass, acknowledging the independence of America? If the king of England wished to dismember the empire, would he dare to attempt it without the advice of Parliament? The most hardy minister would not dare to advise him to attempt it without a previous consultation of Parliament. No cession of territory is binding on the nation unless it be fortified by an act of Parliament. Will it be so in your American government? No. They will tell you that they are omnipotent as to this point.

We are so used to speak of enormity of powers, that we are familiarized with it. To me this power appears still destructive; for they can make any treaty. If Congress forbears to exercise it, you may thank them; but they may exercise it if they please, and as they please. They have a right, from the paramount power given them, to do so. Will the gentleman say that this power is paramount to the state laws only? Is it not paramount to the Constitution and every thing? Can any thing be paramount to what is paramount? Will not the laws of Congress be binding on Congress, as well as on any particular state? Will they not be bound by their own acts? The worthy gentleman must see the impropriety of his assertion. To render this safe, I conceive we must adopt my honorable friend's amendment. The component part of this supreme power are the President, senators, and House of Representatives. The latter is the most material part. They ought to interpose in the formation of treaties. When their consent is necessary, there will be a certainty of attending to the public interests.

## Mr. Henry

### Common Law

then contended that there was real responsibility in the British government, and sufficient security arising from the **common law**, declaration of rights, &c.; whereas, in this government, there was no barrier to stop their mad career. He hoped to obtain the amendments which his honorable friend had proposed.

## Mr. MADISON.

Mr. Chairman, I am persuaded that, when this power comes to be thoroughly and candidly viewed, it will be found right and proper. As to its extent, perhaps it will be satisfactory to the committee that the power is, precisely, in the new Constitution as it is in the Confederation. In the existing confederacy, Congress are authorized indefinitely to make treaties. Many of the states have recognized the treaties of Congress to be the supreme law of the land. Acts have passed, within a year, declaring this to be the case. I have seen many of them. Does it follow,

because this power is given to Congress, that it is absolute and unlimited? I do not conceive that power is given to the President and Senate to dismember the empire, or to alienate any great, essential right. I do not think the whole legislative authority have this power. The exercise of the power must be consistent with the object of the delegation.

One objection against the amendment proposed is this, that, by implication, it would give power to the legislative authority to dismember the empire — a power that ought not to be given, but by the necessity that would force assent from every man. I think it rests on the safest foundation as it is. The object of treaties is the regulation of intercourse with foreign nations, and is external. I do not think it possible to enumerate all the cases in which such external regulations would be necessary. Would it be right to define all {515} the cases in which Congress could exercise this authority? The definition might, and probably would, be defective. They might be restrained, by such a definition, from exercising the authority where it would be essential to the interest and safety of the community. It is most safe, therefore, to leave it to be exercised as contingencies may arise.

It is to be presumed that, in transactions with foreign countries, those who regulate them will feel the whole force of national attachment to their country. The contrast being between their own nation and a foreign nation, is it not presumable they will, as far as possible, advance the interest of their own country? Would it not be considered as a dangerous principle in the British government were the king to have the same power in internal regulations as he has in the external business of treaties? Yet as, among other reasons, it is natural to suppose he will prefer the interest of his own to that of another country, it is thought proper to give him this external power of making treaties. This distinction is well worthy the consideration of gentlemen. I think the argument of the gentleman who restrained the supremacy of these to the laws of particular states, and not to Congress, is rational. Here the supremacy of a treaty is contrasted with the supremacy of the laws of the states. It cannot be otherwise supreme. If it does not supersede their existing laws, as far as they contravene its operation, it cannot be of any effect. To counteract it by the supremacy of the state laws, would bring on the Union the just charge of national perfidy, and involve us in war.

Suppose the king of Great Britain should make a treaty with France, where he had a constitutional right; if the treaty should require an internal regulation, and the Parliament should make a law to that effect, that law would be binding on the one, though not on the other nation. Suppose there should be a violation of right by the exercise of this power by the President and Senate; if there was apparent merit in it, it would be binding on the people; for where there is a power for any particular purpose, it must supersede what may oppose it, or else it can be no power. For instance, where there is a power of declaring war that power, as to declaring war, supersedes every thing. This would be an unfortunate case, should it happen; but should it happen, there is a remedy; and there being a remedy, they will be restrained against abuses.

{516} But let us compare the responsibility in this government to that of the British government. If there be an abuse of this royal prerogative, the minister who advises him is liable to impeachment. This is the only restraint on the sovereign. Now, sir, is not the minister of the United States under restraint? Who is the minister? The President himself, who is liable to impeachment. He is responsible in person. But for the abuse of the power of the king, the

responsibility is in his advisers. Suppose the Constitution had said, that this minister alone could make treaties, and, when he violated the interest of the nation, he would be impeached by the Senate; then the comparison would hold good between the two governments. But is there not an additional security by adding to him the representatives and guardians of the political interest of the states? If he should seduce a part of the Senate to a participation in his crimes, those who were not seduced would pronounce sentence against him; and there is this supplementary security, that he may be convicted and punished afterwards, when other members come into the Senate, one third being excluded every second year; so that there is a twofold security — the security of impeachment and conviction by those senators that may be innocent, should no more than one third be engaged with the President in the plot; and should there be more of them engaged in it, he may be tried and convicted by the succeeding senators, and the upright senators who were in the Senate before.

As to the case of the Russian ambassador, I shall say nothing. It is as inapplicable as many other quotations made by the gentleman. I conceive that, as far as the bills of rights in the states do not express ally thing foreign to the nature of such things, and express fundamental principles essential to liberty, and those privileges which are declared necessary to all free people, these rights are not encroached on by this government. [Mr. Madison added other remarks. which could not be heard.]

## **Mr. CORBIN**

begged leave to explain what he had said. He acknowledged that an act of Parliament passed, acknowledging the independence of America: but though there was nothing in that act respecting the Newfoundland fishery, and we were, by the treaty, to enjoy a right to that fishery unmolested, yet that part of the treaty was binding on the nation.

{517} After some desultory conversation, concerning the mode of considering the judiciary, the 1st and 2d sections of the 3d article were read.

## **Mr. PENDLETON.**

Mr. Chairman, on a former occasion, when I was considering the government at large, I mentioned the necessity of making a judiciary an essential part of the government. It is necessary, in order to arrest the executive arm, prevent arbitrary punishments, and give a fair trial, that the innocent may be guarded, and the guilty brought to just punishment, and that honesty and industry be protected, and injustice and fraud be prevented. Taking it for granted, then, that a judiciary is necessary, the power of that judiciary must be coextensive with the legislative power, and reach to all parts of society intended to be governed. They must be so arranged, that there must be some court which shall be the central point of their operations; and because cause all the business cannot be done in that part, there must be inferior courts to carry it on. The first clause contains an arrangement of the courts — one supreme, and such inferior as Congress may ordain and establish. This seems to me to be proper. Congress must be the judges, and may find reasons to change and vary them as experience shall dictate. It is, therefore, not only improper, but exceedingly inconvenient, to fix the arrangement in the Constitution itself,

and not leave it to laws which may be changed according to circumstances. I think it highly probable that their first experiment will be, to appoint the state courts to have the inferior federal jurisdiction, because it would be best calculated to give general satisfaction, and answer economical purposes; since a small additional salary may in that case suffice, instead of competent provision for the judges. But even this eligible mode experience may furnish powerful reasons for changing, and a power to make such changes ought to rest with Congress. This clause also secures an important point — the independency of the judges, both as to tenure of offices and fixing of salary. I wish the restraint had been applied to increase as well as diminution.

The 2d section points out the subjects of their jurisdiction.

- 1. Cases arising under the Constitution.
- 2. the laws of the federal legislature.
- 3. treaties made by them.
- {518}
- 4. All cases affecting ambassadors, ministers, and consuls.
- 5. All cases of maritime or admiralty jurisdiction.
- 6. Controversies wherein the United States shall be a party.
- 7. between two or more states.
- 8. between a state and citizens of another state.
- 9. between citizens of different states.
- 10. between citizens of the same state, claiming lands under grants of different states.
- 11. between a state, or its citizens, and foreign states, citizens, or subjects.

Without entering into a distinction of all its parts, I believe it will be found that they are all cases of general and not local concern. The necessity and propriety of a federal jurisdiction, in all such cases, must strike every gentleman.

## NOTE

The next clause settles the original jurisdiction of the Supreme Court, confining it to two cases — that of ambassadors, ministers, and consuls, and those in which a state shall be a party. It excludes its original jurisdiction in all other cases. But it appears to me that it will not restrain Congress from regulating even these, so as to permit foreign ambassadors to sue in the inferior courts, or even to compel them to do so, where their causes may be trivial, or they have no reason to expect a partial trial. Notwithstanding this jurisdiction is given to the Supreme Court, yet Congress may go further by their laws, so as to exclude its original jurisdiction, by limiting the cases wherein it shall be exercised. They may require some satisfactory evidence that the party could not expect a fair trial in the inferior court. I am struck with this view, from considering that the legislature is not excluded, by the general jurisdiction in the Constitution, from regulating it, to accommodate the convenience of the people. Yet the legislature cannot extend its original jurisdiction, which is limited to these cases only.

The next branch brings me to the appellate jurisdiction. And first, I say it is proper and necessary, in all free governments, to allow appeals, under certain restrictions, in order to prevent

injustice by correcting the erroneous decisions of local subordinate tribunals, and introduce uniformity in decision. {519} The appellate jurisdiction is, therefore, undoubtedly proper, and would not have been objected to if they had not introduced, unfortunately, in this clause, the words "both as to law and fact." Though I dread no danger, I wish these words had been buried in oblivion. If they had, it would have silenced the greatest objections against the section. I will give my free and candid sentiments on it. We find them followed by words which remove a great deal of doubt — "with such exceptions, and under such regulations, as Congress shall make;" so that Congress may make such regulations as they may think conducive to the public convenience.

## Common Law

Let us consider the appellate jurisdiction if these words had been left out. The general jurisdiction must embrace decrees in chancery and admiralty, and judgments in courts of **common law**, in the ordinary practice of this appellate jurisdiction. When there is an appeal from the inferior court to the Court of Chancery, the appellate jurisdiction goes to law and fact, because the whole testimony appears in the record. The court proceeds to consider the circumstances of both law and fact blended together, and then decrees according to equity. This must be unexceptionable to every body. How is it in appeals from the admiralty? That court, except in some cases, proceeds as a court of chancery. In some cases they have trials by jury. But in most cases they proceed as in chancery. They consider all the circumstances, and determine as well what the fact, as what the law, is. When this goes to the superior court, it is determined the same way.

Appeals from the **common-law** courts involve the consideration of facts by the superior court, when there is a special verdict. They consider the fact and law together, and decide accordingly. But they cannot introduce new testimony. When a jury proceeds to try a cause in an inferior court, a question may arise on the competency of a witness, or some other testimony. The inferior court decides that question; it either admits or rejects that evidence. The party intending to object states the matter in a bill of exceptions. The jury then proceeds to try the cause, according to the judgment of the inferior court; and, on appeal, the superior court determines upon the judgment of the inferior court. They do not touch the testimony. If they determine that {520} the evidence was either improperly admitted or rejected, they set aside the judgment, and send back the cause to be tried again by a jury in the same court. These are the only cases, in appeals from inferior courts of **common law**, where the superior court can even consider facts incidentally. I feel the danger, as much as any gentleman in this committee, of carrying a party to the federal court, to have a trial there. But it appears to me that it will not be the case, if that be the practice which I have now stated; and that it is the practice must be admitted. The appeals may be limited to a certain sum. I make no doubt it will be so. You cannot prevent appeals without great inconveniences; but Congress can prevent that dreadful oppression which would enable many men to have a trial in the federal court, which is ruinous. There is a power which may be considered as a great security. The power of making what regulations and exceptions in appeals they may think proper may be so contrived as to render appeals, as to law and fact, proper, and perfectly inoffensive. How will this power be exercised? If I thought there was a possibility of danger, I should be alarmed.

But when I consider who this Congress are, — that they are the representatives of thirteen states, (which may become fourteen or fifteen, or a much greater number of states,) who cannot be interested, in the most remote degree, to subject their citizens to oppressions of that dangerous kind, but will feel the same inclination to guard their citizens from them, I am not alarmed. I consider them as secured from it by the arrangement of these courts by Congress. To carry the citizens a great distance from their respective states can be of no advantage, but a great hardship to every state, except that wherein the seat of government may be. I conceive it probable that they will, as far as they may consistently with the national good, confine these cases. But when I cast my eyes to the Southern and Eastern States, every one of which is at a greater distance than we are, I cannot entertain a doubt but what this point will be perfectly secure. Every state being concerned almost equally, we have sufficient security that, when they come to organize the Supreme Court, they will regulate it so as to exclude this danger.

The fourth branch secures two important points in criminal cases — 1st, that the trial shall be by jury; 2d, that it {521} shall be in the state where the offence is committed. It does not point out where it shall be within the state, or the more exact minutiae respecting it; but laws will be made by which it will be regulated fully and minutely. I cannot conceive what motives they can have, in forming these trials, to render them oppressive. We have this security — that our citizens shall not be carried out of the state, and that no other trial can be substituted for that by jury.

[Mr. Pendleton made many other remarks; but he spoke too low to be comprehended distinctly.]

## **Mr. GEORGE MASON.**

Mr. Chairman, I had some hopes that the candor and reason of the warmest friends of this Constitution would have led them to point out objections so important. They must occur, more or less, to the mind of every one. It is with great reluctance I speak of this department, as it lies out of my line. I should not tell my sentiments upon it, did I not conceive it to be so constructed as to destroy the dearest rights of the community. After having read the first section, Mr. Mason asked, What is there left to the state courts? Will any gentleman be pleased, candidly, fairly, and without sophistry, to show us what remains? There is no limitation. It goes to every thing. The inferior courts are to be as numerous as Congress may think proper. They are to be of whatever nature they please. Read the 2d section, and contemplate attentively the extent of the jurisdiction of these courts, and consider if there be any limits to it.

I am greatly mistaken if there be any limitation whatsoever, with respect to the nature or jurisdiction of these courts. If there be any limits, they must be contained in one of the clauses of this section; and I believe, on a dispassionate discussion, it will be found that there is none of any check. All the laws of the United States are paramount to the laws and constitution of any single state. "The judicial power shall extend to all cases in law and equity arising under this Constitution." What objects will not this expression extend to? Such laws may be formed as will go to every object of private property. When we consider the nature of these courts, we must conclude that their effect and operation will be utterly to destroy the state governments; for they will be the judges how far their laws will operate. They are to modify their own {522} courts, and you can make no state law to counteract them. The discrimination between their judicial power, and that of the states, exists, therefore, but in name. To what disgraceful and dangerous

length does the principle of this go! For if your state judiciaries are not to be trusted with the administration of common justice, and decision of disputes respecting property between man and man, much less ought the state governments to be trusted with power of legislation. The principle itself goes to the destruction of the legislation of the states, whether or not it was intended. As to my own opinion, I most religiously and conscientiously believe that it was intended, though I am not absolutely certain. But I think it will destroy the state governments, whatever may have been the intention. There are many gentlemen in the United States who think it right that we should have one great, national, consolidated government, and that it was better to bring it about slowly and imperceptibly rather than all at once. This is no reflection on any man, for I mean none. To those who think that one national, consolidated government is best for America, this extensive judicial authority will be agreeable; but I hope there are many in this Convention of a different opinion, and who see their political happiness resting on their state governments. I know, from my own knowledge, many worthy gentlemen of the former opinion.

[Here Mr. Madison interrupted Mr. Mason, and demanded an unequivocal explanation. As these insinuations might create a belief that every member of the late federal Convention was of that opinion, he wished him to tell who the gentlemen were to whom he alluded.]

## **Mr. MASON**

then replied, I shall never refuse to explain myself. It is notorious that this is a prevailing principle. It was at least the opinion of many gentlemen in Convention, and many in the United States. I do not know what explanation the honorable gentleman asks. I can say, with great truth, that the honorable gentleman, in private conversation with me, expressed himself against it; neither did I ever hear any of the delegates from this state advocate it.

## **Mr. MADISON**

declared himself satisfied with this, unless the committee thought themselves entitled to ask a further explanation.

After some desultory remarks, Mr. MASON continued: {523} I have heard that opinion advocated by gentlemen for whose abilities, judgment, and knowledge, I have the highest reverence and respect. I say that the general description of the judiciary involves the most extensive jurisdiction. Its cognizance, in all cases arising under the system and the laws of Congress, may be said to be unlimited. In the next place, it extends to treaties made, or which shall be made, under their authority. This is one of the powers which ought to be given them. I also admit that they ought to have judicial cognizance in all cases affecting ambassadors, foreign ministers and consuls, as well as in cases of maritime jurisdiction. There is an additional reason now to give them this last power; because Congress, besides the general powers, are about to get that; of regulating commerce with foreign nations. This is a power which existed before, and is a proper subject of federal jurisdiction. The next power of the judiciary is also necessary under some restrictions. Though the decision of controversies to which the United States shall be a party may at first view seem proper, it may, without restraint, be extended to a dangerously oppressive length. The next, with respect to disputes between two or more states, is right. I cannot see the propriety of the next power, in disputes between a state and the citizens of another

state. As to controversies between citizens of different states, their power is improper and inadmissible. In disputes between citizens of the same state, claiming lands under the grants of different states, the power is proper. It is the only case in which the federal judiciary ought to have appellate cognizance of disputes between private citizens. Unless this was the case, the suit must be brought and decided in one or the other state, under whose grant the lands are claimed, which would be injurious, as the decision must be consistent with the grant.

The last clause is still more improper. To give them cognizance in disputes between a state and the citizens thereof, is utterly inconsistent with reason or good policy.

## **Here Mr. NICHOLAS**

arose, and informed Mr. Mason that his interpretation of this part was not warranted by the words.

## **Mr. MASON**

replied, that, if he recollected rightly, the propriety of the power, as explained by him, had been contended for; but that, as his memory had never been {524} good, and was now impaired much from his age, he would not insist on that interpretation. He then proceeded: Give me leave to advert to the operation of this judicial power. Its jurisdiction in the first case will extend to all cases affecting revenue, excise, and custom-house officers. If I am mistaken, I will retract. "All cases in law and equity arising under this Constitution, and the laws of the United States," take in all the officers of the government. They comprehend all those who act as collectors of taxes, excisemen, &c. It will take in, of course, what others do to them, and what is done by them to others. In what predicament will our citizens then be? We know the difficulty we are put in by our own courts, and how hard it is to bring officers to justice even in them. If any of the federal officers should be guilty of the greatest oppressions, or behave with the most insolent and wanton brutality to a man's wife or daughter, where is this man to get relief? If you suppose in the inferior courts, they are not appointed by the states. They are not men in whom the community can place confidence. It will be decided by federal judges. Even suppose the poor man should be able to obtain judgment in the inferior court, for the greatest injury, what justice can he get on appeal? Can he go four or five hundred miles? Can he stand the expense attending it? On this occasion they are to judge of fact as well as law. He must bring his witnesses where he is not known, where a new evidence may be brought against him, of which he never heard before, and which he cannot contradict.

The honorable gentleman who presides here has told us that the Supreme Court of appeals must embrace every object of maritime, chancery, and common-law controversy. In the two first, the indiscriminate appellate jurisdiction as to fact must be generally granted; because, otherwise, it could exclude appeals in those cases. But why not discriminate as to matters of fact with respect to common-law controversies? The honorable gentleman has allowed that it was dangerous, but hopes regulations will be made to suit the convenience of the people. But mere hope is not a sufficient security. I have said that it appears to me (though I am no lawyer) to be very

dangerous. Give me leave to lay before the committee an amendment, which I think convenient, easy, and proper.

{525} [Here Mr. Mason proposed an alteration nearly the same as the first part of the fourteenth amendment recommended by the Convention, which see at the conclusion.]

Thus, sir, said Mr. Mason, after limiting the cases in which the federal judiciary could interpose, I would confine the appellate jurisdiction to matters of law only, in common-law controversies.

It appears to me that this will remove oppressions, and answer every purpose of an appellate power.

## Common Law

A discrimination arises between **common-law** trials and trials in courts of equity and admiralty. In these two last, depositions are committed to record, and therefore, on an appeal, the whole fact goes up; the equity of the whole case, comprehending fact and law, is considered, and no new evidence requisite. Is it so in courts of **common law**? There evidence is only given *viva voce*. I know not a single case where there is an appeal of fact as to **common law**. But I may be mistaken. Where there is an appeal from an inferior to a superior court, with respect to matters of fact, a new witness may be introduced, who is perhaps suborned by the other party, a thousand miles from the place where the first trial was had. These are some of the inconveniences and insurmountable objections against this general power being given to the federal courts. Gentlemen will perhaps say there will be no occasion to carry up the evidence by *viva voce* testimony, because Congress may order it to be committed to writing, and transmitted in that manner with the rest of the record. It is true they may, but it is as true that they may not. But suppose they do; little conversant as I am in this subject, I know there is a great difference between *viva voce* evidence given at the bar, and testimony given in writing. I leave it to gentlemen more conversant in these matters to discuss it. They are also to have cognizance in controversies to which the United States shall be a party. This power is superadded, that there might be no doubt, and that all cases arising under the government might be brought before the federal court. Gentlemen will not, I presume, deny that all revenue and excise controversies, and all proceedings relative to the duties of the officers of government, from the highest to the lowest, may and must be brought by these means to the federal courts; in the first instance, to the inferior federal court, and afterwards to the {526} superior court. Every fact proved with respect to these, in the court below, may be revived in the superior court. But this appellate jurisdiction is to be under the regulations of Congress. What these regulations may be, God only knows.

Their *jurisdiction* further extends to controversies between citizens of different states. Can we not trust our state courts with the decision of these? If I have a controversy with a man in Maryland, — if a man in Maryland has my bond for a hundred pounds, — are not the state courts competent to try it? Is it suspected that they would enforce the payment if unjust, or refuse to enforce it if just? The very idea is ridiculous. What! carry me a thousand miles from home — from my family and business — to where, perhaps, it will be impossible for me to prove that I paid it? Perhaps I have a respectable witness who saw me pay the money; but I must carry him one thousand miles to prove it, or be compelled to pay it again. Is there any necessity for this

power? It ought to have no unnecessary or dangerous power. Why should the federal courts have this cognizance? Is it because one lives on one side of the Potomac, and the other on the other? Suppose I have your bond for a thousand pounds: if I have any wish to harass you, or if I be of a litigious disposition, I have only to assign it to a gentleman in Maryland. This assignment will involve you in trouble and expense. What effect will this power have between British creditors and the citizens of this state? This is a ground on which I shall speak with confidence. Every one, who heard me speak on the subject, knows that I always spoke for the payment of the British debts. I wish every honest debt to be paid. Though I would wish to pay the British creditor, yet I would not put it in his power to gratify private malice to our injury. Let me be put right if I be mistaken; but there is not, in my opinion, a single British creditor but can bring his debtors to the federal court.

There are a thousand instances where debts have been paid, and yet must, by this appellate cognizance, be paid again. Are these imaginary cases? Are they only possible cases, or are they certain and inevitable? "To controversies between a state and the citizens of another state." How will their jurisdiction in this case do? Let gentlemen look at the westward. Claims respecting those lands, every liquidated account, or other claim against this state, will be tried {527} before the federal court. Is not this disgraceful? Is this state to be brought to the bar of justice like a delinquent individual? Is the sovereignty of the state to be arraigned like a culprit, or private offender? Will the states undergo this mortification? I think this power perfectly unnecessary. But let us pursue this subject farther. What is to be done if a judgment be obtained against a state? Will you issue a *fieri facias*? It would be ludicrous to say that you could put the state's body in jail. How is the judgment, then, to be enforced? A power which cannot be executed ought not to be granted.

Let us consider the operation of the last subject of its *cognizance*. "Controversies between a state, or the citizens thereof, and foreign states, citizens, or subjects." There is a confusion in this case. This much, however, may be raised out of it — that a suit will be brought against Virginia. She may be sued by a foreign state. What reciprocity is there in it? In a suit between Virginia and a foreign state, is the foreign state to be bound by the decision? Is there a similar privilege given to us in foreign states? Where will you find a parallel regulation? How will the decision be enforced? Only by the *ultima ratio regum*. A dispute between a foreign citizen or subject and a Virginian cannot be tried in our own courts, but must be decided in the federal court. Is this the case in any other country? Are not men obliged to stand by the laws of the country where the disputes are? This is an innovation which is utterly unprecedented and unheard-of. Cannot we trust the state courts with disputes between a Frenchman, or an Englishman, and a citizen; or with disputes between two Frenchmen? This is disgraceful; it will annihilate your state judiciary: it will prostrate your legislature.

Thus, sir, it appears to me that the greater part of these powers are unnecessary, and dangerous, as tending to impair, and ultimately destroy, the state judiciaries, and, by the same principle, the legislation of the state governments. To render it safe, there must be an amendment, such as I have pointed out. After mentioning the original jurisdiction of the Supreme Court, which extends to but three cases, it gives it appellate jurisdiction, in all other cases mentioned, both as to law and fact, indiscriminately and without limitation. Why not remove the cause of fear and danger? {528} But it is said that the regulations of Congress will remove these. I say that, in my opinion,

they will have a contrary effect, and will utterly annihilate your state courts. Who are the court? The judges. It is a familiar distinction. We frequently speak of a court in contradistinction from a jury. I think the court are to be the judges of this. The judges on the bench are to be judges of fact and law, with such exceptions, &c., as Congress shall make. Now, give me leave to ask, Is not a jury excluded absolutely? By way of illustration, were Congress to say that a jury, instead of a court, should judge the fact, will not the court be still judges of the fact consistently with this Constitution? Congress may make such a regulation, or may not. But suppose they do; what sort of a jury would they have in the ten miles square? I would rather, a thousand times, be tried by a court than by such a jury. This great palladium of national safety, which is secured to us by our own government, will be taken from us in those courts; or, if it be reserved, it will be but in name, and not in substance. In the government of Virginia, we have secured an impartial jury of the vicinage. We can except to jurors, and peremptorily challenge them in criminal trials. If I be tried in the federal court for a crime which may affect my life, have I a right of challenging or excepting to the jury? Have not the best men suffered by weak and partial juries? This sacred right ought, therefore, to be secured. I dread the ruin that will be brought on thirty thousand of our people, with respect to disputed lands. I am personally endangered as an inhabitant of the Northern Neck. The people of that part will be obliged, by the operation of this power, to pay the quitrent of their lands. Whatever other gentlemen may think, I consider this as a most serious alarm. It will little avail a man to make a profession of his candor. It is to his character and reputation they will appeal. Let gentlemen consider my public and private character. To these I wish gentlemen to appeal for an interpretation of my motives and views. Lord Fairfax's title was clear and undisputed. After the revolution, we taxed his lands as private property. After his death, an act of Assembly was made, in 1782, to sequester the quitrents due, at his death, in the hands of his debtors. Next year, an act was made restoring them to the executor of the proprietor. Subsequent to this, the treaty {529} of peace was made, by which it was agreed that there should be no further confiscations. But, after this, an act of Assembly passed, confiscating his whole property. As Lord Fairfax's title was indisputably good, and as treaties are to be the supreme law of the land, will not his representatives be able to recover all in the federal court? How will gentlemen like to pay an additional tax on lands in the Northern Neck? This the operation of this system will compel them to do. They now are subject to the same tax that other citizens are; and if the quitrents be recovered in the federal court, they are doubly taxed. This may be called an assertion; but were I going to my grave, I would appeal to Heaven that I think it true. How will a poor man, who is injured or dispossessed unjustly, get a remedy? Is he to go to the federal court, seven or eight hundred miles? He might as well give his claim up. He may grumble, but, finding no relief, he will be contented.

Again, all that tract of country between the Blue Ridge and the Alleghany Mountains will be claimed, and probably recovered in the federal court, from the present possessors, by those companies who have a title to them. These lands have been sold to a great number of people. Many settled on them, on terms which were advertised. How will this be with respect to *ex post facto* laws? We have not only confirmed the title of those who made the contract, but those who did not, by a law, in 1779, on their paying the original price. Much was paid in a depreciated value, and much was not paid at all. Again, the great Indiana purchase, which was made to the westward, will, by this judicial power, be rendered a cause of dispute. The possessors may be ejected from those lands. That company paid a consideration of ten thousand pounds to the crown, before the lands were taken up. I have heard gentlemen of the law say (and I believe it is

right) that, after the consideration was paid to the crown, the purchase was legally made, and ought to be valid. That company may come in, and show that they have paid the money, and have a full right to the land. Of the Indiana company I need not say much. It is well known that their claims will be brought before these courts. Three or four counties are settled on the land to which that company claims a title, and have long enjoyed it peaceably. All these claims before those courts, if they succeed, {530} will introduce a scene of distress and confusion never heard of before. Our peasants will be, like those mentioned by Virgil, reduced to ruin and misery, driven from their farms, and obliged to leave their country: —

*"Nos patriam fugimus, et dulcia linquimus arva."*

Having mentioned these things, give me leave to submit an amendment, which I think would be proper and safe, and would render our citizens secure in their possessions justly held. I mean, sir, "that the judicial power shall extend to no case where the cause of action shall have originated before the ratification of this Constitution, except in suits for debts due to the United States, disputes between states about their territory, and disputes between persons claiming lands under grants of different states." In these cases, there is an obvious necessity for giving it a retrospective power. I have laid before you my idea on the subject, and expressed my fears, which I most conscientiously believe to be well founded.

## **Mr. MADISON.**

Mr. Chairman, the honorable gentleman having persuaded himself that it was calculated to destroy the state governments, and to dispossess of their property so great a proportion of this commonwealth, I am not surprised at the opposition he has made. But, being equally persuaded that his fears are groundless, I will endeavor to refute his objections where they do not appear to me to be well founded. I shall be candid in my remarks. I acknowledge that this part does not stand in that form which would be freest from objection. It might be better expressed.

But, at the same time, truth obliges me to put a fair and liberal interpretation upon the words. I believe the general government will do what is for the interest of the United States; because they have no substantial reason or inducement to violate their duty, nor are they warranted by this part of the plan to commit the oppressions he dreads. The general policy of that clause is to prevent all occasions of having disputes with foreign powers, to prevent disputes between different states, and remedy partial decisions. I believe this to be wise and salutary. The lateness of the hour prevents my entering fully into the subject now. I shall reserve my answer to some other day. But I cannot sit down without adding a few words. He is displeased that {531} there is no provision for peremptory challenges to juries. There is no such provision made in our Constitution or laws. The answer made by an honorable member lately is a full answer to this. He said, and with great propriety and truth, that where a technical word was used, all the incidents belonging to it necessarily attended it. The right of challenging is incident to the trial by jury, and therefore, as one is secured, so is the other. I hope gentlemen will see that the dangers he has pointed out do not necessarily follow.

---

[1. Elliot misprinted this as Wednesday, June 18, 1788.]

---

## FRIDAY, *June 20*, 1788.

[The 1st and 2d sections of the 3d article still under consideration.]

### Mr. MADISON.

Mr. Chairman, permit me to make a few observations, which may place this part in a more favorable light than the gentleman placed it in yesterday. It may be proper to remark that the organization of the general government for the United States was, in all its parts, very difficult. There was a peculiar difficulty in that of *the executive*. Every thing incident to it must have participated in that difficulty. That mode which was judged most expedient was adopted, till experience should point out one more eligible. This part was also attended with difficulties. It claims the indulgence of a fair and liberal interpretation. I will not deny that, according to my view of the subject, a more accurate attention might place it in terms which would exclude some of the objections now made to it. But if We take a liberal construction, I think we shall find nothing dangerous or inadmissible in it. In compositions of this kind, it is difficult to avoid technical terms which have the same meaning. An attention to this may satisfy gentlemen that precision was not so easily obtained as may be imagined. I will illustrate this by one thing in the Constitution. There is a general power to provide courts to try felonies and piracies committed on the high seas. *Piracy* is a word which may be considered as a term of the law of nations. *Felony* is a word unknown to the law of nations, and is to be found in the British laws, and from thence adopted in the laws of these states. It was thought dishonorable to have recourse to that standard. A technical term of the law of nations is therefore used, that we should find ourselves authorized to introduce it into the laws of the United States. The first question which I shall consider is, whether the subjects of {532} its cognizance be proper subjects of a federal jurisdiction. The second will be, whether the provisions respecting it be consistent with safety and propriety, will answer the purposes intended, and suit local circumstances.

The first class of cases to which its jurisdiction extends are those which may arise under the Constitution; and this is to extend to equity as well as law. It may be a misfortune that, in organizing any government, the explication of its authority should be left to any of its coordinate branches. There is no example in any country where it is otherwise. There is a new policy in submitting it to the judiciary of the United States. That causes of a federal nature will arise, will be obvious to every gentleman who will recollect that the states are laid under restrictions, and that the rights of the Union are secured by these restrictions. They may involve equitable as well as legal controversies: With respect to the laws of the Union, it is so necessary and expedient that the judicial power should correspond with the legislative, that it has not been objected to. With respect to treaties, there is a peculiar propriety in the judiciary's expounding them.

These may involve us in controversies with foreign nations. It is necessary, therefore, that they should be determined in the courts of the general government. There are strong reasons why

there should be a Supreme Court to decide such disputes. If, in any case, uniformity be necessary, it must be in the exposition of treaties. The establishment of one revisionary superintending power can alone secure such uniformity. The same principles hold with respect to cases affecting ambassadors and foreign ministers. To the same principles may also be referred their cognizance in admiralty and maritime cases. As our intercourse with foreign nations will be affected by decisions of this kind, they ought to be uniform. This can only be done by giving the federal judiciary exclusive jurisdiction. Controversies affecting the interest of the United States ought to be determined by their own judiciary, and not be left to partial, local tribunals.

The next case, where two or more states are the parties, is not objected to. Provision is made for this by the existing Articles of Confederation, and there can be no impropriety in referring such disputes to this tribunal.

{533} Its jurisdiction in controversies between a state and citizens of another state is much objected to, and perhaps without reason. It is not in the power of individuals to call any state into court. The only operation it can have, is that, if a state should wish to bring a suit against a citizen, it must be brought before the federal court. This will give satisfaction to individuals, as it will prevent citizens, on whom a state may have a claim, being dissatisfied with the state courts. It is a case which cannot often happen, and if it should be found improper, it will be altered. But it may be attended with good effects. This may be illustrated by other cases. It is provided, that citizens of different states may be carried to the federal courts.

But this will not go beyond the cases where they may be parties. A *femme covert* may be a citizen of another state, but cannot be a party in this court. A subject of a foreign power, having a dispute with a citizen of this state, may carry it to the federal court; but an alien enemy cannot bring suit at all. It appears to me that this can have no operation but this — to give a citizen a right to be heard in the federal courts; and if a state should condescend to be a party, this court may take cognizance of it.

As to its cognizance of disputes between citizens of different states, I will not say it is a matter of much importance. Perhaps it might be left to the state courts. But I sincerely believe this provision will be rather salutary than otherwise. It may happen that a strong prejudice may arise, in some states, against the citizens of others, who may have claims against them. We know what tardy, and even defective, administration of justice has happened in some states. A citizen of another state might not chance to get justice in a state court, and at all events he might think himself injured.

To the next clause there is no objection.

The next case provides for disputes between a foreign state and one of our states, should such a case ever arise; and between a citizen and a foreign citizen or subject. I do not conceive that any controversy can ever be decided, in these courts, between an American state and a foreign state, without the consent of the parties. If they consent, provision is here made. The disputes ought to be tried by the national tribunal. This is consonant to the law of nations. Could there be a more favorable or eligible provision to {534} avoid controversies with foreign powers? Ought it to be put in the power of a member of the Union to drag the whole community into war? As the

national tribunal is to decide, justice will be done. It appears to me, from this review, that though, on some of the subjects of this jurisdiction, it may seldom or never operate, and though others be of inferior consideration, yet they are mostly of great importance, and indispensably necessary.

## NOTE

The second question which I proposed to consider, was, whether such organization be made as would be safe and convenient for the states, and the people at large. Let us suppose that the subjects of its jurisdiction are only enumerated, and power given to the general legislature to establish such courts as might be judged necessary and expedient; do not think that, in that case, any rational objection could be made to it, any more than would be made to a general power of legislation in certain enumerated cases. If that would be safe, this appears to me better and more restrictive, so far as it may be abused by extension of power. The most material part is the discrimination of superior and inferior jurisdiction, and the arrangement of its powers; as, where it shall have original, and where appellate cognizance. Where it speaks of appellate jurisdiction, it expressly provides that such regulations will be made as will accommodate every citizen, so far as practicable in any government. The principal criticism which has been made, was against the appellate cognizance as well of fact as law. I am happy that the honorable member who presides, and who is familiarly acquainted with the subject, does not think it involves any thing unnecessarily dangerous. I think that the distinction of fact, as well as law, may be satisfied by the discrimination of the civil and **common law**. But if gentlemen should contend that appeals, as to fact, can be extended to jury cases, I contend that, by the word regulations, it is in the power of Congress to prevent it, or prescribe such a mode as will secure the privilege of jury trial. They may make a regulation to prevent such appeals entirely; or they may remand the fact, or send it to an inferior contiguous court, to be tried; or otherwise preserve that ancient and important trial.

Let me observe that, so far as the judicial power may extend to controversies between citizens of different states, {535} and so far as it gives them power to correct, by another trial, a verdict obtained by local prejudices, it is favorable to those states which carry on commerce. There are a number of commercial states which carry on trade for other states. Should the states in debt to them make unjust regulations, the justice that would be obtained by the creditors might be merely imaginary and nominal. It might be either entirely denied, or partially granted. This is no imaginary evil. Before the war, New York was to a great amount a creditor of Connecticut. While it depended on the laws and regulations of Connecticut, she might withhold payment. If I be not misinformed, there were reasons to complain. These illiberal regulations and causes of complaint obstruct commerce. So far as this power may be exercised, Virginia will be benefited by it. It appears to me, from the most correct view, that, by the word *regulations*, authority is given them to provide against the inconveniences; and so far as it is exceptionable, they can remedy it. This they will do if they be worthy of the trust we put in them. I think them worthy of that confidence which that paper puts in them. Were I to select a power which might be given with confidence, it would be judicial power. This power cannot be abused, without raising the indignation of all the people of the states. I cannot conceive that they would encounter this odium. Leaving behind them their character and friends, and carrying with them local prejudices, I cannot think they would run such a risk. That men should be brought from all parts of the Union to the seat of government, on trivial occasions, cannot reasonably be supposed. It is a species of possibility; but there is every degree of probability against it. I would as soon believe

that, by virtue of the power of collecting taxes or customs, they would compel every man to go and pay the money for his taxes, with his own hands, to the federal treasurer, as I would believe this. If they would not do the one, they would not the other.

I am of opinion (and my reasoning and conclusions are drawn from facts) that, as far as the power of Congress can extend, the judicial power will be accommodated to every part of America. Under this conviction I conclude that the legislation, instead of making the Supreme Federal Court absolutely stationary, will fix it in different parts of the continent, {536} to render it more convenient. I think this idea perfectly warrantable. There is an example, within our knowledge, which illustrates it. By the Confederation, Congress have an exclusive right of establishing rules for deciding, in all cases, what captures should be legal, and establishing courts for determining such cases finally. A court was established for that purpose, which was at first stationary. Experience, and the desire of accommodating the decision of this court to the convenience of the citizens of the different parts of America, had this effect — it soon became a regulation that this court should be held in different parts of America, and it was held accordingly. If such a regulation was made, when only the interest of the small number of people who are concerned with captures was affected, will not the public convenience be consulted, when that of a very considerable proportion of the people of America will be concerned? It will be also in the power of Congress to vest this power in the state courts, both inferior and superior. This they will do, when they find the tribunals of the states established on a good footing.

Another example will illustrate this subject further. By the Confederation, Congress are authorized to establish courts for trying piracies and felonies committed on the high seas. Did they multiply courts unnecessarily in this case? No, sir; they invested the admiralty courts of each state with this jurisdiction. Now, sir, if there will be as much sympathy between Congress and the people as now, we may fairly conclude that the federal cognizance will be vested in the local tribunals.

## JURISDICTION

I have observed that gentlemen suppose that the general legislature will do every thing mischievous they possibly can, and that they will omit to do every thing good which they are authorized to do. If this were a reasonable supposition, their objections would be good. I consider it reasonable to conclude that they will as readily do their duty as deviate from it; nor do I go on the grounds mentioned by gentlemen on the other side — that we are to place unlimited confidence in them, and expect nothing but the most exalted integrity and sublime virtue. But I go on this great republican principle, that the people will have virtue and intelligence to select men of virtue and wisdom. Is there no virtue among us? If there be not, we are in a wretched {537} situation. **No theoretical checks, no form of government, can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea.** If there be sufficient virtue and intelligence in the community, it will be exercised in the selection of these men; so that we do not depend on their virtue, or put confidence in our rulers, but in the people who are to choose them.

Having taken this general view of the subject, I will now advert to what has fallen from the honorable gentleman who presides. His criticism is, that the judiciary has not been guarded from

an increase of the salary of the judges. I wished myself to insert a restraint on the augmentation, as well as diminution, of their compensation, and supported it in the Convention. But I was overruled. I must state the reasons which were urged. They had great weight. The business must increase. If there was no power to increase their pay, according to the increase of business, during the life of the judges, it might happen that there would be such an accumulation of business as would reduce the pay to a most trivial consideration. This reason does not hold as to the President; for, in the short period in which he presides, this cannot happen. His salary ought not, therefore, to be increased. It was objected, yesterday, that there was no provision for a jury from the vicinage. If it could have been done with safety, it would not have been opposed. It might so happen that a trial would be impracticable in the country. Suppose a rebellion in a whole district; would it not be impossible to get a jury? The *trial by jury* is held as sacred in England as in America. There are deviations from it in England; yet greater deviations have happened here, since we established our independence, than have taken place there for a long time, though it be left to the legislative discretion. It is a misfortune in any case that this trial should be departed from; yet in some cases it is necessary. It must be, therefore, left to the discretion of the legislature to modify it according to circumstances. This is a complete and satisfactory answer.

It was objected, that this jurisdiction would extend to all cases, and annihilate the state courts. At this moment of time, it might happen that there are many disputes between citizens of different states. But in the ordinary state of {538} things, I believe that any gentleman will think that the far greater number of causes — ninety-nine out of a hundred — will remain with the state judiciaries. All controversies directly between citizen and citizen will still remain with the local courts. The number of cases within the jurisdiction of these courts is very small when compared to those in which the local tribunals will have cognizance. No accurate calculation can be made; but I think that any gentleman who will contemplate the subject at all must be struck with this truth. (Here Mr. Madison spoke too low to be understood.)

As to vexatious appeals, they can be remedied by Congress. It would seldom happen that mere wantonness would produce such an appeal, or induce a man to sue unjustly. If the courts were on a good footing in the states, what can induce them to take so much trouble? I have frequently, in the discussion of this subject, been struck with one remark. It has been urged that this would be oppressive to those who, by imprudence or otherwise, come under the denomination of debtors. I know not how this can be conceived. I will venture one observation. If this system should have the effect of establishing universal justice, and accelerating it throughout America, it will be one of the most fortunate circumstances that could happen for those men. With respect to that class of citizens, compassion is their due. To those, however, who are involved in such encumbrances, relief cannot be granted. Industry and economy are the only resources. It is vain to wait for money, or temporize. The great *desiderata* are public and private confidence. No country in the world can do without them. Let the influx of money be ever so great, if there be no confidence, property will sink in value, and there will be no inducement or emulation to industry. The circulation of confidence is better than the circulation of money. Compare the situation of nations in Europe, where justice is administered with celerity, to that of those where it is refused, or administered tardily. Confidence produces the best effects in the former. The establishment of confidence will raise the value of property, and relieve those who are so unhappy as to be involved in debts. If this be maturely considered, I think it will be found that, as far as it will

establish uniformity of justice, it will be of real advantage to such persons. I will not enter {539} into those considerations which the honorable gentleman added. I hope some other gentleman will undertake to answer.

## Mr. HENRY.

Mr. Chairman, I have already expressed painful sensations at the surrender of our great rights, and I am again driven to the mournful recollection. The purse is gone; the sword is gone; and here is the only thing of any importance that is to remain with us. As I think this is a more fatal defect than any we have yet considered, forgive me if I attempt to refute the observations made by the honorable member in the chair, and last up. It appears to me that the powers in the section before you are either impracticable, or, if reducible to practice, dangerous in the extreme.

The honorable gentleman began in a manner which surprised me. It was observed that our state judges might be contented to be federal judges and state judges also. If we are to be deprived of that class of men, and if they are to combine against us with the general government, we are gone.

I consider the Virginia judiciary as one of the best barriers against strides of power — against that power which, we are told by the honorable gentleman, has threatened the destruction of liberty. Pardon me for expressing my extreme regret that it is in their power to take away that barrier. Gentlemen will not say that any danger can be expected from the state legislatures. So small are the barriers against the encroachments and usurpations of Congress, that, when I see this last barrier — the independency of the judges — impaired, I am persuaded I see the prostration of all our rights. In what a situation will your judges be, when they are sworn to preserve the Constitution of the state and of the general government! If there be a concurrent dispute between them, which will prevail? They cannot serve two masters struggling for the same object. The laws of Congress being paramount to those of the states, and to their constitutions also, whenever they come in competition, the judges must decide in favor of the former. This, instead of relieving or aiding me, deprives me of my only comfort — the independency of the judges. The judiciary are the sole protection against a tyrannical execution of the laws. But if by this system we lose our judiciary, and they cannot help us, we must sit down quietly, and be oppressed.

## Common Law

{540} The appellate jurisdiction as to law and fact, notwithstanding the ingenuity of gentlemen, still, to me, carries those terrors which my honorable friend described. This does not include law, in the common acceptance of it, but goes to equity and admiralty, leaving what we commonly understand by **common law** out altogether. We are told of technical terms, and that we must put a liberal construction on it. We must judge by the common understanding of common men. Do the expressions "fact and law" relate to cases of admiralty and chancery jurisdiction only? No, sir, the least attention will convince us that they extend to **common-law** cases. Three cases are contradistinguished from the rest. "In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate

jurisdiction, both as to law and fact." Now, sir, what are we to understand by these words? What are the cases before mentioned? Cases of **common law**, as well as of equity and admiralty. I confess I was surprised to hear such an explanation from an understanding more penetrating and acute than mine. We are told that the cognizance of law and fact is satisfied by cases of admiralty and chancery. The words are expressly against it. Nothing can be more clear and incontestable. This will, in its operation, destroy the trial by jury. The verdict of an impartial jury will be reversed by judges unacquainted with the circumstances. But we are told that Congress are to make regulations to remedy this. I may be told that I am bold; but I think myself, and I hope to be able to prove to others, that Congress cannot, by any act of theirs, alter this jurisdiction as established. It appears to me that no law of Congress can alter or arrange it. It is subject to be regulated, but is it subject to be abolished? If Congress alter this part, they will repeal the Constitution. Does it give them power to repeal itself? What is meant by such words in common parlance? If you are obliged to do certain business, you are to do it under such modifications as were originally designed. Can gentlemen support their argument by regular or logical conclusions? When Congress, by virtue of this sweeping clause, will organize these courts, they cannot depart from the Constitution; and their laws in {541} opposition to the Constitution would be void. If Congress, under the specious pretence of pursuing this clause, altered it, and prohibited appeals as to fact, the federal judges, if they spoke the sentiments of independent men, would declare their prohibition nugatory and void. In every point of view, it seems to me that it will continue in as full force as it is now, notwithstanding any regulations they may attempt to make. What then, Mr. Chairman? We are told that, if this does not satisfy every mind, they will yield. It is not satisfactory to my mind, whatever it may be to others. The honorable gentleman has told us that our representatives will mend every defect. I do not know how often we have recurred to that source, but I can find no consolation in it. Who are they? Ourselves. What is their duty? To alter the spirit of the Constitution — to new model it? Is that their duty, or ours? It is our duty to rest our rights on a certain foundation, and not trust to future contingencies.

We are told of certain difficulties. I acknowledge it is difficult to form a constitution. But I have seen difficulties conquered which were as unconquerable as this. We are told that trial by jury is difficult to be had in certain cases. Do we not know the meaning of the term? We are also told it is a technical term. I see one thing in this Constitution; I made the observation before and I am still of the same opinion, that every thing with respect to privileges is so involved in darkness, it makes me suspicious — not of those gentlemen who formed it, but of its operations in its present form. Could not precise terms have been used? You find, by the observations of the gentleman last up, that, when there is a plenitude of power, there is no difficulty; but when you come to a plain thing, understood by all America, there are contradictions, ambiguities, difficulties, and what not. Trial by jury is attended, it seems, with insuperable difficulties, and therefore omitted altogether in civil cases. But an idea is held out that it is secured in criminal cases. I had rather it had been left out altogether than have it so vaguely and equivocally provided for. Poor people do not understand technical terms. Their rights ought to be secured in language of which they know the meaning. As they do not know the meaning of such terms, they may be injured with impunity. If they dare oppose {542} the hands of tyrannical power, you will see what has been practised elsewhere. They may be tried by the most partial powers, by their most implacable enemies, and be sentenced and put to death, with all the forms of a fair trial. I would rather be left to the judges. An abandoned juror would not dread the loss of character like a judge. From these, and a thousand other considerations, I would rather the trial by jury were struck out

altogether. There is no right of challenging partial jurors. There is no **common law** of America, (as has been said,) nor constitution, but that on your table. If there be neither **common law** nor constitution, there can be no right to challenge partial jurors. Yet the right is as valuable as the trial by jury itself.

My honorable friend's remarks were right, with respect to incarcerating a state. It would ease my mind, if the honorable gentleman would tell me the manner in which money should be paid, if, in a suit between a state and individuals, the state were cast. The honorable gentleman, perhaps, does not mean to use coercion, but some gentle caution. I shall give my voice for the federal cognizance only where it will be for the public liberty and safety. Its jurisdiction, in disputes between citizens of different states, will be productive of the most serious inconveniences. The citizens of bordering states have frequent intercourse with one another. From the proximity of the states to each other, a multiplicity of these suits will be instituted. I beg gentlemen to inform me of this — in what courts are they to go and by what law are they to be tried? Is it by a law of Pennsylvania or Virginia? Those judges must be acquainted with all the laws of the different states. I see arising out of that paper a tribunal that is to be resorted to in all cases, when the destruction of the state judiciaries shall happen; and, from the extensive jurisdiction of these paramount courts, the state courts must soon be annihilated.

It may be remarked that here is presented to us that which is execrated in some parts of the states — I mean a retrospective law. This, with respect to property, is as odious as an *ex post facto* law is with respect to persons. I look upon them as one and the same thing. The jurisdiction of controversies between citizens, and foreign subjects and citizens, will operate retrospectively. Every thing with respect to the treaty with Great Britain and other nations {543} will be involved by it. Every man who owes any thing to a subject of Great Britain, or any other nation, is subject to a tribunal that he knew not when he made the contract. Apply this to our citizens. If ever a suit be instituted by a British creditor for a sum which the defendant does not in fact owe, he had better pay it than appeal to the federal Supreme Court. Will gentlemen venture to ruin their own citizens? Foreigners may ruin every man in this state by unjust and vexatious suits and appeals. I need only touch it, to remind every gentleman of the danger.

No objection is made to their cognizance of disputes between citizens of the same state, claiming lands under grants of different states.

As to controversies between a state and the citizens of another state, his construction of it is to me perfectly incomprehensible. He says it will seldom happen that a state has such demands on individuals. There is nothing to warrant such an assertion. But he says that the state may be plaintiff only. If gentlemen pervert the most clear expressions, and the usual meaning of the language of the people, there is an end of all argument. What says the paper? That it shall have cognizance of controversies between a state and citizens of another state, without discriminating between plaintiff and defendant. What says the honorable gentleman? The contrary — that the state can only be plaintiff. When the state is debtor, there is no reciprocity. It seems to me that gentlemen may put what construction they please on it. What! is justice to be done to one party, and not to the other? If gentlemen take this liberty now, what will they not do when our rights and liberties are in their power? He said it was necessary to provide a tribunal when the case happened, though it would happen but seldom. The power is necessary, because New York could

not, before the war, collect money from Connecticut! The state judiciaries are so degraded that they cannot be trusted. This is a dangerous power which is thus instituted. For what? For things which will seldom happen; and yet, because there is a possibility that the strong, energetic government may want it, it shall be produced and thrown in the general scale of power. I confess I think it dangerous. Is it not the first time, among civilized mankind, that there was a tribunal to try disputes between the aggregate society {544} and foreign nations? Is there any precedent for a tribunal to try disputes between foreign nations and the states of America? The honorable gentleman said that the consent of the parties was necessary: I say that a previous consent might leave it to arbitration. It is but a kind of arbitration at best.

To hear gentlemen of such penetration make use of such arguments, to persuade us to part with that trial by jury, is very astonishing. We are told that we are to part with that triad by jury which our ancestors secured their lives and property with, and we are to build castles in the air, and substitute visionary modes of decision for that noble palladium. I hope we shall never be induced, by such arguments, to part with that excellent mode of trial. No appeal can now be made as to fact in common-law suits. The unanimous verdict of twelve impartial men cannot be reversed. I shall take the liberty of reading to the committee the sentiments of the learned Judge Blackstone, so often quoted, on the subject.

[Here Mr. Henry read the eulogium of that writer on this trial. *Blackstone's Commentaries*, iii. 319.]

The opinion of this learned writer is more forcible and cogent than any thing I could say. Notwithstanding the transcendent excellency of this trial, its essentiality to the preservation of liberty, and the extreme danger of substituting any other mode, yet we are now about to alienate it.

But on this occasion, as on all others, we are admonished to rely on the wisdom and virtue of our rulers. We are told that the members from Georgia, New Hampshire, &c., will not dare to infringe this privilege; that, as it would excite the indignation of the people, they would not attempt it: that is, the enormity of the offence is urged as a security against its commission. It is so abominable that Congress will not exercise it. Shall we listen to arguments like these, when trial by jury is about to be relinquished? I beseech you to consider before you decide. I ask you, What is the value of that privilege? When Congress, in all the plenitude of their arrogance, magnificence, and power, can take it from you, will you be satisfied? Are we to go so far as to concede every thing to the virtue of Congress? Throw yourselves at once on their mercy; be no longer free than their virtue will predominate: if this will satisfy republican {545} minds, there is an end of every thing. I disdain to hold any thing of any man. We ought to cherish that disdain America viewed with indignation the idea of holding her rights of England. The Parliament gave you the most solemn assurances that they would not exercise this power. Were you satisfied with their promises? No. Did you trust any man on earth? No. You answered that you disdained to hold your innate, indefeasible rights of any one. Now, you are called upon to give an exorbitant and most alarming power. The genius of my countrymen is the same now that it was then. They have the same feelings. They are equally martial and bold. Will not their answer therefore be the same? I hope that gentlemen will, on a fair investigation, be candid, and not on every occasion recur to the virtue of our representatives.

When deliberating on the relinquishment of the sword and purse, we have a right to some other reason than the possible virtue of our rulers. We are informed that the strength and energy of the government call for the surrender of this right. Are we to make our country strong by giving up our privileges? I tell you that, if you judge from reason, or the experience of other nations, you will find that your country will be great and respectable according as you will preserve this great privilege. It is prostrated by that paper. Juries from the vicinage being not secured, this right is in reality sacrificed; All is gone. And why? Because a rebellion may arise. Resistance will come from certain countries, and juries will come from the same countries.

I trust the honorable gentleman, on a better recollection, will be sorry for this observation. Why do we love this trial by jury? Because it prevents the hand of oppression from cutting you off. They may call any thing rebellion, and deprive you of a fair trial by an impartial jury of your neighbors. Has not your mother country magnanimously preserved this noble privilege upwards of a thousand years? Did she relinquish a jury of the vicinage because there was a possibility of resistance to oppression? She has been magnanimous enough to resist every attempt to take away this privilege. She has had magnanimity enough to rebel when her rights were infringed. That country had juries of hundredors for many generations. And shall Americans give up that which nothing could induce the English people {546} to relinquish? The idea is abhorrent to my mind. There was a time when we should have spurned at it. This gives me comfort — that, as long as I have existence, my neighbors will protect me. Old as I am, it is probable I may yet have the appellation of *rebel*. I trust that I shall see congressional oppression crushed in embryo. As this government stands, I despise and abhor it. Gentlemen demand it, though it takes away the trial by jury in civil cases, and does worse than take it away in criminal cases. It is gone unless you preserve it now. I beg pardon for speaking so long. Many more observations will present themselves to the minds of gentlemen when they analyze this part. We find enough, from what has been said, to come to this conclusion — that it was not intended to have jury trials at all; because, difficult as it was, the name was known, and it might have been inserted. Seeing that appeals are given, in matters of fact, to the Supreme Court, we are led to believe that you must carry your witnesses an immense distance to the seat of government, or decide appeals according to the Roman law. I shall add no more, but that I hope that gentlemen will recollect what they are about to do, and consider that they are going to give up this last and best privilege.

## **Mr. PENDLETON.**

Mr. Chairman, before I enter upon the objections made to this part, I will observe that I should suppose, if there were any person in this audience who had not read this Constitution, or who had not heard what has been said, and should have been told that the trial by jury was intended to be taken away, he would be surprised to find, on examination, that there was no exclusion of it in civil cases, and that it was expressly provided for in criminal cases. I never could see such intention, or any tendency towards it. I have not heard any arguments of that kind used in favor of the Constitution. If there were any words in it which said that trial by jury should not be used, it would be dangerous. I find it secured in criminal cases, and that the trial is to be had in the state where the crime shall have been committed. It is strongly insisted that the privilege of challenging, or excepting to the jury, is not secured. When the Constitution says that the trial shall be by jury, does it not say that every incident will go along with it? I think the honorable gentleman was mistaken yesterday in his reasoning on the propriety of a jury from the vicinage.

{547} He supposed that a jury from the neighborhood is had from this view — that they should be acquainted with the personal character of the person accused. I thought it was with another view — that the jury should have some personal knowledge of the fact, and acquaintance with the witnesses, who will come from the neighborhood. How is it understood in this state? Suppose a man, who lives in Winchester, commits a crime at Norfolk; the jury to try him must come, not from Winchester, but from the neighborhood of Norfolk. *Trial by jury* is secured by this system in criminal cases, as are all the incidental circumstances relative to it. The honorable gentleman yesterday made an objection to that clause which says that the judicial power shall be vested in one Supreme Court, and such inferior courts as Congress may ordain and establish. He objects that there is an unlimited power of appointing inferior courts. I refer to that gentleman, whether it would have been proper to limit this power. Could those gentlemen who framed that instrument have extended their ideas to all the necessities of the United States, and seen every case in which it would be necessary to have an inferior tribunal? By the regulations of Congress, they may be accommodated to public convenience and utility. We may expect that there will be an inferior court in each state; each state will insist on it; and each, for that reason, will agree to it.

To show the impropriety of fixing the number of inferior courts, suppose our Constitution had confined the legislature to any particular number of inferior jurisdictions; there it would remain; nor could it be increased or diminished, as circumstances would render it necessary. But as it is, the legislature can by laws change it from time to time, as circumstances will require. What would have been the consequences to the western district, if the legislature had been restrained in this particular? The emigrations to that country rendered it necessary to establish a jurisdiction there equal in rank to the General Court in this part of the state. This was convenient to them, and could be no inconvenience to us. At the same time, the legislature did not lose sight of making every part of society subject to the supreme tribunal. An appeal was allowed to the Court of Appeals here. This was necessary. Has it reduced any inconvenience? I have not seen any appeal from that court. Its organization {548} has produced no inconvenience whatever. This proves that it is better to leave them unsettled, than fixed in the Constitution. With respect to the subjects of its jurisdiction, I consider them as being of a general and not local nature, and therefore as proper subjects of a federal court. I shall not enter into an examination of each part, but make some reply to the observations of the honorable gentleman.

His next objection was to the first two clauses — cases arising under the Constitution, and laws made in pursuance thereof. Are you to refer these to the state courts? Must not the judicial powers extend to enforce the federal laws, govern its own officers, and confine them to the line of their duty? Must it not protect them, in the proper exercise of duty, against all opposition, whether from individuals or state laws? No, say gentlemen, because the legislature may make oppressive laws, or partial judges may give them a partial interpretation. This is carrying suspicion to an extreme which tends to prove there should be no legislative or judiciary at all. The fair inference is, that oppressive laws will not be warranted by the Constitution, nor attempted by our representatives, who are selected for their ability and integrity, and that honest, independent judges will never admit an oppressive construction.

But, then, we are alarmed with the idea of its being a consolidated government. It is so, say gentlemen, in the executive and legislative, and must be so in the judiciary. I never conceived it to be a consolidated government, so as to involve the interest of all America. Of the two objects

of judicial cognizance, one is general and national, and the other local. The former is given to the general judiciary, and the latter left for the local tribunals. They act in cooperation, to secure our liberty. For the sake of economy, the appointment of these courts might be in the state courts. I rely on an honest interpretation from independent judges. An honest man would not serve otherwise, because it would be to serve a dishonest purpose. To give execution to proper laws, in a proper manner, is their peculiar province. There is no inconsistency, impropriety, or danger, in giving the state judges the federal cognizance. Every gentleman who beholds my situation, my infirmity, and various other considerations, will hardly suppose I carry my view to an accumulation of power. Ever since I had any power, I was {549} more anxious to discharge my duty than to increase my power.

The impossibility of calling a sovereign state before the jurisdiction of another sovereign state, shows the propriety and necessity of vesting this tribunal with the decision of controversies to which a state shall be a party.

But the principal objection of that honorable gentleman was, that jurisdiction was given it in disputes between citizens of different states. I think, in general, those decisions might be left to the state tribunals; especially as citizens of one state are declared to be citizens of all. I think it will, in general, be so left by the regulations of Congress. But may no case happen in which it may be proper to give the federal courts jurisdiction in such a dispute? Suppose a bond given by a citizen of Rhode Island to one of our citizens. The regulations of that state being unfavorable to the claims of the other states, if he is obliged to go to Rhode Island to recover it, he will be obliged to accept payment of one third, or less, of his money. He cannot sue in the Supreme Court, but he may sue in the federal inferior court; and on judgment to be paid one for ten, he may get justice by appeal. Is it an eligible Situation? Is it just that a man should run the risk of losing nine tenths of his claim? Ought he not to be able to carry it to that court where unworthy principles do not prevail? Paper money and tender laws may be passed in other states, in opposition to the federal principle, and restriction of this Constitution, and will need jurisdiction in the federal judiciary, to stop its pernicious effects.

Where is the danger, in the case put, of malice producing an assignment of a bond to a citizen of a neighboring state — Maryland? I have before supposed that there would be an inferior federal court in every state. Now, this citizen of Maryland, to whom this bond is assigned, cannot sue out process from the supreme federal court to carry his debtor thither. He cannot carry him to Maryland. He must sue him in the inferior federal court in Virginia. He can only go farther by appeal. The creditor cannot appeal. He gets a judgment. An appeal can be had only on application of the defendant, who thus gains a privilege instead of an injury; so that the observation of the honorable gentleman is not well founded. It was said by the honorable gentleman {550} to-day, that no regulation Congress would make could prevent from applying to common-law cases matters of law and fact. In the construction of general words of this sort, they will apply concurrently to different purposes. We give them that distributive interpretation, and liberal explication, which will not make them mischievous; and if this can be done by a court, surely it can by a legislature. When it appears that the interpretation made by legislative bodies, in carrying acts into execution, is thus liberal and distributive, there is no danger here. The honorable gentleman was mistaken when he supposed that I said, in cases where the competency of evidence is questioned, the fact was to be changed in the superior court. I said,

the fact was not at all to be affected. I described how the superior court was to proceed, and, when it settled that point, if another trial was necessary, they sent the cause back, and then it was tried again in the inferior court.

The honorable gentleman has proposed an amendment which he supposes would remove those inconveniences. I attended to it, and it gave great force to my opinion that it is better to leave it to be amended by the regulations of Congress. What is to be done in cases where juries have been introduced in the admiralty and chancery? In the admiralty, juries sometimes decide facts. Sometimes in chancery, when the judges are dissatisfied, from the want of testimony or other cause, they send it to be tried by a jury. When the jury determines, they settle it. Let the gentleman review his amendment. It strikes me forcibly that it would be better to leave it to Congress than to introduce amendments which would not answer. I mentioned yesterday that, from the situation of the states, appeals could not be abused. The honorable gentleman to-day said it was putting too much confidence in our agents and rulers. I leave it to all mankind, whether it be not a reasonable confidence, Will the representatives of any twelve states sacrifice their own interest, and that of their fellow.citizens, to answer no purpose? But suppose we should happen to be deceived; have we no security? So great is the spirit of America, that it was found sufficient to oppose the greatest power in the world. Will not the American spirit protect us against any danger from our own representatives? It being now late, I shall add no more.

### **{551} Mr. GEORGE MASON.**

Mr. Chairman, the objection I made, respecting the assignment of a bond from a citizen of this state to a citizen of another state, remains still in force. The honorable gentleman has said that there can be no danger, in the first instance, because it is not within the original jurisdiction of the Supreme Court; but that the suit must be brought in the inferior federal court of Virginia. He supposes there can never be an appeal, in this case, by the plaintiff, because he gets a judgment on his bond; and that the defendant alone can appeal, who therefore, instead of being injured, obtains a privilege. Permit me to examine the force of this. By means of a suit, on a real or fictitious claim, the citizens of the most distant states may be brought to the supreme federal court. Suppose a man has my bond for a hundred pounds, and a great part of it has been paid, and, in order fraudulently to oppress me, he assigns it to a gentleman in Carolina or Maryland. He then carries me to the inferior federal court. I produce my witness, and judgment is given in favor of the defendant. The plaintiff appeals, and carries me to the superior court, a thousand miles, and my expenses amount to more than the bond.

The honorable gentleman recommends to me to alter my proposed amendment. I would as soon take the advice of that gentleman as any other; but, though the regard which I have for him be great, I cannot assent on this great occasion.

There are not many instances of decisions by juries in the admiralty or chancery, because the facts are generally proved by depositions. When that is done, the fact, being ascertained, goes up to the superior court, as part of the record; so that there will be no occasion to revise that part.

### **Mr. JOHN MARSHALL.**

## NOTE

Mr. Chairman, this part of the plan before us is a great improvement on that system from which we are now departing. Here are tribunals appointed for *the decision of controversies* which were before either not at all, or improperly, provided for. That many benefits will result from this to the members of the collective society, every one confesses. Unless its organization be defective, and so constructed as to injure, instead of accommodating, the convenience of the people, it merits our approbation. After such a candid and fair discussion by those gentlemen who support it, — after the very able manner in {552} which they have investigated and examined it, — I conceived it would be no longer considered as so very defective, and that those who opposed it would be convinced of the impropriety of some of their objections. But I perceive they still continue the same opposition. Gentlemen have gone on an idea that the federal courts will not determine the causes which may come before them with the same fairness and impartiality with which other courts decide. What are the reasons of this supposition? Do they draw them from the manner in which the judges are chosen, or the tenure of their office? What is it that makes us trust our judges? Their independence in office, and manner of appointment. Are not the judges of the federal court chosen with as much wisdom as the judges of the state governments? Are they not equally, if not more independent? If so, shall we not conclude that they will decide with equal impartiality and candor? If there be as much wisdom and knowledge in the United States as in a particular state, shall we conclude that the wisdom and knowledge will not be equally exercised in the selection of judges?

The principle on which they object to the federal jurisdiction seems, to me, to be founded on a belief that there will not be a fair trial had in those courts. If this committee will consider it fully, they will find it has no foundation, and that we are as secure there as any where else. What mischief results from some causes being tried there? Is there not the utmost reason to conclude that judges, wisely appointed, and independent in their office, will never countenance any unfair trial? What are the subjects of its jurisdiction? Let us examine them with an expectation that causes will be as candidly tried there as elsewhere, and then determine. The objection which was made by the honorable member who was first up yesterday (Mr. Mason) has been so fully refuted that it is not worth while to notice it. He objected to Congress having power to create a number of inferior courts, according to the necessity of public circumstances. I had an apprehension that those gentlemen who placed no confidence in Congress would object that there might be no inferior courts. I own that I thought those gentlemen would think there would be no inferior courts, as it depended on the will of Congress, but that we should be dragged to the centre of the Union. But I did {553} not conceive that the power of increasing the number of courts could be objected to by any gentleman, as it would remove the inconvenience of being dragged to the centre of the United States. I own that the power of creating a number of courts is, in my estimation, so far from being a defect, that it seems necessary to the perfection of this system. After having objected to the number and mode, he objected to the subject matter of their cognizance. [Here Mr. Marshall read the 2d section.]

These, sir, are the points of *federal jurisdiction* to which he objects, with a few exceptions. Let us examine each of them with a supposition that the same impartiality will be observed there as in other courts, and then see if any mischief will result from them. With respect to its cognizance in all cases arising under the Constitution and the laws of the United States, he says that, the laws

of the United States being paramount to the laws of the particular states, there is no case but what this will extend to. Has the government of the United States power to make laws on every subject? Does he understand it so? Can they make laws affecting the mode of transferring property, or contracts, or claims, between citizens of the same state? Can they go beyond the delegated powers? If they were to make a law not warranted by any of the powers enumerated, it would be considered by the judges as an infringement of the Constitution which they are to guard. They would not consider such a law as coming under their jurisdiction. They would declare it void. It will annihilate the state courts, says the honorable gentleman. Does not every gentleman here know that the causes in our courts are more numerous than they can decide, according to their present construction? Look at the dockets. You will find them crowded with suits, which the life of man will not see determined. If some of these suits be carried to other courts, will it be wrong? They will still have business enough.

Then there is no danger that particular subjects, small in proportion, being taken out of the jurisdiction of the state judiciaries, will render them useless and of no effect. Does the gentleman think that the state courts will have no cognizance of cases not mentioned here? Are there any words in this Constitution which exclude the courts of the states from those cases which they now possess? Does the {554} gentleman imagine this to be the case? Will any gentleman believe it? Are not controversies respecting lands claimed under the grants of different states the only controversies between citizens of the same state which the federal judiciary can take cognizance of? The case is so clear, that to prove it would be a useless waste of time. The state courts will not lose the jurisdiction of the causes they now decide. They have a concurrence of jurisdiction with the federal courts in those cases in which the latter have cognizance.

## NOTE

How disgraceful is it that the state courts cannot be trusted! says the honorable gentleman. What is the language of the Constitution? Does it take away their jurisdiction? Is it not necessary that the federal courts should have cognizance of cases arising under the Constitution, and the laws, of the United States? What is the service or purpose of a judiciary, but to execute the laws in a peaceable, orderly manner, without shedding blood, or creating a contest, or availing yourselves of force? If this be the case, where an its jurisdiction be more necessary than here?

## Common Law

To what quarter will you look for protection from an infringement on the Constitution, if you will not give the power to the judiciary? There is no other body that can afford such a protection. But the honorable member objects to it, because he says that the officers of the government will be screened from merited punishment by the federal judiciary. The federal sheriff, says he, will go into a poor man's house and beat him, or abuse his family, and the federal court will protect him. Does any gentleman believe this? Is it necessary that the officers will commit a trespass on the property or persons of those with whom they are to transact business? Will such great insults on the people of this country be allowable? Were a law made to authorize them, It would be void. The injured man would trust to a tribunal in his neighborhood. To such a tribunal he would apply for redress, and get it. There is no reason to fear that he would not meet that justice there which his country will be ever willing to maintain. But, *on appeal*, says the honorable

gentleman, what chance is there to obtain justice? This is founded on an idea that they will not be impartial. There is no clause in the Constitution which bars the individual member injured from applying to the state courts to give him redress. He says that there is no instance of appeals as to fact in **common-law** cases. The contrary is well {555} known to you, Mr. Chairman, to be the case in this commonwealth. With respect to mills, roads, and other cases, appeals lie from the inferior to the superior court, as to fact as well as law. Is it a clear case, that there can be no case in **common law** in which an appeal as to fact might be proper and necessary? Can you not conceive a case where it would be productive of advantages to the people at large to submit to that tribunal the final determination, involving facts as well as law? Suppose it should be deemed for the convenience of the citizens that those things which concerned foreign ministers should be tried in the inferior courts; if justice could be done, the decision would satisfy all. But if an appeal in matters of facts could not be carried to the superior court, then it would result that such cases could not be tried before the inferior courts, for fear of injurious and partial decisions.

But, sir, where is the necessity of discriminating between the three cases of chancery, admiralty, and **common law**? Why not leave it to Congress? Will it enlarge their powers? Is it necessary for them wantonly to infringe your rights? Have you any thing to apprehend, when they can in no case abuse their power without rendering themselves hateful to the people at large? When this is the case, something may be left to the legislature freely Chosen by ourselves, from among ourselves, who are to share the burdens imposed upon the community, and who can be changed at our pleasure. Where power may be trusted, and there is no motive to abuse it, it seems to me to be as well to leave it undetermined as to fix it in the Constitution.

With respect to disputes between *a state and the citizens of another state*, its jurisdiction has been decried with unusual vehemence. I hope that no gentleman will think that a state will be called at the bar of the federal court. Is there no such case at present? Are there not many cases in which; the legislature of Virginia is a party, and yet the state is not sued? It is not rational to suppose that the sovereign power should be dragged before a court. The intent is, to enable states to recover claims of individuals residing in other states. I contend this construction is warranted by the words. But, say they, there will be partiality in it if a state cannot be defendant — if an individual cannot proceed to obtain judgment against a state, though he may be sued {556} by a state. It is necessary to be so, and cannot be avoided. I see a difficulty in making a state defendant, which does not prevent its being plaintiff. If this be only what cannot be avoided, why object to the system on that account? If an individual has a just claim against any particular state, is it to be presumed that, on application to its legislature, he will not obtain satisfaction? But how could a state recover any claim from a citizen of another state, without the establishment of these tribunals?

The honorable member objects to suits being instituted in the federal courts, by the citizens of one state, against the citizens of another state. Were I to contend that this was necessary in all cases, and that the government without it would be defective, I should not use my own judgment. But are not the objections to it carried too far? Though it may not in general be absolutely necessary, a case may happen, as has been observed, in which a citizen of one state ought to be able to recur to this tribunal, to recover a claim from the citizen of another state. What is the evil which this can produce? Will he get more than justice there? The independence of the judges forbids it. What has he to get? Justice. Shall we object to this, because the citizen of another state

can obtain justice without applying to our state courts? It may be necessary with respect to the laws and regulations of commerce, which Congress may make. It may be necessary in cases of debt, and some other controversies. In claims for land, it is not necessary, but it is not dangerous. In the court of which state will it be instituted? said the honorable gentleman. It will be instituted in the court of the state where the defendant resides, where the law can come at him, and nowhere else. By the laws of which state will it be determined? said he. By the laws of the state where the contract was made. According to those laws, and those only, can it be decided. Is this a novelty? No; it is a principle in the jurisprudence of this commonwealth. If a man contracted a debt in the East Indies, and it was sued for here, the decision must be consonant to the laws of that country. Suppose a contract made in Maryland, where the annual interest is at six per centum, and a suit instituted for it in Virginia; what interest would be given now, without any federal aid? The interest of Maryland most certainly; and if the contract {557} had been made in Virginia, and suit brought in Maryland, the interest of Virginia must be given, without doubt. It is now to be governed by the laws of that state where the contract was made. The laws which governed the contract at its formation govern it in its decision. To preserve the peace of the Union only, its jurisdiction in this case ought to be recurred to. Let us consider that, when citizens of one state carry on trade in another state, much must be due to the one from the other, as is the case between North Carolina and Virginia. Would not the refusal of justice to our citizens, from the courts of North Carolina, produce disputes between the states? Would the federal judiciary swerve from their duty in order to give partial and unjust decisions?

The objection respecting the assignment of a bond to a citizen of another state has been fully answered. But suppose it were to be tried, as he says; what would be given more than was actually due in the case he mentioned? It is *possible* in our courts, as they now stand, to obtain a judgment for more than justice. But the court of chancery grants relief. Would it not be so in the federal court? Would not depositions be taken to prove the payments; and if proved, would not the decision of the court be accordingly?

He objects, in the next place, to its jurisdiction in controversies between a state and a foreign state. Suppose, says he, in such a suit, a foreign state is cast; will she be bound by the decision? If a foreign state brought a suit against the commonwealth of Virginia, would she not be barred from the claim if the federal judiciary thought it unjust? The previous consent of the parties is necessary; and, as the federal judiciary will decide, each party will acquiesce. It will be the means of preventing disputes with foreign nations. On an attentive consideration of these points, I trust every part will appear satisfactory to the committee.

The exclusion of trial by jury, in this case, he urged to prostrate our rights. Does the word court only mean the judges? Does not the determination of a jury necessarily lead to the judgment of the court? Is there any thing here which gives the judges exclusive jurisdiction of matters of fact? What is the object of a jury trial? To inform the court of the facts. When a court has cognizance of facts, does it not follow that they can make inquiry by a jury? It is impossible to be otherwise. I hope that in this country, where impartiality is so much admired, the laws will direct facts to be ascertained by a jury. But, says the honorable gentleman, the juries in the ten miles square will be mere tools of parties, with which he would not trust his person or property; which, he says, he would rather leave to the court. Because the government may have a district of ten miles square, will no man stay there but the tools and officers of the government? Will nobody else be found

there? Is it so in any other part of the world, where a government has legislative power? Are there none but officers, and tools of the government of Virginia, in Richmond? Will there not be independent merchants, and respectable gentlemen of fortune, within the ten miles square? Will there not be worthy farmers and mechanics? Will not a good jury be found there, as well as any where else? Will the officers of the government become improper to be on a jury? What is it to the government whether this man or that man succeeds? It is all one thing. Does the Constitution say that juries shall consist of officers, or that the Supreme Court shall be held in the ten miles square? It was acknowledged, by the honorable member, that it was secure in England. What makes it secure there? Is it their constitution? What part of their constitution is there that the Parliament cannot change? As the preservation of this right is in the hands of Parliament, and it has ever been held sacred by them, will the government of America be less honest than that of Great Britain? Here a restriction is to be found. The jury is not to be brought out of the state. There is no such restriction in that government; for the laws of Parliament decide every thing respecting it. Yet gentlemen tell us that there is safety there, and nothing here but danger. It seems to me that the laws of the United States will generally secure trials by a jury of the vicinage, or in such manner as will be most safe and convenient for the people.

But it seems that the right of challenging the jurors is not secured in this Constitution. Is this done by our own Constitution, or by any provision of the English government? Is it done by their Magna Charta, or bill of rights? This privilege is founded on their laws. If so, why should it be objected to the American Constitution, that it is not inserted {559} in it? If we are secure in Virginia without mentioning it in our Constitution, why should not this security be found in the federal court?

The honorable gentleman said much about the quitrents in the Northern Neck. I will refer it to the honorable gentleman himself. Has he not acknowledged that there was no complete title? Was he not satisfied that the right of the legal representatives of the proprietor did not exist at the time he mentioned? If so, it cannot exist now. I will leave it to those gentlemen who come from that quarter. I trust they will not be intimidated, on this account, in voting on this question. A law passed in 1782, which secures this. He says that many poor men may be harassed and injured by the representatives of Lord Fairfax. If he has no right, this cannot be done. If he has this right, and comes to Virginia, what laws will his claims be determined by? By those of this state. By what tribunals will they be determined? By our state courts. Would not the poor man, who was oppressed by an unjust prosecution, be abundantly protected and satisfied by the temper of his neighbors, and would he not find ample justice? What reason has the honorable member to apprehend partiality or injustice? He supposes that, if the judges be judges of both the federal and state courts, they will incline in favor of one government. If such contests should arise, who could more properly decide them than those who are to swear to do justice? If we can expect a fair decision any where, may we not expect justice to be done by the judges of both the federal and state governments? But, says the honorable member, laws may be executed tyrannically. Where is the independency of your judges? If a law be exercised tyrannically in Virginia, to what can you trust? To your judiciary. What security have you for justice? Their independence. Will it not be so in the federal court?

Gentlemen ask, What is meant by law cases, and if they be not distinct from facts? Is there no law arising on cases of equity and admiralty? Look at the acts of Assembly. Have you not many

cases where law and fact are blended? Does not the jurisdiction in point of law as well as fact, find itself completely satisfied in law and fact? The honorable gentleman says that no law of Congress can make any exception to the federal appellate jurisdiction of facts as well as {560} law. He has frequently spoken of technical terms, and the meaning of them. What is the meaning of the term *exception*? Does it not mean an alteration and diminution? Congress is empowered to make exceptions to the appellate jurisdiction, as to law and fact, of the Supreme Court. These exceptions certainly go as far as the legislature may think proper for the interest and liberty of the people. Who can understand this word, exception, to extend to one case as well as the other? I am persuaded that a reconsideration of this case will convince the gentleman that he was mistaken. This may go to the cure of the mischief apprehended. Gentlemen must be satisfied that this power will not be so much abused as they have said.

The honorable member says that he derives no consolation from the wisdom and integrity of the legislature, because we call them to rectify defects which it is our duty to remove. We ought well to weigh the good and evil before we determine. We ought to be well convinced that the evil will be really produced before we decide against it. If we be convinced that the good greatly preponderates, though there be small defects in it, shall we give up that which is really good, when we can remove the little mischief it may contain, in the plain, easy method pointed out in the system itself?

I was astonished when I heard the honorable gentleman say that he wished the trial by jury to be struck out entirely. Is there no justice to be expected by a jury of our fellow-citizens? Will any man prefer to be tried by a court, when the jury is to be of his countrymen, and probably of his vicinage? We have reason to believe the regulations with respect to juries will be such as shall be satisfactory. Because it does not contain all, does it contain nothing? But I conceive that this committee will see there is safety in the case, and that there is no mischief to be apprehended.

He states a case, that a man may be carried from a federal to an anti-federal corner, (and *vice versa*) where men are ready to destroy him. Is this probable? Is it presumable that they will make a law to punish men who are of different opinions in politics from themselves? Is it presumable that they will do it in one single case, unless it be such a case as must satisfy the people at large? The good opinion of the people at large must be consulted by their representatives; otherwise, mischiefs would be produced which would {561} shake the government to its foundation. As it is late, I shall not mention all the gentleman's argument, but some parts of it are so glaring that I cannot pass them over in silence. He says that the establishment of these tribunals, and more particularly in their jurisdiction of controversies between citizens of these states and foreign citizens and subjects, is like a retrospective law. Is there no difference between a tribunal which shall give justice and effect to an existing right, and creating a right that did not exist before? The debt or claim is created by the individual. He has bound himself to comply with it. Does the creation of a new court amount to a retrospective law?

We are satisfied with the provision made in this country on the subject of trial by jury. Does our Constitution direct trials to be by jury? It is required in our bill of rights, which is not a part of the Constitution. Does any security arise from hence? Have you a jury when a judgment is obtained on a replevin bond, or by default? Have you a jury when a motion is made for the commonwealth against an individual; or when a motion is made by one joint obligor against

another, to recover sums paid as security? Our courts decide in all these cases, without the intervention of a jury; yet they are all civil cases. The bill of rights is merely recommendatory. Were it otherwise, the consequence would be that many laws which are found convenient would be unconstitutional. What does the government before you say? Does it exclude the legislature from giving a trial by jury in civil cases? If it does not forbid its exclusion, it is on the same footing on which your state government stands now. The legislature of Virginia does not give a trial by jury where it is not necessary, but gives it wherever it is thought expedient. The federal legislature will do so too, as it is formed on the same principles.

The honorable gentleman says that unjust claims will be made, and the defendant had better pay them than go to the Supreme Court. Can you suppose such a disposition in one of your citizens, as that, to oppress another man, he will incur great expenses? What will he gain by an unjust demand? Does a claim establish a right? He must bring his witnesses to prove his claim. If he does not bring his witnesses, the expenses must fall upon him. Will he go on a calculation that the defendant will not defend it, or cannot {562} produce a witness? Will he incur a great deal of expense, from a dependence on such a chance? Those who know human nature, black as it is, must know that mankind are too well attached to their interest to run such a risk. I conceive that this power is absolutely necessary, and not dangerous; that, should it be attended by little inconveniences, they will be altered, and that they can have no interest in not altering them. Is there any real danger? When I compare it to the exercise of the same power in the government of Virginia, I am persuaded there is not. The federal government has no other motive, and has every reason for doing right which the members of our state legislature have. Will a man on the eastern shore be sent to be tried in Kentucky, or a man from Kentucky be brought to the eastern shore to have his trial? A government, by doing this, would destroy itself. I am convinced the trial by jury will be regulated in the manner most advantageous to the community.

## **Gov. RANDOLPH**

declared that the faults which he once saw in this system he still perceived. It was his purpose, he said, to inform the committee in what his objections to this part consisted. He confessed some of the objections against the judiciary were merely chimerical; but some of them were real, which his intention of voting in favor of adoption would not prevent him from developing.

---

**S**ATURDAY, *June 21, 1788.*

## **Mr. HARRISON**

reported, from the committee on privileges and elections, that the committee had, according to order, had under their further consideration the petition of Mr. Richard Morris, complaining of an undue election and return of William White, as a delegate to serve in this Convention for the county of Louisa, and had agreed upon a report, and come to several resolutions thereupon,

resulting as follows — on motion, ordered, that the committee of privileges and elections be discharged from further proceeding on the petition of Richard Morris, and that the petitioner have leave to withdraw the same.

[The 1st and 2d sections of the 3d article still under consideration.]

## Mr. GRAYSON.

Mr. Chairman, it seems to have been a rule with the gentlemen on the other side to argue from the excellency of human nature, in order to induce us to {563} grant away (if I may be allowed the expression) the rights and liberties of our country. I make no doubt the same arguments were used on a variety of occasions. I suppose, sir, that this argument was used when Cromwell was invested with power. The same argument was used to gain our assent to the stamp act. I have no doubt it has been invariably the argument in all countries, when the concession of power has been in agitation. But power ought to have such checks and limitations as to prevent bad men from abusing it. It ought to be granted on a supposition that men will be bad; for it may be eventually so. With respect to the judiciary, my grand objection is, that it will interfere with the state judiciaries, in the same manner as the exercise of the power of direct taxation will interfere with the same power in the state governments; there being no superintending central power to keep in order these two contending jurisdictions. This is an objection which is unanswerable in its nature.

In England they have great courts, which have great and interfering powers. But the controlling power of Parliament, which is a *central focus*, corrects them. But here each party is to shift for itself. There is no arbiter or power to correct their interference. Recurrence can be only had to the sword. I shall endeavor to demonstrate the pernicious consequences of this interference. It was mentioned, as one reason why these great powers might harmonize, that the judges of the state courts might be federal judges. The idea was approbated, in my opinion, with a great deal of justice. They are the best check we have. They secure us from encroachments on our privileges. They are the principal defence of the states. How improper would it be to deprive the state of its only defensive armor! I hope the states will never part with it. There is something extremely disgraceful in the idea. How will it apply in the practice? The independent judges of Virginia are to be subordinate to the federal judiciary. Our judges in chancery are to be judges in the inferior federal tribunals. Something has been said of the independency of the federal judges. I will only observe that it is on as corrupt a basis as the art of man can place it. The *salaries of the judges* may be augmented. Augmentation of salary is the only method that can be taken to corrupt a judge.

{564} It has been a thing desired by the people of England for many years, that the judges should be *independent*. This independency never was obtained till the second or third year of the reign of George III. It was omitted at the revolution by inattention. Their compensation is now fixed, and they hold their offices during good behavior. But I say that our federal judges are placed in a situation as liable to corruption as they could possibly be. How are judges to be operated upon? By the hopes of reward, and not the fear of a diminution of compensation. *Common decency* would prevent lessening the salary of a judge. Throughout the whole page of history, you will find the corruption of judges to have always arisen from that principle — the hope of reward.

This is left open here. The flimsy argument brought by my friend, not as his own, but as supported by others, will not hold. It would be hoped that the judges should get too much rather than too little, and that they should be perfectly independent. What if you give six hundred or a thousand pounds annually to a judge? It is but a trifling object, when, by that little money, you purchase the most invaluable blessing that any country can enjoy.

## Common Law

There is to be one *Supreme Court* — for chancery, admiralty, common pleas, and exchequer, (which great eases are left in England to four great, courts,) to which are added criminal jurisdiction, and all cases depending on the law of nations — a most extensive jurisdiction. This court has more power than any court under heaven. One set of judges ought not to have this power — and judges, particular, who have temptation always before their eyes. The court thus organized are to execute laws made by thirteen nations, dissimilar in their customs, manners, laws, and interests. If we advert to the customs of these different sovereignties, we shall find them repugnant and dissimilar. Yet they are all forced to unite and concur in making these laws. They are to form them on one principle, and on one idea, whether the civil law, **common law**, or law of nations. The gentleman was driven, the other day, to the expedient of acknowledging the necessity of having thirteen different tax laws. This destroys the principle, that he who lays a tax should feel it and bear his proportion of it. This has not been answered: it will involve consequences so absurd, that, I presume, they will not attempt to make thirteen different {565} codes. They will be obliged to make one code. How will they make one code, without being contradictory to some of the laws of the different states?

It is said there is to be *a court of equity*. There is no such thing in Pennsylvania, or in some other states in the Union. A nation, in making a law, ought not to make it repugnant to the spirit of the Constitution or the genius of the people. This rule cannot be observed in forming a general code. I wish to know how the people of Connecticut would agree with the lordly pride of your Virginia nobility. Its operation will be as repugnant and contradictory, in this case, as in the establishment of a court of equity. They may inflict punishments where the state governments will give rewards. This is not probable; but *still it is possible*. It would be a droll sight, to see a man on one side of the street punished for a breach of the federal law, and on the other side another man rewarded by the state legislature for the same act. Or suppose it were the same person that should be thus rewarded and punished at one time for the same act; it would be a droll sight, to see a man laughing on one side of his face, and crying on the other. I wish only to put this matter in a clear point of view; and I think that if thirteen states, different in every thing, shall have to make laws for the government of the whole, they cannot harmonize, or suit the genius of the people; there being no such tiling as a spirit of laws, or a pervading principle, applying to every state individually. The only promise, in this respect, is, that there shall be a republican government in each state. But it does not say whether it is to be aristocratical or democratical.

My next objection to *the federal judiciary* is, that it is not expressed in a definite manner. The jurisdiction of all cases arising under the Constitution and the laws of the Union is of stupendous magnitude.

It is impossible for human nature to trace its extent: It is so vaguely and indefinitely expressed, that its latitude cannot be ascertained. Citizens or subjects of foreign states may sue citizens of the different states in the federal courts. It is extremely impolitic to place foreigners in a better situation than our own citizens. This was never the policy of other nations. It was the policy, in England, to put foreigners on a secure footing. The statute merchant and statute staple were favorable to them. But in no country are the {566} laws more favorable to foreigners than to the citizens. If they be equally so, it is surely sufficient. Our own state merchants would be ruined by it, because they cannot recover debts so soon in the state courts as foreign merchants can recover of them in the federal courts. The consequence would be inevitable ruin to commerce. It will induce foreigners to decline becoming citizens. There is no reciprocity in it.

How will this apply to *British creditors*? I have ever been an advocate for paying the British creditors, both in Congress and elsewhere. But here we do injury to our own citizens. It is a maxim in law, that debts should be on the same original foundation they were on when contracted. I presume, when the contracts were made, the creditors had an idea of the state judiciaries only. The procrastination and delays of our courts were probably in contemplation by both parties. They could have no idea of the establishment of new tribunals to affect them. *Trial by jury* must have been in the contemplation of both parties, and the venue was in favor of the defendant. From these premises it is clearly discernible that it would be wrong to change the nature of the contracts. Whether they will make a law other than the state laws, I cannot determine.

But we are told that it is wise, politic, and preventive of controversies with foreign nations. The treaty of peace with Great Britain does not require that creditors should be put in a better situation than they were, but that there should be no hinderance to the collection of debts. It is therefore unwise and impolitic to give those creditors such an advantage over the debtors. But the citizens of different states are to sue each other in these courts. No reliance is to be put on the state judiciaries. The fear of unjust regulations and decisions in the states is urged as the reason of this jurisdiction. Paper money in Rhode Island has been instanced by gentlemen. There is one clause in the Constitution which prevents the issuing of paper money. If this clause should pass, (and it is unanimously wished by every one that it should not be objected to,) I apprehend an execution in Rhode Island would be as good and effective as in any state in the Union.

A state may sue a foreign state, or a foreign state may sue one of our states. This may form a *new*, American law of nations. Whence the idea could have originated, I cannot {567} determine, unless from the idea that predominated in the time of Henry IV. and Queen Elizabeth. They took it into their heads to consolidate all the states in the world into one great political body. Many ridiculous projects were imagined to reduce that absurd idea into practice; but they were all given up at last. My honorable friend, whom I much respect, said that the consent of the parties must be previously obtained. I agree that the consent of foreign nations must be had before they become parties; but it is not so with our states. It is fixed in the Constitution that they shall become parties. This is not reciprocal. If the Congress cannot make a law against the Constitution, I apprehend they cannot make a law to abridge it. The judges are to defend it. They can neither abridge nor extend it. There is no reciprocity in this, that a foreign state should have a right to sue one of our states, whereas a foreign state cannot be sued without its own consent. The idea to me is monstrous and extravagant. It cannot be reduced to practice.

Suppose one of our states objects to the decision; arms must be recurred to. How can a *foreign state be compelled to submit to a decision*? Pennsylvania and Connecticut had like, once, to have fallen together concerning their contested boundaries. I was convinced that the mode provided in the Confederation, for the decision of such disputes, would not answer. The success which attended it, with respect to settling bounds, has proved to me, in some degree, that it would not answer in any other case whatever. The same difficulty must attend this mode in the execution. This high court has not a very extensive original jurisdiction. It is not material. But its appellate jurisdiction is of immense magnitude; and what has it in view, unless to subvert the state governments? The honorable gentleman who presides has introduced the high court of appeals. I wish the federal appellate court was on the same foundation. If we investigate the subject, we shall find this jurisdiction perfectly unnecessary. It is said that its object is to prevent subordinate tribunals from making unjust decisions, to defraud creditors. I grant the suspicion is in some degree just. But would not an appeal to the state courts of appeal, or supreme tribunals, correct the decisions of inferior courts? Would not this put every thing right? Then there would be no interference of jurisdiction.

{568} But a gentleman (Mr. Marshall) says, we ought certainly to give this power to Congress, because our state courts have more business than they can possibly do. A gentleman was once asked to give up his estate because he had too much; but he did not comply. Have we not established district courts, which have for their object the full administration of justice? Our courts of chancery might, by our legislature, be put in a good situation; so that there is nothing in this observation.

But the same honorable gentleman says, that trial by jury is preserved by implication. I think this was the idea. I beg leave to consider that, as well as other observations of the honorable gentleman. After enumerating the subjects of its jurisdiction, and confining its original cognizance to cases affecting ambassadors and other public ministers, and those in which a state shall be a party, it expressly says, that, "in all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and *fact*." I would beg the honorable gentleman to turn his attention to the word *appeal*, which I think comprehends chancery, admiralty, **common law**, and every thing. But this is with such exceptions, and under such regulations, as Congress shall make. This, we are told, will be an ample security. Congress may please to make these exceptions and regulations, but they may not, also. I lay it down as a principle, that trial by jury is given up to the discretion of Congress. If they take it away, will it be a breach of this Constitution? I apprehend not; for, as they have an absolute appellate jurisdiction of facts, they may alter them as they may think proper. It is possible that Congress may regulate it properly; but still it is at their discretion to do it or not. There has been so much said of the excellency of the trial by jury, that I need not enlarge upon it. The want of trial by jury in the Roman republic obliged them to establish the regulation of *patron* and *client*. I think this must be the case in every country where this trial does not exist. The poor people were obliged to be defended by their *patrons*.

It may be laid down as a rule that, where the governing power possesses an unlimited control over the venue, no man's life is in safety. How is it in this system? "The trial of all crimes shall be by jury, except in cases of impeachment; {569} and such trial shall be held in the state where the said crimes shall have been committed." He has said that, when the power of a court is given,

all its appendages and concomitants are given. Allowing this to be the case by implication, how is it? Does it apply to counties? No, sir. The idea is, that the states are to the general government as counties are to our state legislatures. What sort of a vicinage is given by Congress? The idea which I call a true vicinage is, that a man shall be tried by his neighbors. But the idea here is, that he may be tried in any part of the state. Were the venue to be established according to the federal districts, it would not come up to the true idea of vicinage. Delaware sends but one member: it would then extend to that whole state. This state sends ten members, and has ten districts; but this is far from the true idea of vicinage. The allusion another gentleman has made to this trial, as practised in England, is improper. It does not justify this regulation. The jury may come from any part of the state. They possess an absolute, uncontrollable power over the venue. The conclusion, then, is, that they can hang any one they please, by having a jury to suit their purpose. They might, on particular, extraordinary occasions, suspend the privilege. The Romans did it on creating a dictator. The British government does it when the *habeas corpus* is to be suspended — when the *salus populi* is affected. I never will consent to it unless it be properly defined.

Another gentleman has said that trial by jury has not been so sacred a thing among our ancestors, and that in England it may be destroyed by an act of Parliament. I believe the gentleman is mistaken. I believe it is secured by Magna Charta and the bill of rights. I believe no act of Parliament can affect it, if this principle be true, — that a law is not paramount to the constitution. I believe, whatever may be said of the mutability of the laws, and the defect of a written, fixed constitution, that it is generally thought, by Englishmen, that it is so sacred that no act of Parliament can affect it.

The interference of the federal judiciary and the state courts will involve the most serious and even ludicrous consequences. Both courts are to act on the same persons and things, and cannot possibly avoid interference. As to connection {570} or coalition, it would be incestuous. How could they avoid it, on an execution from each court, either against the body or effects? How will it be with respect to mortgaged property? Suppose the same lands or slaves mortgaged to two different persons, and the mortgages foreclosed, one in the federal and another in the state court; will there be no interference in this case? It will be impossible to avoid interference in a million of cases. I would wish to know how it can be avoided; for it is an insuperable objection in my mind. I shall no longer fatigue the committee, but shall beg leave to make some observations another time.

## **Gov. RANDOLPH.**

Mr. Chairman, I shall state to the committee in what cases the federal judiciary appears to me to deserve applause, and where it merits dispraise. It has not yet been denied that a federal judiciary is necessary to a certain extent, Every government necessarily involves a judiciary as a constituent part. If, then, a federal judiciary be necessary, what are the characters of its powers? That it shall be auxiliary to the federal government, support and maintain harmony between the United States and foreign powers, and between different states, and prevent a failure of justice in cases to which particular state courts are incompetent. If this judiciary be reviewed as relative to these purposes, I think it will be found that nothing is granted which does not belong to a federal judiciary. Self-defence is its first object. Has not the Constitution said that the states shall not use

such and such powers, and given exclusive powers to Congress? If the state judiciaries could make decisions conformable to the laws of their states, in derogation to the general government, I humbly apprehend that the federal government would soon be encroached upon. If a particular state should be at liberty, through its judiciary, to prevent or impede the operation of the general government, the latter must soon be undermined. It is, then, necessary that its jurisdiction should "extend to all cases in law and equity arising under this Constitution and the laws of the United States."

Its next object is to perpetuate harmony between us and foreign powers. The general government, having the superintendency of the general safety, ought to be the judges how the United States can be most effectually secured and guarded against controversies with foreign nations. I presume, {571} therefore, that treaties and cases affecting ambassadors, other public ministers, and consuls, and all those concerning foreigners, will not be considered as improper subjects for a federal judiciary. Harmony between the states is no less necessary than harmony between foreign states and the United States. Disputes between them ought, therefore, to be decided by the federal judiciary. Give me leave to state some instances which have actually happened, which prove to me the necessity of the power of deciding controversies between two or more states. The disputes between Connecticut and Pennsylvania, and Rhode Island and Connecticut, have been mentioned. I need not particularize these. Instances have happened in Virginia. There have been disputes respecting boundaries. Under the old government, as well as this, reprisals have been made by Pennsylvania and Virginia on one another. Reprisals have been made by the very judiciary of Pennsylvania on the citizens of Virginia. Their differences concerning their boundaries are not yet perhaps ultimately determined. The legislature of Virginia, in one instance, thought this power right. In the case of Mr. Nathan, they thought the determination of the dispute ought to be out of the state, for fear of partiality.

It is with respect to the rights of territory that the state judiciaries are not competent. If the claimants have a right to the territories claimed, it is the duty of a good government to provide means to put them in possession of them. If there be no remedy, it is the duty of the general government to furnish one.

*Cases of admiralty and maritime jurisdiction* cannot, with propriety, be vested in particular state courts. As our national tranquillity and reputation, and intercourse with foreign nations, may be affected by admiralty decisions; as they ought, therefore, to be uniform; and as there can be no uniformity if there be thirteen distinct, independent jurisdictions, — this jurisdiction ought to be in the federal judiciary. On these principles, I conceive the subjects themselves are proper for the federal judiciary.

Although I do not concur with the honorable gentleman that the judiciary is so formidable, yet I candidly admit that there are defects in its construction, among which may be objected too great an extension of jurisdiction. I cannot say, by any means, that its jurisdiction is free from fault, {572} though I conceive the subjects to be proper. It is ambiguous in some parts, and unnecessarily extensive in others. It extends to all cases in law and equity arising under the Constitution. What are these cases of law and equity? Do they not involve all rights, from an inchoate right to a complete right, arising from this Constitution? Notwithstanding the contempt gentlemen express for technical terms, I wish such were mentioned here. I would have thought it

more safe; if it had been more clearly expressed. What do we mean by the words *arising under the Constitution*? What, do they relate to? I conceive this to be very ambiguous. If my interpretation be right, the word arising will be carried so far that it will be made use of to aid and extend the federal jurisdiction.

As to controversies between the citizens of different states, I am sure the general government will make provision to prevent men being harassed to the federal court. But I do not see any absolute necessity for vesting it with jurisdiction in these cases.

With respect to that part which gives *appellate jurisdiction*, both as to law and fact, I concur with the honorable gentleman who presides, that it is unfortunate, and my lamentation over it would be incessant, were there no remedy. I can see no reason for giving it jurisdiction with respect to fact as well as law; because we find, from our own experience, that appeals as to fact are not necessary. My objection would be unanswerable, were I not satisfied that it contains its own cure, in the following words: "with such exceptions and under such regulations as Congress shall make." It was insisted on by gentlemen that these words could not extend to law and fact, and that they could not separate the fact from the law. This construction is irrational; for, if they cannot separate the law from the fact, and if the exceptions are prevented from applying to law and fact, these words would have no force at all. It would be proper to refer here to any thing that could be understood in the federal court. They may except generally both as to law and fact, or they may except as to the law only, or fact only. Under these impressions, I have no difficulty in saying that I consider it as an unfortunate clause. But when I thus impeach it, the same candor which I have hitherto followed calls upon me to declare that it is not so dangerous as {573} it has been represented. Congress can regulate it properly, and I have no doubt they will. An honorable gentleman has asked, Will you put the body of the state in prison? How is it between independent states? If a government refuses to do justice to individuals, war is the consequence. Is this the bloody alternative to which we are referred? Suppose justice was refused to be done by a particular state to another; I am not of the same opinion with the honorable gentleman. I think, whatever the law of nations may say, that any doubt respecting the construction that a state may be plaintiff, and not defendant, is taken away by the words *where a state shall be a party*. But it is objected that this is retrospective in its nature. If thoroughly considered, this objection will vanish. It is only to render valid and effective existing claims, and secure that justice, ultimately, which is to be found in every regular government. It is said to be disgraceful. What would be the disgrace? Would it not be that Virginia, after eight states had adopted the government, none of which opposed the federal jurisdiction in this case, rejected it on this account? I was surprised, after hearing him speak so strenuously in praise of the trial by jury, that he would rather give it up than have it regulated as it is in the Constitution. Why? Because it is not established in civil cases, and in criminal cases the jury will not come from the vicinage. It is not excluded in civil cases, nor is a jury from the vicinage in criminal cases excluded. This house has resounded repeatedly with this observation — that where a term is used, all its concomitants follow from the same phrase. Thus, as the trial by jury is established in criminal cases, the incidental right of challenging and excepting is also established, which secures, in the utmost latitude, the benefit of impartiality in the jurors. I beg those gentlemen who deny this doctrine to inform me what part of the bill of English rights, or Great Charter, provides this right. The Great Charter only provides that "no man shall be deprived of the free enjoyment of his life, liberty, or property, unless declared to be forfeited by the judgment of his peers, or the law of the land."

The bill of rights gives no additional security on the subject of trial by jury. Where is the provision made, in England, that a jury shall be had in civil cases? This is secured by no constitutional provision. It is left to the temper and genius of the people to preserve and protect it.

{574} I beg leave to differ from my honorable friends in answering this objection. They said that, in case of a general rebellion, the jury was to be drawn from some other part of the country. I know that this practice is sanctified by the usages in England. But I always thought that this was one of those instances to which that nation, though alive to liberty, had unguardedly submitted. I hope it will never be so here. If the whole country be in arms, the prosecutor for the commonwealth can get a good jury, by challenging improper jurors. The right of challenging, also, is sufficient security for the person accused. I can see no instance where this can be abused. It will answer every purpose of the government, and individual security. In this whole business we have had *argumenta ad hominem* in abundance. A variety of individuals; and Classes of men, have been solicited to opposition. I will pass by the *glance* which was darted at some gentlemen in this house, and take no notice of it; because the *lance shivered as against adamantine*. Gentlemen then intimidate us on the subject of the lands settled to the westward, and claimed by different claimants, who, they urge, will recover them in the federal court. I will observe that, as to Mr. Henderson's claim, if they look at the laws, they will see a compensation made for him: he has acquiesced, and has some of the lands. The Indiana Company has been dissolved. The claim is dormant, and will probably never be revived. I was once well acquainted with these matters: perhaps I may have forgotten. I was once thoroughly persuaded of the justice of their claim. I advocated it, not only as a lawyer in their behalf, but supported it as my opinion. I will not say how far the acts of Assembly, passed when they had full power, may have operated respecting it. One thing is certain — that, though they may have the right, yet the remedy will not be sought against the settlers, but the state of Virginia. The court of equity will direct a compensation to be made by the state, the claimants being precluded at law from obtaining their right, and the settlers having now an indefeasible title under the state.

The next is Lord Fairfax's quitrents. He died during the war. In the year 1782, an act passed sequestering all quitrents, then due, in the hands of the persons holding the lands, until the right of descent should be known, and the {575} General Assembly should make final provision therein. This act directed all quitrents, thereafter becoming due, to be paid into the public treasury; so that, with respect to his descendants, this act confiscated the quitrents. In the year 1783, an act passed restoring to the legal representative of the proprietor the quitrents due to him at the time of his death. But in the year 1785 another act passed, by which the inhabitants of the Northern Neck are exonerated and discharged from paying composition and quitrents to the commonwealth. This last act has completely confiscated this property. It is repugnant to no part of the treaty, with respect to the quitrents confiscated by the act of 1782.

I ask the Convention of the free people of Virginia if there can be honesty in rejecting the government because justice is to be done by it? I beg the honorable gentleman to lay the objection to his heart — let him consider it seriously and attentively. Are we to say that we shall discard this government because it would make us all honest? Is this to be the language of the select representatives of the free people of Virginia?

An honorable gentleman observed, to-day, that there is no instance where foreigners have this advantage over the citizens. What is the reason of this? Because a Virginian creditor may go about for a lamentable number of years before he can get justice, while foreigners will get justice immediately. What is the remedy? Honesty. Remove the procrastination of justice, make debts speedily payable, and the evil goes away. But you complain of the evil because you will not remove it. If a foreigner can recover his debts in six months, why not, make a citizen do so? There will then be reciprocity. This term is not understood. Let America be compared to any nation with which she has connection, and see the difference with respect to justice. I am sorry to make the comparison; but the truth is that, in those nations, justice is obtained with much more facility than in America.

Gentlemen will perhaps ask me, Why, if you know the Constitution to be ambiguous, will you vote for it? I answer, that I see a power which will be probably exercised to remedy this defect. The style of the ratification will remove this mischief. I do not ask for this concession — that human nature is just and absolutely honest. But I am fair {576} when I say that the nature of man is capable of virtue where there is even a temptation, and that the defects in this system will be removed. The appellate jurisdiction might be corrected, as to matters of fact, by the exceptions and regulations of Congress, but certainly will be removed by the amendatory provision in the instrument itself; so that we do not depend on the virtue of our representatives only, but the sympathy and feelings between the inhabitants of the states. On the same grounds, the sum on which appeals will be allowed may be limited to a considerable amount, in order to prevent vexatious and oppressive appeals. The appellate jurisdiction, as to fact, and in trivial sums, are the two most material defects. If it be not considered too early, as ratification has not yet been spoken of, I beg leave to speak of it. If I did believe, with the honorable gentleman, that all power not expressly retained was given up by the people, I would detest this government.

But I never thought so, nor do I now. If, in the ratification, we put words to this purpose, "and that all authority not given is retained by the people, and may be resumed when perverted to their oppression; and that no right can be cancelled, abridged, or restrained, by the Congress, or any officer of the United States," — I say, if we do this, I conceive that, as this style of ratification would manifest the principles on which Virginia adopted it, we should be at liberty to consider as a violation of the Constitution every exercise of a power not expressly delegated therein. I see no objection to this. It is demonstrably clear to me that rights not given are retained, and that liberty of religion, and other rights, are secure. I hope this committee will not reject it for faults which can be corrected, when they see the consequent confusion that will follow.

---

**MONDAY, *June 23, 1788.***

[The incomplete and inaccurate state in which the speeches of this day appear must be ascribed to the absence of the person who took the rest of the speeches in short hand. As he could not possibly attend on this day, the printer hereof, earnestly desirous of conveying as much information as possible to the public on so important a subject, has endeavored, by the assistance of his notes, to give as full and impartial an account of this day's proceedings as was practicable without the aid of stenography.]

[The 1st and 2d sections of the 3d article still under consideration.]

## Mr. NICHOLAS

informed the committee that he had {577} attempted, on a former occasion, to deliver his sentiments; on the subject of the Constitution; he therefore did not mean to trouble the committee now, — but he hoped that gentlemen were Satisfied with the arguments that had been urged by those who were last up, and that the clerk would proceed to read the next clause.

## Mr. HENRY

replied, that he did not consider the objections answered in such a manner as gave satisfaction. He hoped gentlemen would consider and remember that; if they were not heard now, they may never be heard again on the subject: it was an important part of the proposed plan of government, which ought, if possible, to be fairly understood; he hoped, therefore, that gentlemen would not be impatient. He proceeded to state the cases which might arise under the proposed plan of government, and the probable *interference of the federal judiciary with the state judiciaries*; the dangers and difficulties which would arise to the citizens from the operation of a federal revenue law which would extend to the lands, tenements, and other property, coming under the denomination of direct taxes — and, when intrusted to a federal collector, might be attended with abuses of a dangerous and alarming tendency; the property of the citizens seized and sold for one tenth part of its value; they ousted from their house and home, with no other resource for redress but to the federal government, which might perhaps be five hundred miles from the place of sale. He observed, This may be done, Mr. Chairman; for we have instances to prove my assertion, even in some parts of our state, where persons have been turned out of house and home by our collectors, and their property sold for a mere trifle; and if it had not been for an act of the last Assembly, this practice would still have continued. Mr. Chairman, I feel myself particularly interested in this part of the Constitution. I perceive dangers must and will arise; and, when the laws of that government come to be enforced here, I have. my fears for the consequences. It is not on that paper before you we have to rely, should it be received; it is on those who maybe appointed under it. It will be an empire of menD and not of laws, Your rights and liberties rest upon men. Their wisdom and integrity may preserve you; but, on the contrary, should they prove ambitious and designing, {578} may they not flourish and triumph upon the ruins of their country?

He then proceeded to state the appellate jurisdiction of the judicial power, both as to law and fact, with such exceptions and under such regulations as Congress shall make. He observed, that, as Congress had a right to organize the federal judiciary, they might or might not have recourse to a jury, as they pleased. He left it to the candor of the honorable gentleman to say whether those persons who were at the expense of taking witnesses to Philadelphia, or wherever the federal judiciary may sit, could be certain whether they were to be heard before a jury or not. An honorable gentleman (Mr. Marshall) the other day observed, that he conceived the trial by jury better secured under the plan on the table than in the British government, or even in our bill of rights. I have the highest veneration and respect for the honorable gentleman, and I have experienced his candor on all occasions; but, Mr. Chairman, in this instance, he is so materially mistaken that I cannot but observe, he is much in error. I beg the clerk to read that part of the

Constitution which relates to trial by jury. [*The clerk then read the 8th article of the bill of rights.*]

## **Mr. MARSHALL**

rose to explain what he had before said on this subject: he informed the committee that the honorable gentleman (Mr. Henry) must have misunderstood him. He said that he conceived the trial by jury was as well secured, and not better secured, in the proposed new Constitution as in our bill of rights. [*The clerk then read the 11th article of the bill of rights.*]

## **Mr. HENRY.**

Mr. Chairman: the gentleman's candor, sir, as I informed you before, I have the highest opinion of, and am happy to find he has so far explained what he meant; but, sir, has he mended the matter? Is not the ancient trial by jury preserved in the Virginia bill of rights? and is that the case in the new plan? No, sir; they can do it if they please. Will gentlemen tell me the trial by a jury of the vicinage where the party resides is preserved? True, sir, there is to be a trial by the jury in the state where the fact was committed; but, sir, this state, for instance, is so large that your juries may be collected five hundred miles from where the party resides — no neighbors who are acquainted with their characters, their good or bad conduct in {579} life, to judge of the unfortunate man Who may be thus exposed to the rigor of that government. Compare this security, then, sir, in our bill of rights with that in the new plan of government; and in the first you have it, and in the other, in my opinion, not at all. But, sir, in what situation will our citizens be, who have made large contracts under our present government? They will be called to a federal court, and tried under the retrospective laws; for it is evident, to me at least, that the federal court must look back, and give better remedies, to compel individuals to fulfil them.

The whole history of human nature cannot produce a government like that before you. The manner in which the judiciary and other branches of the government are formed, seems to me calculated to lay prostrate the states, and the liberties of the people. But, sir, another circumstance ought totally to reject that plan, in my opinion; which is, that it cannot be understood, in many parts, even by the supporters of it. A constitution, sir, ought to be, like a beacon, held up to the public eye, so as to be understood by every, man. Some gentlemen have observed that the word *jury* implies a jury of the vicinage. There are so many inconsistencies in this, that, for my part, I cannot understand it. By the bill of rights of England, a subject has a right to a trial by his peers. What is meant by his peers? Those who reside near him, his neighbors, and who are well acquainted with his character and situation in life. Is this secured in the proposed plan before you? No, sir. As I have observed before, what is to become of the *purchases of the Indians*? — those unhappy nations who have given up their lands to private purchasers; who, by being made drunk, have given a thousand, nay, I might say, ten thousand acres, for the trifling sum of sixpence! It is with true concern, with grief, I tell you that I have waited with pain to come to this part of the plan; because I observed gentlemen admitted its being defective, and, I had my hopes, would have proposed amendments But this part they have defended; and this convinces me of the necessity of obtaining amendments before it is adopted. They have defended it with ingenuity and perseverance, but by no means satisfactorily. If

previous amendments are not obtained, the trial by jury is gone. British debtors will be ruined by being dragged to {580} the federal court, and the liberty and happiness of our citizens gone, never again to be recovered.

## **Mr. STEPHENS.**

Mr. Chairman: the gentleman, sir, means to frighten us by his bugbears of hobgoblins, his sale of lands to pay taxes, Indian purchases, and other horrors, that I think I know as much about as he does. I have travelled through the greater part of the Indian countries. I know them well, sir. I can mention a variety of resources by which the people may be enabled to pay their taxes.

[He then went into a description of the Mississippi and its waters, Cook's River, the Indian tribes residing in that country, and the variety of articles which might be obtained to advantage by trading with these people.]

I know, Mr. Chairman, of several rich mines of gold and silver in the western country; and will the gentleman tell me that these precious metals will not pay taxes? If the gentleman does not like this government, let him go and live among the Indians. I know of several nations that live very happily; and I can furnish him with a vocabulary of their language.

## **Mr. GEORGE NICHOLAS**

observed, that he should only make a few observations on the objections that had been stated to the clauses now under consideration — and not renew the answer already given. The gentleman says he would admit some parts of the Constitution, but that he would never agree to that now before us. t beg gentlemen, when they retire from these walls, that they would take the Constitution, and strike out such parts as the honorable gentleman (Mr. Henry) has given his approbation to, and they will find what a curious kind of government he would make it. It appears to me, sir, that he has objected to the whole; and that no part, if he had his way, would be agreed to.

It has been observed, sir, that the judges appointed under the British constitution are more independent than those to be appointed under the plan on the table. This, sir, like other assertions of honorable gentlemen, is equally groundless. May there not be a variety of pensions granted to the judges in England, so as to influence them? and cannot they be removed by a vote of both houses of Parliament? This is not the case with our federal judges. They are to be appointed during good behavior, and cannot be removed, and at stated times are to receive a compensation for their services. {581} We are told, sir, Of fraudulent assignments of bonds. Do gentlemen suppose that the federal judges will not see into such conduct, and prevent it? Western claims are to be revived too — new suits commenced in the federal courts for disputes already determined in this state. This, sir, this cannot be, for they are already determined under the laws of this state, and, therefore, are conclusive.

But, sir, we are told that two executions are to issue — one from the federal court and the other from the state court. Do not gentlemen know, sir, that the first execution is good, and must be satisfied, and that the debtor cannot be arrested under the second execution? Quitrents, too, sir, are to be sued for. To satisfy gentlemen, sir, I beg leave to refer them to an act of Assembly

passed in the year 1782, before the peace, which absolutely abolished the quitrents, and discharged the holders of lands in the Northern Neck from any claim of that kind. [He then read the act alluded to.] As to the claims of certain companies who purchased lands of the Indians, they were determined prior to the opening of the land-office by the Virginia Assembly; and it is not to be supposed they will again renew their claims. But, sir, there are gentlemen who have come by large possessions, that it is not easy in account for.

[Here Mr. HENRY interfered, and hoped the honorable gentleman meant nothing personal.]

## **Mr. NICHOLAS**

observed, I mean what I say, sir. But we are told of *the blue laws* of Massachusetts: are these to be brought in debate here? Sir, when the gentleman mentioned them the day before yesterday, I did not well understand what he meant; but from inquiry, I find, sir, they were laws made for the purpose of preserving the morals of the people, and took the name of *blue* laws from being written on blue paper. But how does this apply to the subject before you? Is this to be compared to the plan now on the table? Sir, this puts me in mind of an observation I have heard out of doors; which was that, because the New Englandmen wore black Stockings and plush breeches, there can be no union with them. We have heard a great deal of the trial by jury — a design to destroy the state judiciaries, and the destruction of the state governments. This, sir, has already been travelled over, and I think sufficiently explained {582} to render it unnecessary for me to trouble this committee again on the subject.

## **Mr. HENRY.**

Mr. Chairman, if the gentleman means personal insinuations, or to wound my private reputation, I think this an improper place to do so. If, on the other hand, he means to go on in the discussion of the subject, he ought not to apply arguments which might tend to obstruct the discussion. As to land matters, I can tell how I came by what I have; but I think that gentleman (Mr. Nicholas) has no right to make that inquiry of me. I meant not to offend any one. I have not the most distant idea of injuring any gentleman: my object was to obtain information. If I have offended in private life, or wounded the feelings of any man, I did not intend it. I hold what I hold in right, and in a just manner. I beg pardon, sir, for having intruded thus far.

## **Mr. NICHOLAS.**

Mr. Chairman, I meant no personality in what I said, nor did I mean any resentment. If such conduct meets the contempt of that gentleman, I can only assure him it meets with an equal degree of contempt from me.

[Mr. President observed, that he hoped gentlemen would not be personal; that they would proceed to investigate the subject calmly, and in a peaceable manner.]

## **Mr. NICHOLAS**

replied, that he did not mean the honorable gentleman, (Mr. Henry;) but he meant those who had taken up large tracts of land in the western country. The reason he would not explain himself before was, that he thought some observations dropped from the honorable gentleman which ought not to have come from one gentleman to another.

## **Mr. MONROE.**

Mr. Chairman: I am satisfied of the propriety of closing this subject, sir; but I must beg leave to trouble the committee a little further. We find, sir, that two different governments are to have concurrent jurisdiction in the same object. May not this bring on a conflict in the judiciary? And if it does, will it not end in the ruin of one or the other? There will be two distinct judiciaries — one acting under the federal authority, the other the state authority. May it not also tend to oppress the people by having suits going on against them in both courts for the same debt?

## **{583} Mr. MADISON**

answered Mr. Monroe, by observing that the county courts were perfectly independent of each other, where the same inconvenience might arise: the states are also independent of each other. We well know, sir, that foreigners cannot get justice done them in these courts, and this has prevented many wealthy gentlemen from trading or residing among us, there are also many public debtors, who have escaped from justice for want of such a method as is pointed out in the plan on the table. To prevent any interference of the federal and state judiciaries, the judges of the states may be deprived of holding any office in the general government.

## **Mr. GRAYSON**

observed, that the federal and state judiciaries could not, on the present plan, be kept in perfect harmony, As to the trial by jury being safer here than in England, that I deny. Jury trials are secured there, sir, by Magna Charta, in a clear and decided manner; and that here it is not in express and positive terms, is admitted by most gentlemen who now hear me. He concluded with saying, that he did not believe there existed a social compact upon the face of the earth so vague and so indefinite as the one now on the table.

## **Mr. HENRY**

went into an explanation of the trial by jury, and the difference between the new plan and our bill of rights, and observed that the latter had been violated by several acts of Assembly, which could only be justified by necessity. He begged gentlemen to consider how necessary it was to have that invaluable blessing secured: those feeble implications, relative to juries, in the new plan, might create the unhappy tendency of factions in a republican government, which nothing but a monarchy could suppress. As to people escaping with public money, the gentleman must know that bond and security are always taken on occasions where men are intrusted with collection of it; and these can follow them, and be sued for and recovered in another state, or wherever they may escape to.

## Mr. MADISON

here observed, that the declaration on that paper could not diminish the security of the people, unless a majority of their representatives should concur in a violation of their rights.

## Mr. GEORGE MASON.

Mr. Chairman, I should not have troubled the committee again on this subject, were {584} there not some arguments in support of that plan, sir, that appear to me totally unsatisfactory. With respect to concurrent jurisdiction, sir, the honorable gentleman has observed, that county courts had exercised this right without complaint. Have Hanover and Henrico the same objects? Can an officer in either of those counties serve a process in the other? The federal judiciary has concurrent jurisdiction throughout the states, and therefore must interfere with the state judiciaries. Congress can pass a law constituting the powers of the federal judiciary throughout the states: they may also pass a law vesting the federal power in the state judiciaries. These laws are *permanent*, and cannot be controverted by any law of the state.

If we were forming a general government, and not states, I think we should perfectly comply with the genius of the paper before you; but if we mean to form one great national government for thirteen states, the arguments which I have heard hitherto in support of this part of the plan do not apply at all. We are willing to give up all powers which are necessary to preserve the peace of the Union, so far as respects foreign nations, or our own preservation; but we will not agree to a federal judiciary, which is not necessary for this purpose, because the powers there granted will tend to oppress the middling and lower class of people. A poor man seized by the federal officers, and carried to the federal court, — has he any chance under such a system as this? Justice itself may be bought too dear; yet this may be the case. It may cost a man five hundred pounds to recover one hundred pounds. These circumstances are too sacred to leave undefined; and I wish to see things certain, positive, and clear. But, however, sir, these matters have been so fully investigated, that I beg pardon for having intruded so far, and I hope we shall go on in the business.

[The 1st section of the 4th article was then read.]

## Mr. GEORGE MASON.

Mr. Chairman: the latter part of this clause, sir, I confess I do not understand — *Full faith and credit shall be given to all acts*; and how far it may be proper that Congress shall declare the effects, I cannot clearly see into.

## Mr. MADISON.

Mr. Chairman, it appears to me that this is a clause which is absolutely necessary. I never heard {585} any objection to this Clause before, and have not employed a thought on the subject.

[The 2d section was then read.]

## Mr. GEORGE MASON.

Mr. Chairman, on some former part of the investigation of this subject, gentlemen were pleased to make some observations on the security of *property* coming within this section. It was then said, and I now say, that *there is no security*; nor have gentlemen convinced me of this.

[The 3d section was then read.]

## Mr. GRAYSON.

Mr. Chairman: it appears to me, sir, under this section, there never can be *a southern state admitted into the Union*. There are seven states, which are a majority, and whose interest it is to prevent it. The balance being actually in their possession, they will have the regulation of commerce, and the federal ten miles square wherever they please. It is not to be supposed, then, that they *will admit* any southern state into the Union, so as to lose that majority.

## Mr. MADISON

replied, that he thought this part of the plan *more favorable to the Southern States* than the present Confederation, as there was a greater chance of *new states* being admitted.

## Mr. GEORGE MASON

took a retrospective view of several parts which had been before objected to. He endeavored to demonstrate the dangers that must inevitably arise from *the insecurity* of our rights and privileges, as they depended on vague, indefinite, and ambiguous implications. The adoption of a system so replete with defects, he apprehended, could not but be productive of the most *alarming* consequences. He dreaded popular resistance to its operation. He expressed, in emphatic terms, the *dreadful effects* which must ensue, should the people resist; and concluded by observing, that he trusted gentlemen would pause before they would decide a question which involved such awful consequences.

## Mr. LEE, (of Westmoreland.)

Mr. Chairman, my feelings are so oppressed with the declarations of my honorable friend, that I can no longer suppress my utterance, I respect the honorable gentleman, and never believed I should live to have heard fall from his lips opinions so injurious to our country, and so opposite to the dignity of this assembly. {586} If the dreadful picture which he has drawn be so abhorrent to his mind as he has declared, let me ask the honorable gentleman if he has not pursued the very means to bring into action the horrors which he deprecates. Such speeches within these walls, from a character so venerable and estimable, easily progress into overt acts, among the less thinking and the vicious. Then, sir, I pray you to remember, and the gentlemen in opposition not to forget, should these impious scenes commence, which my honorable friend might abhor, and which I execrate, whence and how they began.

God of heaven avert from my country the dreadful curse!

But if the madness of some, and the vice of others, should risk the awful appeal, I trust that the friends to the paper on your table, conscious of the justice of their cause, conscious of the integrity of their views, and recollecting their uniform moderation, will meet the afflicting call with that firmness and fortitude which become men summoned to defend what they conceive to be the true interest of their Country, and will prove to the world that, although they boast not, in words, of love of country and affection for liberty, still they are not less attached to these invaluable objects than their vaunting opponents, and can, with alacrity and resignation, encounter every difficulty and danger in defence of them.

The remainder of the Constitution was then read, and the several objectionable parts noticed by the opposition, particularly that which related to the mode pointed out by which *amendments* were to be obtained; and, after discussing it fully, the Convention then rose.

---

**T**UESDAY, *June 24, 1788.*

**Mr. WYTHE**

arose, and addressed the chairman; but he spoke so very low that his speech could not be fully comprehended. He took a cursory view of the situation of the United States previous to the late war, their resistance to the oppression of Great Britain, and the glorious conclusion and issue of that arduous conflict. To perpetuate the blessings of freedom, happiness, and independence, he demonstrated the necessity of a firm, indissoluble union of the states. He expatiated on the defects and inadequacy of the Confederation, and the consequent misfortunes {587} suffered by the people. He pointed out the impossibility of securing liberty without society, the impracticability of acting personally, and the inevitable necessity of delegating power to agents. He then recurred to the system under consideration. He admitted its imperfection, and the propriety of some amendments. But the excellency of many parts of it could not be denied by its warmest opponents. He thought that experience was the best guide, and could alone develop its consequences. Most of the improvements that had been made in the science of government, and other sciences, were the result of experience. He referred it to the advocates for amendments, whether, if they were indulged with any alterations they pleased, there might not still be a necessity of alteration.

He then proceeded to the consideration of the question of previous or subsequent *amendments*. The critical situation of America, the extreme danger of dissolving the Union, rendered it necessary to adopt the latter alternative. He saw no danger from this. It appeared to him, most clearly, that any amendments which might be thought necessary would be easily obtained *after ratification*, in the manner proposed by the Constitution, as amendments were desired by all the states, and had already been proposed by the several states. He then *proposed* that the committee *should ratify the Constitution*, and that whatsoever amendments might be deemed necessary

should be recommended to the consideration of the Congress which should first assemble under the Constitution, to be acted upon according to the mode prescribed therein.

[The resolution of ratification proposed by Mr. Wythe was then read by the clerk; which see hereafter in the report of the committee to the Convention.]

## Mr. HENRY,

after observing that the proposal of ratification was premature, and that the importance of the subject required the most mature deliberation, proceeded thus: —

The honorable member must forgive me for declaring my dissent from it; because, if I understand it rightly, it admits that the new system is defective, and most capitally; for, immediately after the proposed ratification, there comes a declaration that the paper before you is not intended to violate any of these three great rights — the liberty of religion, liberty of the press, and the trial by jury. What is the inference {588} when you enumerate the rights which you are to enjoy? That those not enumerated are relinquished. There are only three things to be retained — religion, freedom of the press, and jury trial. Will not the ratification carry every thing, without excepting these three things? Will not all the world pronounce that we intended to give up all the rest? Every thing it speaks of, by way of rights, is comprised in these things. Your subsequent amendments only go to these three amendments.

I feel myself distressed, because the necessity of securing our *personal rights* seems not to have pervaded the minds of men; for many other valuable things are omitted: — for instance, general warrants, by which an officer may search suspected places, without evidence of the commission of a fact, or seize any person without evidence of his crime, ought to be prohibited. As these are admitted, any man may be seized, any property may be taken, in the most arbitrary manner, without any evidence or reason. Every thing the most sacred may be searched and ransacked by the strong hand of power. We have infinitely more reason to dread general warrants here than they have in England, because there, if a person be confined, liberty may be quickly obtained by the writ of *habeas corpus*. But here a man living many hundred miles from the judges may get in prison before he can get that writ.

Another most fatal omission is with respect to standing armies. In our bill of rights of Virginia, they are said to be dangerous to liberty, and it tells you that the proper defence of a free state consists in militia; and so I might go on to ten or eleven things of immense consequence secured in your bill of rights, concerning which that proposal is silent. Is that the language of the bill of rights in England? Is it the language of the American bill of rights, that these three rights, and these only, are valuable? Is it the language of men going into a new government? Is it not necessary to speak of those things before you go into a compact? How do these three things stand? As one of the parties, we declare we do not mean to give them up. This is very dictatorial — much more so than the conduct which proposes alterations as the condition of adoption. In a compact there are two parties — one excepting, and another proposing. As a party, we propose that we shall secure these three things; {589} and before we have the assent of the other contracting party, we go into the compact, and leave these things at their mercy.

What will be the consequence? Suppose the other states shall call this dictatorial. They will say, Virginia has gone into the government, and carried with her certain propositions, which, she says, ought to be concurred in by the other states. They will declare that she has no right to dictate to other states the conditions on which they shall come into the Union. According to the honorable member's proposal, the ratification will cease to be obligatory unless they accede to these amendments. We have ratified it. You have committed a violation, will they say. They have not violated it. We say, we will go out of it. You are then reduced to a sad dilemma — to give up these three rights, or leave the government. This is worse than our present Confederation, to which we have hitherto adhered honestly and faithfully. We shall be told we have violated it, because we have left it for the infringement and violation of conditions which they never agreed to be a part of the ratification. The ratification will be complete. The proposal is made by the party. We, as the other, accede to it, and propose the security of these three great rights; for it is only a proposal. In order to secure them, you are left in that state of fatal hostility which I shall as much deplore as the honorable gentleman. I exhort gentlemen to think seriously before they ratify this Constitution, and persuade themselves that they will succeed in making a feeble effort to get amendments after adoption.

With respect to that part of the proposal which says that every power not granted remains with the people, it must be previous to adoption, or it will involve this country in inevitable destruction. To talk of it as a thing subsequent, not as one of your unalienable rights, is leaving it to the casual opinion of the Congress who shall take up the consideration of that matter. They will not reason with you about the effect of this Constitution. They will not take the opinion of this committee concerning its operation. They will construe it as they please. If you place it subsequently, let me ask the consequences. Among ten thousand *implied powers* which they may assume, they may, if we be engaged in war, liberate every one of your slaves if they please. And this must and will be done by men, a majority of whom have not {590} a common interest with you. They will, therefore, have no feeling of your interests. It has been repeatedly said here, that the great object of a national government was national defence. That power which is said to be intended for security and safety may be rendered detestable and oppressive. If they give power to the general government to provide for the *general defence*, the means must be commensurate to the end. All the means in the possession of the people must be given to the government which is intrusted with the public defence. In this state there are two hundred and thirty-six thousand blacks, and there are many in several other states. But there are few or none in the Northern States; and yet, if the Northern States shall be of opinion that our slaves are numberless, they may call forth every national resource. May Congress not say, *that every black man must fight?* Did we not see a little of this last war? We were not so hard pushed as to make emancipation general; but acts of Assembly passed that every slave who would go to the army should be free. Another thing will contribute to bring this event about. Slavery is detested. We feel its fatal effects — we deplore it with all the pity of humanity. Let all these considerations, at some future period, press with full force on the minds of Congress. Let that urbanity, which I trust will distinguish America, and the necessity of national defence, — let all these things operate on their minds; they will search that paper, and see if they have power of manu-mission. And have they not, sir? Have they not power to provide for the general defence and welfare? May they not think that these call for the abolition of slavery? May they not pronounce all slaves free, and will they not be warranted by that power? This is no ambiguous implication or logical deduction. The paper speaks to the point: they have the power in clear, unequivocal terms, and will clearly and

certainly exercise it. As much as I deplore slavery, I see that prudence forbids its abolition. I deny that the general government ought to set them free, because a decided majority of the states have not the ties of sympathy and fellow-feeling for those whose interest would be affected by their emancipation. The majority of Congress is to the north, and the slaves are to the south.

In this situation, I see a great deal of the property of the people of Virginia in jeopardy, and their peace and tranquility {591} gone. I repeat it again, that it would rejoice my very soul that every one of my fellow-beings was emancipated. As we ought with gratitude to admire that decree of Heaven which has numbered us among the free, we ought to lament and deplore the necessity of holding our fellowmen in bondage. But is it practicable, by any human means, to liberate them without producing the most dreadful and ruinous consequences? We ought to possess them in the manner we inherited them from our ancestors, as their manumission is incompatible with the felicity of our country. But we ought to soften, as much as possible, the rigor of their unhappy fate. I know that, in a variety of particular instances, the legislature, listening to complaints, have admitted their emancipation. Let me not dwell on this subject. I will only add that this, as well as every other property of the people of Virginia, is in jeopardy, and put in the hands of those who have no similarity of situation with us. This is a local matter, and I can see no propriety in subjecting it to Congress.

With respect to subsequent amendments, proposed by the worthy member, I am distressed when I hear the expression. It is a new one altogether, and such a one as stands against every idea of fortitude and manliness in the states, or any one else. Evils admitted in order to be removed subsequently, and tyranny submitted to in order to be excluded by a subsequent alteration, are things totally new to me. But I am sure the gentleman meant nothing but to amuse the committee. I know his candor. His proposal is an idea dreadful to me. I ask, does experience warrant such a thing from the beginning of the world to this day? Do you enter into a compact first, and afterwards settle the terms of the government? It is admitted by every one that this is a compact.

Although the Confederation be lost, it is a compact, constitution, or something of that nature. I confess I never heard of such an idea before. It is most abhorrent to my mind. You endanger the tranquillity of your country, you stab its repose, if you accept this government unaltered. How are you to allay animosities? — for such there are, great and fatal.

He flatters me, and tells me that I could influence the people, and reconcile them to it. Sir, their sentiments are {592} as firm and steady as they are patriotic. Were I to ask them to apostatize from their native religion, they would despise me. They are not to be shaken in their opinions with respect to the propriety of preserving their rights. You never can persuade them that it is necessary to relinquish them. Were I to attempt to persuade them to abandon their patriotic sentiments, I should look on myself as the most infamous of men.

I believe it to be a fact that the great body of yeomanry are in decided opposition to it. I may say with confidence that, for nineteen counties adjacent to each other, nine tenths of the people are conscientiously opposed to it. I may be mistaken, but I give you it as my opinion; and my opinion is founded on personal knowledge, in some measure, and other good authority. I have not hunted *popularity* by declaiming to injure this government. Though public fame might say

so, it was not owing to me that this flame of opposition has been kindled and spread. These men never will part with their political opinions. If they should see their political happiness secured to the latest posterity, then, indeed, they may agree to it. Subsequent amendments will not do for men of this cast. Do you consult the Union in proposing them? You may amuse them as long as you please, but they will never like it. You have not solid reality — the hearts and hands of the men who are to be governed.

Have gentlemen no respect to the actual dispositions of the people in the adopting states? Look at Pennsylvania and Massachusetts. These two great states have raised as great objections to that government as we do. There was a majority of only nineteen in Massachusetts. We are told that only ten thousand were represented in Pennsylvania, although seventy thousand had a fight to be represented. Is not this a serious thing? Is it not worth while to turn your eyes, for a moment, from subsequent amendments to the situation of your country? Can you have a lasting union in these circumstances? It will be in vain to expect it. But if you agree to previous amendments, you shall have union, firm and solid.

I cannot conclude without saying that I shall have nothing to do with it, if subsequent amendments be determined upon. Oppressions will be carried on as radically by the majority when adjustments and accommodations will be held up. I {593} say, I conceive it my duty, if this government is adopted before it is amended, to go home. I shall act as I think my duty requires. Every other gentleman will do the same. Previous amendments, in my opinion, are necessary to procure peace and tranquillity. I fear, if they be not agreed to, every movement and operation of government will cease; and how long that baneful thing, civil discord, will stay from this country, God only knows: When men are free from restraint, how long will you suspend their fury? The interval between this and bloodshed is but a moment. The licentious and wicked of the community will seize with avidity every thing you hold. In this unhappy situation, what is to be done? It surpasses my stock of wisdom. If you will, in the language of freemen, stipulate that there are rights which no man under heaven can take from you, you shall have me going along with you; not otherwise.

[Here Mr Henry informed the committee that he had a resolution prepared, to refer a declaration of rights, with certain amendments to the most exceptionable parts Of the Constitution, to the other states in the confederacy, for their consideration, previous to its ratification, The clerk than read the resolution, the declaration of rights, and amendments, which were nearly the same as those ultimately proposed by the Convention; which see at the conclusion.]

## **Mr. HENRY**

then resumed the subject. I have thus candidly submitted to you, Mr. Chairman, and this committee, what occurred to me as proper amendments to the Constitution, and a declaration of rights containing those fundamental, unalienable privileges, which I conceive to be essential to liberty and happiness. I believe that, on a review of these amendments, it will still be found that the arm of power will be sufficiently strong for national purposes, when these restrictions shall be a part of the government. I believe no gentleman who opposes me in sentiments will be able to discover that any one feature of a strong government is altered; and at the same time your unalienable rights are secured by them. The government unaltered may be terrible to America, but can never be loved till it be amended. You find all the resources of the continent may be

drawn to a point. In danger, *the President* may concentrate to a point every effort of the continent. If the government be constructed to satisfy the people, and remove their apprehensions, the wealth and the Strength of the continent will go where {594} public utility shall direct. This government, with these restrictions, will be a strong government, united with the privileges of the people. In my weak judgment, a government is strong when it applies to the most important end of all governments — the rights and privileges of the people. In the honorable member's proposal, jury trial, the press and religion, and other essential rights, are not to be given up. Other essential rights — what are they? The world will say that you intended to give them up. When you go into an enumeration of your rights, and stop that enumeration, the inevitable conclusion is, that what is omitted is intended to be surrendered.

Anxious as I am to be as little troublesome as possible, I cannot leave this part of the subject without adverting to one remark of the honorable gentleman. He says that, rather than bring the Union into danger, he will adopt it with its Imperfections. A great deal is said about disunion, and consequent dangers. I have no claim to a greater share of fortitude than others; but I can see no kind of danger. I form my judgment on a single fact alone — that we are at peace with all the world; nor is there any apparent cause of a rupture with any nation in the world. Is it among the American states that the cause of disunion is to be feared? Are not the states using all their efforts for the promotion of union? New England sacrifices local prejudices for the purposes of union. We hear the necessity of the union, and predilection for the union, reëchoed from all parts of the continent; and all at once disunion is to follow! If gentlemen dread disunion, the very thing they advocate will inevitably produce it. A previous ratification will raise insurmountable obstacles to union. New York is an insurmountable obstacle to it, and North Carolina also. They will never accede to it, till it be amended. A great part of Virginia is opposed most decidedly to it as it stands. This very spirit, which will govern us in these three states, will find a kindred spirit in the adopting states. Give me leave to say that it is very problematical if the adopting states can stand on their own legs. I hear only on one side, but as far as my information goes, there are heartburnings and animosities among them. Will these animosities be cured by subsequent amendments?

Turn away from America, and consider European politics. {595} The nations there which can trouble us are, France, England, and Spain. But at present we know for a certainty that those nations are engaged in very different pursuits from American conquests. We are told by our intelligent ambassador, that there is no such danger as has been apprehended. Give me leave then to say, that dangers from beyond the Atlantic are imaginary.

From these premises, then, it may be concluded that, from the creation of the world to this time, there never was a more fair and proper opportunity than we have at this day to establish such a government as will permanently establish the most transcendent political felicity. Since the revolution, there has not been so much experience. Since then, the general interests of America have not been better understood, nor the Union more ardently loved, than at this present moment. I acknowledge the weakness of the old Confederation. Every man says that something must be done. Where is the moment more favorable than this? During the war, when ten thousand dangers surrounded us, America was magnanimous. What was the language of the little state of Maryland? "I will have time to consider. I will hold out three years. Let what may come, I will have time to reflect." Magnanimity appeared every where. What was the upshot? America

triumphed. Is there any thing to forbid us to offer these amendments to the other states? If this moment goes away unimproved, we shall never see its return.

We now act under a happy system, which says that a majority may alter the government when necessary. But by the paper proposed, a majority will forever endeavor in vain to alter it. Three fourths may. Is not this the most promising time for securing the necessary alteration? Will you go into that government, where it is a principle that a contemptible minority may prevent an alteration? What will be the language of the majority? Change the government. Nay, seven eighths of the people of America may wish the change; but the minority may come with a Roman *veto*, and object to the alteration. The language of a magnanimous country, and of freemen, is, Till you remove the defects, we will not accede. It would be in vain for me to show that there is no danger to prevent our obtaining those amendment, if you are not convinced already. If the other states {596} will not agree to them, it is not an inducement to union. The language of this paper is not dictatorial, but merely a proposition for amendments. The proposition of Virginia met with a favorable reception before. We proposed that convention which met at Annapolis. It was not called dictatorial. We proposed that at Philadelphia. Was Virginia thought dictatorial? But Virginia is now to lose her preeminence. Those rights of equality to which the meanest individual in the community is entitled, are to bring us down infinitely below the Delaware people. Have we not a right to say, Hear our propositions! Why, sir, your slaves have a right to make their humble requests. Those who are in the meanest occupations of human life have a right to complain. What do we require? Not preëminence, but safety — that our citizens may be able to sit down in peace and security under their own fig-trees. I am confident that sentiments like these will meet with unison in every state; for they will wish to banish discord from the American soil. I am certain that the warmest friend of the Constitution wishes to have fewer enemies — fewer of those who pester and plague him with opposition. I could not withhold from my fellow-citizens any thing so reasonable. I fear you will have no union, unless you remove the cause of opposition. Will you sit down contented with the name of union, without any solid foundation?

Mr. Henry then concluded, by expressing his hopes that his resolution would be adopted, and added, that, if the committee should disapprove of any of his amendments, others might be substituted.

## **Gov. RANDOLPH.**

Mr. Chairman: once more, sir, I address you; and perhaps it will be the last time I shall speak concerning this Constitution, unless I be urged by the observations of some gentlemen. Although this is not the first time that my mind has been brought to contemplate this awful period, yet I acknowledge it is not rendered less awful by familiarity with it. Did I persuade myself that those fair days were present which the honorable gentleman described, — could I bring my mind to believe that there were peace and tranquillity in this land, and that there was no storm gathering which would burst, and that previous amendments could be retained, — I would concur with the honorable gentleman; for nothing but the fear of inevitable {597} destruction would lead me to vote for the Constitution in spite of the objections I have to it. But, sir, what have I heard to-day? I sympathized most warmly with what other gentlemen said yesterday, that, let the contest be what it may, the minority should submit to the majority. With satisfaction and joy I heard what

he then said — that he would submit, and that there should be peace if his power could procure it. What a sad reverse to-day! Are we not told, by way of counterpart to language that did him honor, that he would secede? I hope he will pardon, and correct me if I misrecite him; but if not corrected, my interpretation is, that secession by him will be the consequence of adoption without previous amendments.

[Here Mr. HENRY explained himself, and denied having said any thing of secession, but that he said, he would have no hand in subsequent amendments; that he would remain and vote, and afterwards he would have no business here.]

I see, continued his excellency, that I am not mistaken in my thoughts. The honorable gentleman says, he will remain and vote on the question, but after that he has no business here, and that he will go home. I beg to make a few remarks on the subject of secession. If there be in this house members who have in contemplation to secede from the majority, let me conjure them, by all the ties of honor and duty, to consider what they are about to do. Some of them have more property than I have, and all of them are equal to me in personal rights. Such an idea of refusing to submit to the decision of the majority is destructive of every republican principle. It will kindle a civil war, and reduce every thing to anarchy and confusion. To avoid a calamity so lamentable, I would submit to it, if it contained greater evils than it does.

What are they to say to their constituents when they go home? "We come here to tell you that liberty is in danger, and, though the majority is in favor of it, you ought not to submit." Can any man consider, without shuddering with horror, the awful consequences of such desperate conduct? I entreat men to consider and ponder what good citizenship requires of them. I conjure them to contemplate the consequences as to themselves as well as others. They themselves will be overwhelmed in the general disorder. I did not think that the proposition of the honorable gentleman {598} near me (Mr. White) could have met with the treatment it has. The honorable gentleman says there are only three rights stipulated in it. I thought this error might have been accounted for at first; but after he read it, the continuance of the mistake has astonished me. He has wandered from the point. [Here he read Mr. Whitens proposition.] Where in this paper do you discover that the people of Virginia are tenacious of three rights only? It declares that all power comes from the people, and whatever is not granted by them, remains with them; that among other things remaining with them, are liberty of the press, right of conscience, and some other essential rights. Could you devise any express form of words, by which the rights contained in the bill of rights of Virginia could be better secured or more fully comprehended? What is the paper which he offers in the form of a bill of rights? Will that better secure our rights than a declaration like this? All rights are therein declared to be completely vested in the people, unless expressly given away. Can there be a more pointed or position reservation?

That honorable gentleman, and some others, have insisted that the abolition of slavery will result from it, and at the same time have complained that it encourages its continuation. The inconsistency proves, in some degree, the futility of their arguments. But if it be not conclusive, to satisfy the committee that there is no danger of enfranchisement taking place, I beg leave to refer them to the paper itself. I hope that there is none here who, considering the subject in the calm light of philosophy, will advance an objection dishonorable to Virginia — that, at the moment they are securing the rights of their citizens, an objection is started that there is a spark of hope that those unfortunate men now held in *bondage* may, by the operation of the general

government be made *free*. But if any gentleman be terrified by this apprehension, let him read the system. I ask, and I will ask again and again, till I be answered, (not by declamation,) *Where* is the part that has a tendency to *the abolition of slavery*? Is it the clause which says that "the migration or importation of such persons as any of the states now existing shall think proper to admit shall not be prohibited by Congress prior to the year 1808"? This is an exception from the power of regulating commerce, and the restriction {599} is only to continue till 1808. Then Congress can, by the exercise of that power, prevent future importations; but does it affect the existing state of slavery? Were it right here to mention what passed in convention on the occasion, I might tell you *that the Southern States, even South Carolina herself, conceived this property to be secure by these words*. I believe, whatever we may think here, that there was not a member of the Virginia delegation who had *the smallest suspicion of the abolition of slavery*. Go to their meaning, Point out the clause where this formidable power of emancipation is inserted.

But another clause of the Constitution proves the absurdity of the supposition, The words of the clause are, "No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due." Every one knows that *slaves* are held to service and labor. And when authority is given to owners of slaves to vindicate their property, can it be supposed they can be *deprived* of it? If a citizen of this state, in consequence of this clause, can take his runaway slave in Maryland, can it be seriously thought that, after taking him and bringing him home, he could be made free?

I observed that the honorable gentleman's proposition comes in a truly questionable shape, and is still more extra? ordinary and unaccountable for another consideration — that, although we went article by article through the Constitution, and although we did not expect a general review of the subject, (as a most comprehensive view had been taken of it before it was regularly debated,) yet we are carried back to the clause giving that dreadful power, for the general welfare, Pardon me, if I remind you of the true state of that business. I appeal to the candor of the honorable gentleman, and if he thinks it an improper appeal, I ask the gentlemen here, *whether* there be a *general, indefinite* power of providing for the general welfare? The power is, "to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare," so that they can only raise money by these means, in order to provide for the general welfare. No man who reads it can say it is general, as the honorable gentleman represents {600} it. You must violate every rule of construction and common sense, if you sever it from the power of raising money, and annex it to any thing else, in order to make it that formidable power which it is represented to be.

The honorable gentleman say's there is no restraint on the power of issuing general warrants. If I be tedious in asking where is that power, you will ascribe it to him who has put me to the necessity of asking. They have no such power given them: if they have, where is it?

Again he recurs to *standing armies*, and asks if Congress cannot raise such. Look at the bill of rights provided by the honorable gentleman himself, and tell me if there be no great security by admitting it when necessary. It says that standing armies should be avoided in time of peace. It does not absolutely prohibit them. Is there any clause in it, or in the Confederation, which prevents Congress from raising an army? No: it is left to the discretion of Congress. It ought to

be in the power of Congress to raise armies, as the existence of society might, at some future period, depend upon it. But it should be recommended to them to use the power only when necessary. I humbly conceive that you have as great security as you could desire from that clause in the Constitution which directs that money for supporting armies will be voted for every two years — as, by this means, the representatives who will have appropriated money unnecessarily, or imprudently, to that purpose, may be removed, and a new regulation made. Review the practice of the, favorite nation of the honorable gentleman. In their bill of rights there is no prohibition of a standing army, but only that it ought not to be maintained without the consent of the legislature. Can it be done here without the consent of the democratic branch? Their consent is necessary to every bill, and money bills can originate with them only. Can an army, then, be raised or supported without their approbation?

[His excellency then went over all the articles of Mr. Henry's proposed declaration of rights, and endeavored to prove that the rights intended to be thereby secured were either provided for in the Constitution itself, or could not be infringed by the general government, as being unwarranted by any of the powers which were delegated therein; for that it was in vain to provide against the exercise of a power which did not exist.]

He then proceeded to examine the nature of some of the amendments proposed by the honorable gentleman. As to {601} the reservation of rights not expressly given away, he repeated what he had before observed of the 2d article of the Confederation, that it was interpreted to prohibit Congress from granting passports, although such a power was necessarily incident to that of making war. Did not this, says he show the vanity of all the federal authority? Gentlemen have displayed great wisdom in the use they make of the experience of the defects in the old Confederation. When we see the defect of that article, are we to repeat it? Are those gentlemen zealous friends to the Union, who profess to be so here, and yet insist on a repetition of measures which have been found destructive to it? I believe their professions, but they must pardon me when I say their arguments are not true.

[His excellency then read the 2d amendment proposed, respecting *the number of representatives.*]

What better security have you under these words than under the clause in the paper before you? This puts it in the power of your representatives to continue the number of it in that paper. They may always find a pretext to justify their regulations concerning it. They may continue the number at two hundred, when an augmentation would be necessary.

As to the amendment respecting direct taxation, the subject has been so fully handled, and is so extensive in its nature, that it is needless to say any thing of it.

The 4th amendment

goes on the wide field of indiscriminate suspicion that every one grasps after Offices, and that Congress will create them unnecessarily. Perhaps it will exclude the most proper from offices of great importance to the community.

[Here he read the 5th amendment.] —

I beg the honorable gentleman to tell me on what subject Congress will exercise this power improperly. If there be any treachery in their view, the words in this amendment are broad enough to allow it. It is as good a security in this Constitution, as human ingenuity can devise; for if they intend any treachery, they will not let you see it.

[Here he read the 7th and 8th amendments.] —

I have never hesitated to acknowledge that I wished the regulation of commerce had been put in the hands of a greater body than it is in the sense of the Constitution. But I appeal to {602} my colleagues in the federal Convention, whether this was not a *sine qua non* of the Union. Of all the amendments, this is the most destructive, which requires the consent of three fourths of both houses to *treaties* ceding or restraining *territorial rights*. This is priding in the Virginia sovereignty, in opposition to the majority. This suspected Congress, these corrupt sixty-five and corrupt twenty-six, are brought so low they cannot be trusted, lest they should have it in their power to lop off part of Virginia — cede it, so as that it should become a colony to some foreign state. There is no power in the Constitution to *cede any part of the territories of the United States*. The whole number of Congress, being unanimous, have no power to suspend or cede territorial rights. But this amendment admits, in the fullest latitude, that Congress have a right to dismember the empire.

His amendment respecting the militia is unnecessary. The same powers rest in the states by the Constitution. Gentlemen were repeatedly called upon to show where the power of the states over the militia was taken away, but they could not point it out.

[He read the 12th amendment.] —

Will this be a melioration of the Constitution? I wish to know what is meant by the words *police* and *good government*! These words may lead to complete tyranny in Congress. Perhaps some gentlemen think that these words relate to particular objects, and that they will diminish and confine their power. They are most extensive in their significations, and will stretch and dilate it, and all the imaginary horrors of the honorable gentleman will be included in this amendment.

[He read the 13th amendment.] —

I was of this opinion myself; but I informed you before why I changed it.

[He read the 14th amendment.] —

If I were to propose an amendment on this subject, it would be to limit the word *arising*. I would not discard it altogether, but define its extent. The jurisdiction of the judiciary in cases arising under the system, I should wish to be defined, so as to prevent its being extended unnecessarily: I would restrain the appellate cognizance as to fact, and prevent oppressive and vexatious appeals.

[He read the 15th amendment.] —

The right of challenging and excepting, I hope, has clearly appeared to the committee to be a necessary appendage of the trial by jury itself.

Permit me now to make a few remarks on the proposal of {603} these amendments, previous to our ratification. The first objection arises from the paper itself. Can you conceive, or does any man believe, that there are twelve, or even nine, states in the whole Union, that would subscribe to this paper? — a paper fraught with, perhaps, more defects than the Constitution itself. What are we about to do? To make this the condition of our coming into this government. I hope gentlemen will never agree to this. If we declare that these amendments, and a bill of rights containing twenty articles, must be incorporated into the Constitution before we assent to it, I ask you whether you may not bid a long farewell to the Union? It will produce that deplorable thing — the dissolution of the Union — which no man yet has dared openly to advocate. No, say the gentlemen, because Maryland kept off three years from the confederacy, and no injury happened. This very argument carries its own refutation with it. The war kept us together, in spite of the discordance of the states. There is no war now. All the nations of Europe have their eyes fixed on America, and some of them perhaps cast wistful looks at you. Their gold may be tried, to sow disunion among us. The same bandage which kept us before together, does not now exist. Let gentlemen seriously ponder the calamitous consequences of dissolving the Union in our present situation. I appeal to the great Searcher of hearts, on this occasion, that we behold the greatest danger that ever happened hanging over us; for previous amendments are but another name for rejection. They will throw Virginia out of the Union, and cause heartaches to many of those gentlemen who may vote for them. But let us consider things calmly. Reflect on the facility of obtaining amendments if you adopt, and weigh the danger if you do not. Recollect that many other states have adopted it, who wish for many amendments. I ask you if it be not better to adopt, and run the chance of amending it hereafter, than run the risk of endangering the Union. The Confederation is gone; it has no authority. If, in this situation, we reject the Constitution, the Union will be dissolved, the dogs of war will break loose, and anarchy and discord will complete the ruin of this country. Previous adoption will prevent these deplorable mischiefs. The union of sentiments with us in the adopting states will render subsequent amendments easy. I therefore rest my happiness with perfect confidence on this subject.

### **{604} Mr. GEORGE MASON.**

Mr. Chairman, with respect to commerce and navigation, he has given it as his opinion that their regulation, as it now stands, was a *sine qua non* of the Union, and that without it the states in Convention would never concur. I differ from him. It never was, nor in my opinion ever will be, a *sine qua non* of the Union.

I will give you, to the best of my recollection, the history of that affair. This business was discussed at Philadelphia for four months, during which time the subject of commerce and navigation was often under consideration; and I assert that eight states out of twelve, for more than three months, voted for requiring two thirds of the members present in each house to pass commercial and navigation laws. True it is, that afterwards it was carried by a majority as it stands. If I am right, there was a great majority for requiring two thirds of the states in this

business, till a compromise took place between the Northern and Southern States; the Northern States agreeing to the temporary importation of slaves, and the Southern States conceding, in return, that navigation and commercial laws should be on the footing in which they now stand. If I am mistaken, let me be put right. Those are ray reasons for saying that this was not a *sine qua non* of their concurrence. The Newfoundland fisheries will require that kind of security which we are now in want of. The Eastern States therefore agreed, at length, that treaties should require the consent of two thirds of the members present in the Senate.

## Mr. DAWSON.

Mr. Chairman, when a nation is about to make a change in its political character, it behoves it to summon the experience of ages which have passed, to collect the wisdom of the present day, to ascertain clearly those great principles of equal liberty which secure the rights, liberties, and properties, of the people. Such is the situation of the United States at the moment we are about to make such a change.

The Constitution proposed for the government of the United States has been a subject of general discussion. While many able and honorable gentlemen within these walls have, in the development of the various parts, delivered their sentiments with that freedom which will ever mark the citizens of an independent state, and with that ability which will prove to the world their eminent talents, I, sir, although {605} urged by my feelings, have forborne to say any thing on my part, from a satisfactory impression of the inferiority of my talents, and from a wish to acquire every information which might assist my judgment in forming a decision on a question of such magnitude. But, sir, as it involves in its fate the interest of so extensive a country, every sentiment which can be offered deserves its proportion of public attention. I shall therefore avoid any apology for now rising, although uncommon propriety might justify it, and rather trust to the candor of those who hear me. Indeed, I am induced to come forward, not from any apprehension that my opinion will have weight, but in order to discharge that duty which I owe to myself, and to those I have the honor to represent.

The defects of the articles by which we are at present confederated have been echoed and reëchoed, not only from every quarter of this house, but from every part of the continent. At the framing of those articles, a common interest excited us to unite for the common good. But no sooner did this principle cease to operate, than the defects of the system were sensibly felt. Since then, the seeds of civil dissension have been gradually opening, and political confusion has pervaded the states. During the short time of my political life, having been fully impressed with the truth of these observations, when a proposition was made by Virginia to invite the sister states to a general convention, at Philadelphia, *to amend these defects*, I readily gave my assent; and when I considered the very respectable characters who formed that body, — when I reflected that they were, most of them, those sages and patriots under whose banners, and by whose counsels, we had been rescued from impending danger, and placed among the nations of the earth, — when I also turned my attention to that illustrious character, to immortalize whose memory Fame shall blow her trump to the latest ages, — I say, when I weighed all these considerations, I was almost persuaded to declare in favor of the proposed plan, and to exert my slender abilities in its favor, But when I came to investigate it impartially, on the immutable principles of government, and to exercise that reason with which the God of nature hath endowed

me, and which I will ever freely use, I was convinced of this important, though melancholy truth, — that the greatest men may err, and that {606} their errors are sometimes of the greatest magnitude. I was persuaded that, although the proposed plan contains many things excellent, yet, by the adoption of it as it now stands, the liberties of America in general, the property of Virginia in particular, would be endangered.

These being my sentiments, — sentiments which I offer with the diffidence of a young politician, but with the firmness of a republican, which I am ready to change when I am convinced they are founded in error, but which I will support until that conviction, — I should be a traitor to my country, and unworthy that freedom for which I trust I shall ever remain an advocate, were I to declare my entire approbation of the plan as it now stands, or assent to its ratification without previous amendments.

During the deliberations of this Convention, several gentlemen of eminent talents having exerted themselves to prove the necessity of the union by presenting to our view the relative situation of Virginia to the other states, the melancholy representation made to-day, and frequently before, by an honorable gentleman, (Gov. Randolph,) of our state, reduced, in his estimation, to the lowest degree of degradation, must now haunt the recollection of many gentlemen in this committee. How far he has drawn the picture to the life, or where it is too highly colored, rests with them to determine. To gentlemen, however, sir, of their abilities, the task was easy, and perhaps I may add unnecessary. It is a truth admitted on all sides, and I presume there is not a gentleman who hears me who is not a friend to a union of the thirteen states.

But, sir, an opinion has gone abroad (from whence it originated, or by whom it is supported, I will not venture to say) that the opponents to the paper on your table are enemies to the union. It may not, therefore, be improper for me to declare, that I am a warm friend to a firm, federal, energetic government; that I consider a confederation of the states, on republican principles, as a security to their mutual interests, and a disunion as injurious to the whole; but I shall lament exceedingly, when a confederation of independent states shall be converted into a consolidated government; for, when that event shall happen, I shall consider the history of American liberty as short as it has been brilliant, and we shall afford one more proof to the favorite maxim of tyrants, that "mankind cannot govern themselves."

{607} An honorable gentleman (Col. H. Lee) came forward some days since, with all the powers of eloquence and all the warmth of enthusiasm. After descending on some military operations to the south, of which he was a spectator, and pronouncing sentence of condemnation on a Mr. Shays, to the north, — as a military character he boldly throws the gauntlet, and defies the warmest friend to the opposition to come forth and say that the friends to the system on your table are not also friends to republican liberty.

Arguments, sir, in this house, should ever be addressed to the reason, and should be applied to the system itself, and not to those who either support or oppose it. I, however, dare come forth, and tell that honorable gentleman, not with the military warmth of a young soldier, but with the firmness of a republican, that, in my humble opinion, had the paper now on your table, and which is so ably supported, been presented to our view ten years ago, (when the American spirit shone forth in the meridian of glory, and rendered us the wonder of an admiring world,) it would

have been considered, as containing principles incompatible with republican liberty, and therefore doomed to infamy.

Having, sir, made these loose observations, and having proved, I flatter myself, to this honorable Convention, the motives from which my opposition to the proposed system originated, I may now be permitted to turn my attention, for a very few moments, to the system itself; and to point out some of the leading parts most exceptionable, in my estimation — my original objections to which have not been removed by the debate, but rather confirmed.

If we grant to Congress the power of direct taxation, if we yield to them the sword, and if we also invest them with the judicial authority, two questions, of the utmost importance, immediately present themselves to our inquiries — whether these powers will not be oppressive in their operations, and, aided by other parts of the system, convert the thirteen confederated states into one consolidated government; and whether any country as extensive as North America, and where climates, dispositions, and interests, are so essentially different, can be governed under one consolidated plan, except by the introduction of despotic principles.

The warmest friends, sir, to the government, — some of those who formed, signed, and have recommended it, — some {608} of those who have enthusiastically supported it in every quarter of this continent, — have answered my first query in the affirmative: they have admitted that it possesses few federal features, and will ultimately end in a consolidated government — a truth which, in my opinion, they would have denied in vain; for every article, every section, every clause, and almost every line, proves that it will have this tendency; and if this position has, during the course of the long and learned debates on this head, been established to the satisfaction of the Convention, I apprehend that the authority of all eminent writers on the subject, and the experience of all ages, cannot be controverted, and that it will be admitted that no government formed on the principles of freedom can pervade all North America.

This, sir, is my great objection — an objection general in its nature, because it operates on the whole system; an objection which I early formed, which I flattered myself would have been removed, but which, I am obliged to say, has been confirmed by the observations which have been made by many learned gentlemen, and which would be tedious for me now to recapitulate.

That the legislative, executive, and judicial powers should be separate and distinct, in all free governments, is a political fact so well established, that I presume I shall not be thought arrogant, when I affirm that no country ever did, or ever can, long remain free, where they are blended. All the states have been in this sentiment when they formed their state constitutions, and therefore have guarded against the danger; and every schoolboy in politics must be convinced of the propriety of the observation; and yet, by the proposed plan, the legislative and executive powers are closely united; the Senate, who compose one part of the legislature, are also, as council to the President, the supreme head, and are concerned in passing laws which they themselves are to execute.

The wisdom, sir, of many nations has induced them to enlarge the powers of their rulers; but there are very few instances of the relinquishment of power, or the abridgment of authority, on the part of the governors. The very 1st clause of the 8th section of the 1st article, which gives to

Congress the power "to lay and collect taxes, duties, imposts, excises," &c., appears to me to be big with unnecessary {609} danger, and to reduce human nature, to which I would willingly pay a compliment did not the experience of all ages rise up against me, to too great a test. The arguments, sir, which have been urged by some gentlemen, that the impost will defray all expenses, in my estimation cannot be supported; and common sense will never assent to the assertions which have been made, that the government will not be an additional expense to this country. Will not the support of an army and navy — will not the establishment of a multiplicity of offices in the legislative, executive, and particularly the judiciary departments, most of which will be of a national character, and must be supported with a superior degree of dignity and credit — be prodigious additions to the national expense? And, sir, if the states are to retain even a shadow of sovereignty, the expense thence arising must also be defrayed, and will be very considerable.

I come now, sir, to speak of a clause to which our attention has been frequently called, and on which many gentlemen have already delivered their sentiments — a clause, in the estimation of some, of little consequence, and which rather serves as a pretext for scuffling for votes; but which, in my opinion, is one of the most important contained in the system, and to which there are many and weighty objections. I refer to the clause empowering the President, by and with the consent of two thirds of the senators present, to make *treaties*. If, sir, the dismemberment of the empire, if the privation of the most essential national rights, and the very existence of a people, depend on this clause, surely, sir, it merits the most thorough investigation; and if, on that investigation, it appears that those great rights are endangered, it highly behoves us to amend it in such a manner as will prevent the evils which may arise from it as it now stands, My objections to it do not arise from a view of the particular situation of the western part of this state, although certainly we are bound, by every principle, to attend to the interest of our fellow-citizens in that quarter; but from an apprehension that the principle pervades all America, and that, in its operation, it will be found highly injurious to the Southern States. It will, I presume, be readily admitted that the dismemberment of empire is the highest act of sovereign authority, the exercise of which can be authorized {610} only by absolute necessity. Exclusive, then, sir, of any consideration which arises from the particular system of American politics, the guard established against the exercise of this power is by far too slender.

The President, with the concurrence of two thirds of the Senate present, may make a treaty, by which any territory may be ceded, or the navigation of any river surrendered; thereby granting to five states the exercise of a right acknowledged to be the highest act of sovereignty — to fifteen men, not the representatives of the country to be ceded, but, as has already happened, men whose interest and policy it may be to make such surrender. Admitting, for a moment, that this point is as well guarded by the proposed plan as by the old Articles of Confederation, (to which, however, common sense can never assent,) have we not already had cause to tremble, and ought we not to guard against the accomplishment of a scheme to which nothing but an inattention to the general interest of America, and a selfish regard to the interest of particular states, could have given rise? Surely, sir, we ought; and since we have already seen a diabolical attempt made to surrender the navigation of a river, the source of which is as yet unknown, and on which depends the importance of the southern part of America; since we have every reason to believe that the same principle which at first dictated this measure, still exists, and will forever operate; it is our duty — a duty which we owe to ourselves, which we owe to the southern part of America, and

which we owe to the natural rights of mankind — to guard against it in such manner as will forever prevent its accomplishment. This, sir, is not done by the clause, nor will it rest on that sure footing which I wish, and which the importance of the subject demands, until the concurrence of three fourths *of all the senators* shall be requisite to ratify a treaty respecting the cession of territory, the surrender of the navigation of rivers, or the use of all the American seas.

That sacred palladium of liberty, the freedom of the press, (the influence of which is so great that it is the opinion of the ablest writers that no country can remain long in slavery where it is unrestrained,) has not been expressed; nor are the liberties of the people ascertained and protected by any declaration of rights; that inestimable privilege, (the most important which freemen can enjoy,) the trial by jury in all {611} civil cases, has not been guarded by the system; — and while they have been inattentive to these all-important considerations, they have made provision for the introduction of standing armies in time of peace. These, sir, ever have been used as the grand machines to suppress the liberties of the people, and will ever awaken the jealousy of republicans, so long as liberty is dear, and tyranny odious, to mankind.

Congress, sir, have the power to declare war, and also to raise and support armies; and if we suppose them to be a representation of the states, the *nexus imperii* of the British constitution is here lost. There the king has the power of declaring war, and the Parliament that of raising money to support it. Governments ought not to depend on an army for their support, but ought to be so formed as to have the confidence, respect, and affection of the citizens. Some degree of virtue, sir, must exist, or freedom cannot live. A standing army will introduce idleness and extravagance, which will be followed by their sure concomitant vices. In a country extensive like ours, the power of the sword is more sensibly felt than in a small community. The advantages, sir, of military science and discipline cannot be exerted unless a proper number of soldiers are united in one body, and actuated by one soul. The tyrant of a single town, or a small district, would soon discover that a hundred armed soldiers were a weak defence against ten thousand peasants or citizens; but ten thousand well-disciplined soldiers, will command, with despotic sway, millions of subjects, and will strike terror into the most numerous populace. It was this, sir, which enabled the pretorian bands of Rome, whose number scarcely amounted to ten thousand, after having violated the sanctity of the throne by the atrocious murder of a most excellent emperor, to dishonor the majesty of it, by proclaiming that the Roman empire — the mistress of the world — was to be disposed of, to the highest bidder, at public auction; — and to their licentious frenzy may be attributed the *first* cause of the decline and fall of that mighty empire. We ought, therefore, strictly to guard against the establishment of an army — whose only occupation would be idleness; whose only effort the introduction of vice and dissipation; and who would, at some future day, deprive us our liberties, as a reward for past favors, by the introduction of some military despot.

{612} I had it in contemplation to have made some observations on the disposition of the judicial powers; but, as my knowledge in that line is confined, and as the subject has been so ably handled by other gentlemen, and the defects clearly developed, and as their arguments remain unanswered, I shall say nothing on that head. The want of responsibility to the people from their representatives would furnish matter of ample discussion; but I pass it over in silence, only observing that it is a grand, and indeed a daring fault, and one which sanctions with security the most tyrannic edicts of a despotic ruler. The ambiguous terms in which all rights are secured to

the people, and the clear and comprehensive language used when power is granted to Congress, also afford matter for suspicions and objections; but the able manner in which my very worthy, my very eloquent, and truly patriotic friend and coadjutor, whose name shall ever be hallowed in the temple of liberty, has handled this subject, would render any observations from me tedious and unnecessary.

Permit me, then, to conclude by reminding gentlemen who appeal to history to prove the excellence of the proposed plan, that their mode of comparison is unjust. "Wealth and extent of territory," says the great Montesquieu, "have a relation to government, and the manners and customs of the people are closely connected with it." The same system of policy which might have been excellent in the governments of antiquity would not, probably, suit us at the present day. The question, therefore, which should be agitated, is, not whether the proposed Constitution is better or worse than those which have from time to time existed, but whether it is calculated to secure our liberties and happiness at the present stage of the world.

For my own part, after an impartial investigation of it, and after a close attention and candid consideration of the arguments, which have been used, I am impressed with an opinion that it is not. I am persuaded that, by adopting it, and then proposing amendments, that unfortunate traveller, Liberty, is more endangered than the union of the states will be by first proposing these amendments. I am so far an enthusiast, in favor of liberty, that I never will trust the sacred deposit to other hands, nor will I exchange it for any earthly consideration; and I have such a fixed aversion to the bitter {613} cup of slavery, that, in my estimation, a draught is not sweetened, whether administered by the hand of a Turk, a Briton, or an American.

Impressed, then, sir, with these sentiments, and governed by these principles, I shall decidedly give my vote in favor of previous amendments. But, sir, should the question be decided contrary to my wishes, the first wish of my heart is, that the decision may promote the happiness and prosperity of the country so dear to us all.

## **Mr. GRAYSON.**

Mr. Chairman, gentlemen have misrepresented what I said on the subject of *treaties*. On this ground let us appeal to the law of nations. How does it stand? Thus — that Without the consent of the national legislature, dismemberment cannot be made. This is a subject in which Virginia is deeply interested, and ought to be well understood. It ought to be expressly provided that no dismemberment should take place without the consent of the legislature. On this occasion, I beg leave to introduce an instance mentioned on the floor of Congress. Francis, king of France, was taken by the Spaniards at the battle of Pavia. He stipulated to give up certain territories, to be liberated. Yet the stipulation was not complied with, because it was alleged that it was not made by the sovereign power. Let us apply this. Congress has a right to dismember the empire. The President may do it, and the legislature may confirm it. Let gentlemen contradict it if they can. This is one of the highest acts of sovereignty, and I think it of the utmost importance that it should be placed on a proper footing. There is an absolute necessity for the existence of the power. It may prevent the annihilation of society by procuring a peace. It must be lodged somewhere. The opposition wish it to be put in the hands of three fourths of the members of both houses of Congress. It would be then secure. It is not so now.

The dangers of disunion were painted in strong colors. How is the fact? It is this — that, if Virginia thinks proper to insist on previous amendments, joined by New York and North Carolina, she can procure what amendments she pleases. What is the geographical position of these states? New York commands the ocean. Virginia and North Carolina join the Spanish dominions. What would be the situation, then, of the Other states? They would be topographically {614} separated, though politically, connected with one another. There would be no communication between the centre and the component parts. While those states were thus separated, of what advantage would commercial regulations be to them? Yet will gentlemen pretend to say that we must adopt first, and then beg for amendments? I see no reason in it. We undervalue our own importance. Consider the vast consequence and importance of Virginia and North Carolina. What kind of connection would the rest of the states form? They would be carrying states, without Having any thing to carry. They could have no communication with the other Southern States. I therefore insist that, if you are not satisfied with the paper as it stands, it is as clear to me as that the sun shines, that, by joining these two states, you may command such amendments as you may think necessary for the happiness of the people.

The late Convention were not empowered totally to alter the present Confederation. The idea was to *amend*. If they lay before us a thing quite different, we are not bound to accept it. There is nothing dictatorial in refusing it: we wish to remove the spirit of party. In all parts of the world there is a reciprocity in contracts and compacts. If one man makes a proposition to another, is he bound to accept it?

Six or seven states have agreed to it. As it is not their interest to stand by themselves, will they not with open arms receive us? Tobacco will always make our peace with them. I hope, then, that the honorable gentleman will find, on a reconsideration, that we are not at all in that dangerous situation he represented. In my opinion, the idea of subsequent amendments is preposterous. They are words without meaning. The little states will not agree to an alteration. When they find themselves on an equal footing with the other states in the Senate, and all power vested in them, — the executive mixed with the legislative, — they will never assent. Why are such extensive powers given to the Senate? Because the little states gained their point. In every light I consider subsequent amendments as unwise and impolitic.

Considering the situation of the continent, this is not a time for changing our government. I do not think we stand so secure with respect to other nations as to change our government. The nations of Europe look with watchful eyes {615} on us, and with reason; for the West India islands depend on our motions. When we have strength, importance, and union, they will have reason to tremble for their islands. Almost all the governments of the world have been formed by accident. We are now, in time of peace, without any real cause, changing our government. We ought to be cool and temperate, and not act like the people of Denmark, who gave up their liberties, in a transport of passion, to the crown. Let us therefore be cautious, and deliberate before we determine.

What is the situation of Virginia? She is rich when her resources are compared with those of others. Is it right for a rich nation to consolidate with a poor one? By no means. It was right for Scotland to unite with England, as experience has shown. Scotland only pays forty-eight thousand pounds, when England pays four shillings in the pound, which amounts to two million

pounds. In all unions where a rich state is joined with a poor one, it will be found that the rich one will pay in that disproportion. A union between such nations ought never to take place, except in peculiar circumstances, and on very particular conditions, How is it with Virginia? It is politic for her to unite, but not on any terms. She will pay more than her natural proportion, and the present state of the national debt renders it an object. She will also lose her importance. She is now put in the same situation as a state forty times smaller.

Does she gain any advantage from her central situation, by acceding to that paper? Within ten miles of Alexandria the centre of the states is said to be. It has not said that the ten miles square will be there. In a monarchy, the seat of government must be where the monarch pleases. How ought it to be in a republic like ours? — now in one part, and at another time in another, or where it will best suit the convenience of the people. Then I lay it down as a political right that the seat of government ought to be fixed by the Constitution, so as to suit the public convenience.

Has Virginia any gain from her riches and commerce? What does she get in return? I can see what she gives up, which is immense. The little states gain in proportion as we lose. Every disproportion is against us. If the effects of such a contrariety of interests be happy, it must be extraordinary and wonderful. From the very nature of the paper, {616} one part, whose interest is different from the other, is to govern it. What will be our situation? The Northern States are carrying states. We are considered as productive states. They will consequently carry for us. Are manufactures favorable to us? If they reciprocate the act of Charles II., and say that no produce of America will be carried in any foreign bottom, what will be the consequence? This — that all the produce of the Southern States will be carried by the Northern States on their own terms, which must be very high.

Though this government has the power of taxation, and the most important subject of the legislation, there is no responsibility any where. The members of Delaware do not return to Virginia to give an account of their conduct. Yet they legislate for us. In addition to this, it will be productive of great expenses. Virginia has assumed an immense weight of private debt, and her imports and exports are taken away. Judge, then, how such an accumulation of expenses will accommodate us. I think that, were it not for one great character in America, so many men would not be for this government. We have one ray of hope. We do not fear while he lives; but we can only expect his *fame* to be immortal. We wish to know who, besides him, can concentrate the confidence and affections of all America.

He then concluded by expressing hopes that the proposition of his honorable friend would be acceded to.

## **Mr. MADISON.**

Mr. Chairman, nothing has excited more admiration in the world than the manner in which free governments have been established in America; for it was the first instance, from the creation of the world to the American revolution, that free inhabitants have been seen deliberating on a form of government, and selecting such of their citizens as possessed their confidence, to determine upon and give effect to it. But why has this excited so much wonder and applause? Because it is of so much magnitude, and because it is liable to be frustrated by so many accidents. If it has

excited so much wonder that the United States have, in the middle of war and confusion, formed free systems of government, how much more astonishment. and admiration will be excited, should they be able, peaceably, freely, and satisfactorily, to establish one general {617} government, when there is such a diversity of opinions and interests — when not cemented or stimulated by any common danger! How vast must be the difficulty of concentrating, in one government, the interests, and conciliating the opinions, of so many different, heterogeneous bodies!

How have the confederacies of ancient and modern times been formed? As far as ancient history describes the former to us, they were brought about by the wisdom of some eminent sage. How was the imperfect union of the Swiss cantons formed? By danger. How was the confederacy of the United Netherlands formed? By the same. They are surrounded by dangers. By these, and one influential character, they were stimulated to unite. How was the Germanic system formed? By danger, in some degree, but principally by the overruling influence of individuals.

When we consider this government, we ought to make great allowances. We must calculate the impossibility that every state should be gratified in its wishes, and much less that every individual should receive this gratification. It has never been denied, by the friends of the paper on the table, that it has defects; but they do not think that it contains any real danger. They conceive that they will, in all probability, be removed, when experience will show it to be necessary. I beg that gentlemen, in deliberating on this subject, would consider the alternative. Either nine states shall have ratified it, or they will not. If nine states will adopt it, can it be reasonably presumed, or required, that nine states, having freely and fully considered the subject, and come to an affirmative decision, will, upon the demand of a single state, agree that they acted wrong, and could not see its defects — tread back the steps which they have taken, and come forward, and reduce it to uncertainty whether a general system shall be adopted or not? Virginia has always heretofore spoken the language of respect to the other states, and she has always been attended to. Will it be that language to call on a great majority of the states to acknowledge that they have done wrong? Is it the language of confidence to say that we do not believe that amendments for the preservation of the common liberty, and general interests, of the states, will be consented to by them? This is the language neither of confidence nor respect. Virginia, when she speaks respectfully, will be as much attended {618} to as she has hitherto been when speaking this language.

It is a most awful thing that depends on our decision — no less than whether the thirteen states shall unite freely, peaceably, and unanimously, for security of their common happiness and liberty, or whether every thing is to be put in confusion and disorder. Are we to embark in this dangerous enterprise, uniting various opinions to contrary interests, with the vain hope of coming to an amicable concurrence?

It is worthy of our consideration that those who prepared the paper on the table found difficulties not to be described in its formation: mutual deference and concession were absolutely necessary. Had they been inflexibly tenacious of their individual opinions, they would never have concurred. Under what circumstances was it formed? When no party was formed, or particular proposition made, and men's minds were calm and dispassionate. Yet, under these circumstances, it was difficult, extremely difficult, to agree to any general system.

Suppose eight states only should ratify, and Virginia should propose certain alterations, as the previous condition of her accession. If they should be disposed to accede to her proposition, which is the most favorable conclusion, the difficulty attending it will be immense. Every state which has decided it, must take up the subject again. They must not only have the mortification of acknowledging that they had done wrong, but the difficulty of having a reconsideration of it among the people, and appointing new conventions to deliberate upon it. They must attend to *all* the amendments, which may be dictated by as great a diversity of political opinions as there are local attachments. When brought together in one assembly, they must go through, and accede to, every one of the amendments. The gentlemen who, within this house, have thought proper to propose previous amendments, have brought no less than forty amendments, a bill of rights which contains twenty amendments, and twenty other alterations, some of which are improper and inadmissible. Will not every state think herself equally entitled to propose as many amendments? And suppose them to be contradictory! I leave it to this Convention whether it be probable that they can agree, or agree to {619} any thing but the plan on the table; or whether greater difficulties will not be encountered than were experienced in the progress of the formation of the Constitution.

I have said that there was a great contrariety of opinions among the gentlemen in the opposition. It has been heard in every stage of their opposition. I can see, from their amendments, that very great sacrifices have been made by some of them. Some gentlemen think that it contains too much state influence; others, that it is a complete consolidation; and a variety of other things. Some of them think that the equality in the Senate is nor a defect; others, that it is the bane of all good government. I might, if there were time, show a variety of other cases where their opinions are contradictory. If there be this contrariety of opinions in this house, what contrariety may not be expected, when we take into view thirteen conventions equally or more numerous! Besides, it is notorious, from the debates which have been published, that there is no sort of uniformity in the grounds of the opposition.

The state of New York has been adduced. Many in that state are opposed to it from local views. The two who opposed it in the general Convention from that state are in the state Convention. Every step of this system was opposed by those two gentlemen. They were unwilling to part with the old Confederation. Can it be presumed, then, sir, that gentlemen in this state, who admit the necessity of changing, should ever be able to unite in sentiments with those who are totally averse to any change?

I have revolved this question in my mind with as much serious attention, and called to my aid as much information, as I could, yet I can see no reason for the apprehensions of gentlemen; but I think that the most happy effects for this country would result from adoption, and if Virginia will agree to ratify this system, I shall look upon it as one of the most fortunate events that ever happened for human nature, t cannot, therefore, without the most excruciating apprehensions, see a possibility of losing its blessings. It gives me infinite pain to reflect that all the earliest endeavors of the warmest friends of their country to introduce a system promotive of our happiness, may be blasted by a rejection, for which I think, with my honorable friend, that previous amendments are but another name. The gentlemen in opposition {620} seem to insist on those amendments, as if they were all necessary for the liberty and happiness of the people. Were I to hazard an opinion on the subject, I would declare it infinitely more safe, in its present

form, than it would be after introducing into it that long train of alterations which they call amendments.

With respect to the proposition of the honorable gentleman to my left, (Mr. Wythe,) gentlemen apprehend that, by enumerating three rights, it implied there were no more. The observations made by a gentleman lately up, on that subject, correspond precisely with my opinion. That resolution declares that the powers granted by the proposed Constitution are the gift of the people, and may be resumed by them when perverted to their oppression, and every power not granted thereby remains with the people, and at their will. It adds, likewise, that no right, of any denomination, can be cancelled, abridged, restrained, or modified, by the general government, or any of its officers, except in those instances in which power is given by the Constitution for these purposes. There cannot be a more positive and unequivocal declaration of the principle of the adoption — that every thing not granted is reserved. This is obviously and self-evidently the case, without the declaration. Can the general government exercise any power not delegated? If an enumeration be made of our rights, will it not be implied that every thing omitted is given to the general government? Has not the honorable gentleman himself admitted that an imperfect enumeration is dangerous? Does the Constitution say that they shall not alter the law of descents, or do those things which would subvert the whole system of the state laws? If it did, what was not excepted would be granted. Does it follow, from the omission of such restrictions that they can exercise powers not delegated? The reverse of the proposition holds. The delegation alone warrants the exercise of any power.

With respect to *the amendments* proposed by the honorable gentleman, it ought to be considered how far they are good. As far as they are palpably and insuperably objectionable they ought to be opposed. One amendment he proposes is, that any army which shall be necessary shall be raised by the consent of two thirds of the states. I most devoutly wish that there may never be an occasion for having {621} a single regiment. There can be no harm in declaring that standing armies, in time of peace, are dangerous to liberty, and ought to be avoided, as far as it may be consistent with the protection of the community. But when we come to say that the national security shall depend, not on a majority of the people of America, but that it may be frustrated by less than one third of the people of America, I ask if this be a safe or proper mode. What parts of the United States are most likely to stand in need of this protection? The weak parts, which are the Southern States. Will it be safe to leave the United States at the mercy of one third of the states — a number which may comprise a very small proportion of the American people? They may all be in that part of America which is least exposed to danger. As far as a remote situation from danger would render exertions for public defence less active, so far the Southern States would be endangered.

The regulation of *commerce*, he further proposed, should depend on two thirds of both houses. I wish I could recollect the history of this matter; but I cannot call it to mind with sufficient exactness. But I well recollect the reasoning of some gentlemen on that subject. It was said, and I believe with truth, that every part of America does not stand in equal need of security. It was observed that the Northern States were most competent to their own safety. Was it reasonable, asked they, that they should bind themselves to the defence of the Southern States, and still be left at the mercy of the minority for commercial advantages? Should it be in the power of the

minority to deprive them of this and other advantages, when they were bound to defend the whole Union, it might be a disadvantage for them to confederate.

These were his arguments. This policy of guarding against political inconveniences, by enabling a small part of the community to oppose the government, and subjecting the majority to a small minority, is fallacious. In some cases it may be good; in others it may be fatal. In all cases, it puts it in the power of the minority to decide a question which concerns the majority.

I was struck with surprise when I heard him express himself alarmed with respect to the emancipation of slaves. Let me ask, if they should even attempt it, if it will not be {622} a usurpation of power. There is no power to warrant it, in that paper. If there be, I know it not. But why should it be done? Says the honorable gentleman, for the general welfare: it will infuse strength into our system. Can any member of this committee suppose that it will increase our strength? Can any one believe that the American councils will come into a measure which will strip them of their property, and discourage and alienate the affections off five thirteenths of the Union? Why was nothing of this sort aimed at before? I believe such an idea never entered into any American breast, nor do I believe it ever will enter into the heads of those gentlemen who substitute unsupported suspicions for reasons.

I am persuaded that the gentlemen who contend for previous amendments are not aware of the dangers which must result. Virginia, after having made opposition, will be obliged to recede from it. Might not the nine states say, with a great deal of propriety, "It is not proper, decent, or right, in you, to demand that we should reverse what we have done. Do as we have done; place confidence in us, as we have done in one another; and then we shall freely, fairly, and dispassionately consider and investigate your propositions, and endeavor to gratify your wishes. But if you do not do this, it is more reasonable that you should yield to us than we to you. You cannot exist without us; you must be a member of the Union.

The case of Maryland, instanced by the gentleman, does not hold. She would not agree to confederate, because the other states would not assent to her claims of the western lands. Was she gratified? No; she put herself like the rest. Nor has she since been gratified. The lands are in the common stock of the Union.

As far as his amendments are not objectionable, or unsafe, so far they may be subsequently recommended — not because they are necessary, but because they can produce no possible danger, and may gratify some gentlemen's wishes. But I never can consent to his previous amendments, because they are pregnant with dreadful dangers.

## **Mr. HENRY.**

Mr. Chairman, the honorable gentleman who was up some time ago exhorts us not to fall into a repetition of the defects of the Confederation. He said we ought not to declare that each state retains every power, jurisdiction, and right, which is not expressly delegated, because {623} experience has proved the insertion of such a restriction to be destructive, and mentioned an instance to prove it. That case, Mr. Chairman, appears to me to militate against himself. Passports would not be given by Congress — and why? Because there was a clause in the Confederation

which denied them implied powers. And says he, Shall we repeat the error? He asked me where was the power of emancipating slaves. I say it will be implied, unless implication be prohibited. He admits that the power of granting passports will be in the new Congress without the insertion of this restriction; yet he can show me nothing like such a power granted in that Constitution. Notwithstanding he admits their right to this power by implication, he says that I am unfair and uncandid in my deduction that they can emancipate our slaves, though the word *emancipation* is not mentioned in it. They can exercise power by implication in one instance, as well as in another. Thus, by the gentleman's own argument, they can exercise the power, though it be not delegated.

We were then told that the power of treaties and commerce was the *sine qua non* of the Union; that the little states would not confederate otherwise. There is a thing not present to human view. We have seen great concessions from the large states to the little states. But little concessions from the little states to the great states will be refused. He concedes that great concessions were made in the great Convention. Now, when we speak of rights, and not of emoluments, these little states would not have been affected. What boon did we ask? We demanded only rights which ought to be unalienable and sacred. We have nothing local to ask. We ask rights which concern the general happiness. Must not justice bring them into the concession of these? The honorable gentleman was pleased to say that the new government, in this policy, will be equal to what the present is. If so, that amendment will not injure that part.

He then mentioned the danger that would arise from foreign gold. We may be bribed by foreign powers if we ask for amendments, to secure our own happiness. Are we to be bribed to forget our own interests? I will ask, if foreign gold be likely to operate, where will it be? In the seat of government, or in those little channels in which the state {624} authority will flow? It will be at the fountain of power, where bribery will not be detected. He speaks of war and bloodshed. Whence do this war and bloodshed come? I fear it, but not from the source he speaks of. I fear it, sir, from the operation and friends of the federal government. He speaks with contempt of this amendment. But whoever will advert to the use made repeatedly, in England, of the prerogative of the king, and the frequent attacks on the privileges of the people, notwithstanding many legislative acts to secure them, will see the necessity of excluding implications. Nations who have trusted to logical deduction have lost their liberty.

The honorable gentleman last up agrees that there are defects, and by and by, he says there is no defect. Does not this amount to a declaration that subsequent amendments are not necessary? His arguments, great as the gentleman's abilities are, tend to prove that amendments cannot be obtained after adoption. Speaking of forty amendments, he calculated that it was something like impracticability to obtain them. I appeal, therefore, to the candor of the honorable gentleman, and this committee, whether amendments be not absolutely unattainable, if we adopt; for he has told us that, if the other states will do like this, they cannot be previously obtained. Will the gentleman bring this home to himself? This is a piece of information which I expected. The worthy member who proposed to ratify has also proposed that what amendments may be deemed necessary should be recommended to Congress, and that a committee should be appointed to consider what amendments were necessary. But what does it all come to at last? That it is a vain project, and that it is indecent and improper. I will not argue unfairly, but I will ask him if amendments are not unattainable. Will gentlemen, then, lay their hands on their hearts, and say

that they can adopt it in this shape? When we demand this security of our privileges, the language of Virginia is not that of respect! Give me leave to deny. She only asks amendments previous to her adoption of the Constitution.

Was the honorable gentleman accurate, when he said that they could exist better without us than we could without them? I will make no comparison. But I will say that the states which have adopted will not make a respectable {625} appearance without us. Would he advise them to refuse us admission when we profess ourselves friends to the Union, and only solicit them to secure our rights? We do not reject a connection with them. We only declare that we will adopt it, if they will but consent to the security of rights essential to the general happiness.

He told you to confine yourselves to amendments which were indisputably true, as applying to several parts of the system proposed. Did you hear any thing like the admission of the want of such amendments from any one else? I will not insist on any that does not stand on the broad basis of human rights. He says there are forty. I say there is but one half the number, for the bill of rights is but one amendment.

He tells you of the important blessings which he imagines will result to us and mankind in general from the adoption of this system. I see the awful immensity of the dangers with which it is pregnant. I see it. I feel it. I see beings of a higher order anxious concerning our decision. When I see beyond the horizon that bounds human eyes, and look at the final consummation of all human things, and see those intelligent beings which inhabit the ethereal mansions reviewing the political decisions and revolutions which, in the progress of time, will happen in America, and the consequent happiness or misery of mankind, I am led to believe that much of the account, on one side or the other, will depend on what we now decide. Our own happiness alone is not affected by the event. All nations are interested in the determination. We have it in our power to secure the happiness of one half of the human race. Its adoption may involve the misery of the other hemisphere.

[Here a violent storm arose, which put the house in such disorder, that Mr. Henry was obliged to conclude.]

## **Mr. NICHOLAS**

proposed that the question should be put at nine o'clock next day.

He was opposed by Mr. CLAY.

## **Mr. RONALD**

also opposed the motion, and wished amendments to be prepared by a committee, before the question should be put.

## **Mr. NICHOLAS**

contended that the language of the proposed ratification would secure every thing which gentlemen desired, as it declared that all powers vested in the {626} Constitution were derived from the people, and might be resumed by them whensoever they should be perverted to their injury and oppression; and that every power not granted thereby remained at their will. No danger whatever could arise; for, says he, these expressions will become a part of the contract. The Constitution cannot be binding on Virginia, but with these conditions. If thirteen individuals are about to make a contract, and one agrees to it, but at the same time declares that he understands its meaning, signification, and intent, to be, (what the words of the contract plainly and obviously denote,) that it is not to be construed so as to impose any supplementary condition upon him, and that he is to be exonerated from it whensoever any such imposition shall be attempted, — I ask whether, in this case, these conditions, on which he has assented to it, would not be binding on the other twelve. In like manner these conditions will be binding on Congress. They can exercise no power that is not expressly granted them.

## **Mr. RONALD.**

Mr. Chairman, I came hither with a determination to give my vote so as to secure the liberty and privileges of my constituents. I thought that a great majority argued that amendments were necessary. Such is my opinion; but whether they ought to be previous or subsequent to our adoption, I leave to the wisdom of this committee to determine. I feel an earnest desire to know what amendments shall be proposed, before the question be put. One honorable gentleman has proposed several amendments. They are objected to by other gentlemen. I do not declare myself for or against those amendments; but unless I see such amendments, one way or the other, introduced, as will secure the happiness of the people, and prevent their privileges from being endangered, I must, though much against my inclination, vote against this Constitution.

## **Mr. MADISON**

conceived that what defects might be in the Constitution might be removed by the amendatory mode in itself. As to a solemn declaration of our essential rights, he thought it unnecessary and dangerous — unnecessary, because it was evident that the general government had no power but what was given it, and that the delegation alone warranted the exercise of power; dangerous, because an enumeration which is not complete is not safe. Such an enumeration could not be made, within any compass of time, {627} as would be equal to a general negation, such as his honorable friend (Mr. Wythe) had proposed. He declared that such amendments as seemed, in his judgment, to be without danger, he would readily admit, and that he would be the last to oppose any such amendment as would give satisfaction to any gentleman, unless it were dangerous.

---

**W**EDNESDAY, *June 25, 1788.*

## **Mr. NICHOLAS.**

Mr. Chairman, I do not mean to enter into any further debate. The friends of the Constitution wish to take up no more time, the matter being now fully discussed. They are convinced that further time will answer no end but to serve the cause of those who wish to destroy the Constitution. We wish it to be ratified, and such amendments as may be thought necessary to be subsequently considered by a committee, in order to be recommended to Congress, to be acted upon according to the amendatory mode presented in itself. Gentlemen in the opposition have said that the friends of the Constitution would depart after the adoption, without entering into any consideration of subsequent amendments. I wish to know their authority. I wish for subsequent amendments as a friend to the Constitution; I trust its other friends wish so too; and I believe no gentleman has any intention of departing. The amendments contained in this paper are those we wish; but we shall agree to any others which will not destroy the spirit of the Constitution, or that will better secure liberty.

He then moved that the clerk should read the resolution proposed by Mr. Wythe, in order that the question might be put upon it; which being done, Mr. TYLER moved to read she amendments and bill of rights proposed by Mr. Henry, for the same purpose.

## **Mr. HARRISON.**

Mr. Chairman, the little states refused to come into the Union without extravagant concessions. It will be the same case on every other occasion. Can it be supposed that the little states, whose interest and importance are greatly advanced by the Constitution as it now stands, will ever agree to any alteration which must infallibly diminish their political influence? On this occasion, let us behave with that fortitude which animated us in our resistance to Great Britain.

The situation and disposition of the states reader subsequent {628} amendments dangerous and impolitic, and previous amendments eligible.

*New Hampshire* does not approve of the Constitution as it stands.

They have refused it so. In *Massachusetts*, we are told that there was a decided majority in their Convention who opposed the Constitution as it stood, and were in favor of previous amendments, but were afterwards, by the address and artifice of the federalists, prevailed upon to ratify it.

*Rhode Island* is not worthy the attention of this house. She is of no weight or importance to influence any general subject of consequence.

*Connecticut* adopted it, without proposing amendments.

*New York*, we have every reason to believe, will reject the Constitution, unless amendments be obtained. Hence it clearly appears that there are three states which wish for amendments.

*Jersey, Pennsylvania, and Delaware*, have adopted it unconditionally.

In *Maryland*, there is a considerable number who wish amendments to be had.

*Virginia* is divided, let this question be determined which way it will. One half of the people, at least, wish amendments to be obtained.

*North Carolina* is decidedly against it. *South Carolina* has proposed amendments.

Under this representation, it appears that there are seven states who wish to get amendments. Can it be doubted, if the seven states insert amendments as the condition of their accession, that they would be agreed to? Let us not, then, be persuaded into an opinion that the Union will be dissolved if we should reject it. I have no such idea.

As far as I am acquainted with history, there never existed a constitution where the liberty of the people was established in this way. States have risen by gradual steps: let us follow their example. The line which we ought to pursue is equally bounded. How comes that paper on your table to be now here discussed? The state of Virginia, finding the power of the Confederation insufficient for the happiness of the people, invited the other states to call a convention, in order that the powers of Congress might be enlarged. I was not in the Assembly then; and if I had been, {629} I have no vanity to suppose I could have decided more cautiously. They were bound to do what we ought to do now. I have no idea of danger to the Union. A vast majority, from every calculation, are invincibly attached to it. I see an earnest desire in gentlemen to bring this country to be great and powerful. Considering the very late period when this country was first settled, and the present state of population and wealth, this is impossible now. The attempt will bring ruin and destruction upon us. These things must not be forced. They must come of course, like the course of rivers, gently going on. As to the inconveniences, to me, from adoption, they are none at all. I am not prejudiced against New England, or any part. They are held up to us as a people from whom protection will come. Will any protection come from thence for many years? When we were invaded, did any gentleman from the Northern States come to relieve us? No, sir, we were left to be buffeted. General Washington, in the greatness of his soul, came with the French auxiliaries, and relieved us opportunely. Were it not for this, we should have been ruined. I call Heaven to witness that I am a friend to the Union. But I conceive the measure of adoption to be unwarrantable, precipitate, and dangerously impolitic. Should we rush into sudden perdition, I should resist with the fortitude of a man. As to the amendments proposed by gentlemen, I do not object to them: they are inherently good. But they are put in the wrong place — subsequent instead of previous. [Mr. Harrison added other observations, which could not be heard.]

## **Mr. MADISON.**

Mr. Chairman, I should not have risen at all, were it not for what the honorable gentleman said. If there be any suspicions that, if the ratification be made, the friends of the system will withdraw their concurrence, and much more, their persons, it shall never be with my approbation. Permit me to remark that, if he has given us a true state of the disposition of the several members of the Union, there is no doubt they will agree to the same amendments after adoption. If we propose

the conditional amendments, I entreat gentlemen to consider the distance to which they throw the ultimate settlement, and the extreme risk of perpetual disunion. They cannot but see how easy it will be to obtain subsequent amendments. They can be proposed when the legislatures of two thirds of the states {630} shall make application for that purpose; and the legislatures of three fourths of the states, or conventions in the same, can fix the amendments so proposed. If there be an equal zeal in every state, can there be a doubt that they will concur in reasonable amendments? If, on the other hand, we call on the states to rescind what they have done, and confess that they have done wrong, and to consider the subject again, it will produce such unnecessary delays, and is pregnant with such infinite dangers, that I cannot contemplate it without horror. There are uncertainty and confusion on the one hand, and order, tranquillity, and certainty, on the other. Let us not hesitate to elect the latter alternative. Let us join with cordiality in those alterations we think proper. There is no friend to the Constitution but who will concur in that mode.

## Mr. MONROE,

after an exordium which could not be heard, remarking that the question now before the committee was, whether previous or subsequent amendments were the most prudent, strongly supported the former. He could not conceive that a conditional ratification would, in the most remote degree, endanger the Union; for that it was as clearly the interest of the adopting states to be united with Virginia, as it could be her interest to be in union with them. He demanded if they would arm the states against one another, and make themselves enemies of those who were respectable and powerful from their situation and numbers. He had no doubt that they would, in preference to such a desperate and violent measure, come forward and make a proposition to the other states, so far as it would be consistent with the general interest. Adopt it now, unconditionally, says he, and it will never be amended, not even when experience shall have proved its defects. An alteration will be a diminution of their power, and there will be great exertions made to prevent it. I have no dread that they will immediately infringe the dearest rights of the people, but that the operation of the government will be oppressive in process of time. Shall we not pursue the dictates of common sense, and the example of all free and wise nations, and insist on amendments with manly fortitude?

It is urged that there is an impossibility of getting previous amendments, and that a variety of circumstances concur to render it impracticable. This argument appears to {631} me fallacious, and as a specious evasion. The same cause which has hitherto produced a spirit of unanimity, and a predilection for the Union, will hereafter produce the same effects.

How did *the federal Convention* meet? From the beginning of time, in any age or country, did ever men meet under so loose, uncurbed a commission? There was nothing to restrain them but their characters and reputation. They could not organize a system without defects. This cannot, then, be perfect. Is it not presumable that by subsequent attempts we shall make it more complete and perfect?

What are the great objections now made? Are they local? What are the amendments brought forth by my friends? Do they not contemplate the great interests of the people, and of the Union at large? I am satisfied, from what we have seen of the disposition of the other states, that,

instead of disunion and national confusion, there will be harmony and perfect concord. Disunion is more to be apprehended from the adoption of a system reprobated by some, and allowed by all to be defective. The arguments of gentlemen have no weight on my mind. It is unnecessary to enter into the refutation of them. My honorable friends have done it highly to my satisfaction. Permit me only to observe, with respect to those amendments, that they are harmless. Do they change a feature of the Constitution? They secure our rights without altering a single feature; I trust, therefore, that gentlemen will concur with them.

## **Mr. INNES.**

Mr. Chairman, I have hitherto been silent on this great and interesting question. But my silence has not proceeded from a neutrality of sentiments, or a supineness of disposition. The session of the Court of Oyer and Terminer, at this time, has indispensably called my attention to the prosecutions for the commonwealth. Had I taken an earlier part in the discussion, my observations would have been desultory, and perhaps not satisfactory, not being apprized of all the arguments which had been used by gentlemen. We are now brought to that great part of the system where it is necessary for me to take a decided part. This is one of the most important questions that ever agitated the councils of America. When I see in this house, {632} divided in opinion, several of those brave officers whom I have seen so gallantly fighting and bleeding for their country, the question is doubly interesting to me. I thought it would be the last of human events, that I should be on a different side from them on so awful an occasion. However painful and distressing to me the recollection of this diversity of sentiment may be, I am consoled by this reflection — that difference of opinion has a happy consequence; it aids discussion, and is a friend to truth. We ought (and I hope we have the temper) to be regulated by candor and moderation — without which, in a deliberative body, every thing with respect to the public good evaporates into nothing.

I came hither under a persuasion that the felicity of our country required that we should accede to this system; but I am free to declare that I came in with my mind open to conviction, and a predetermination to recede from my opinion, if I should find it to be erroneous. I have heard nothing hitherto that would warrant a change of one idea. The objections urged by the advocates of the opposition have been ably, and, in my conception, satisfactorily answered by the friends of the Constitution. I wish, instead of reasoning from possible abuses, that the government had been considered as an abstract position, drawn from the history of alterations and such theoretic opinions as experience has demonstrated to be right. I have waited to hear this mode of reasoning, but in vain. Instead of this, sir, horrors have been called up, chimeras suggested, and every terrific and melancholy idea adduced to prevent what I think indispensably necessary for our national honor, happiness, and safety — I mean the adoption of the system under consideration.

How are we to decide this question? Shall we take the system by way of subsequent amendments, or propose amendments as the previous condition of our adoption? Let us consider this question coolly. In my humble opinion, it transcends the power of this Convention to take it with previous amendments. If you take it so, I say that you transcend and violate the commission of the people; for, if it be taken with amendments, the opinions of the people at large ought to be consulted on them. Have they an opportunity of considering previous amendments? They have

seen the Constitution, and sent us hither to adopt or reject it. Have we more latitude on this subject? If you propose {633} previous amendments as the condition of your adoption, they may radically change the paper on the table, and the people will be bound by what they know not. Subsequent amendments would not have that effect. They would not operate till the people had an opportunity of considering and altering them, if they thought proper. They could have it in their power to give contrary directions to their members of Congress.

But I observe, with regret, that there is a general spirit of jealousy with respect to our *northern brethren*. Had we this political jealousy in 1775? If we had had, it would have damped our ardor and intrepidity, and prevented that unanimous resistance which enabled us to triumph over our enemies. It was not a Virginian, Carolinian, or Pennsylvanian, but the glorious name of an American, that extended from one end of the continent to the other, that was then beloved and confided in. Did we then expect that, in case of success, we should be armed against one another? I would have submitted to British tyranny rather than to northern tyranny, had what we have been told been true — that they had no part of that philanthropic spirit which cherishes fraternal affection, unites friends, enables them to achieve the most gallant exploits, and renders them formidable to other nations.

Gentlemen say that the states have not similar interests that what will accommodate their interests will be incompatible with ours; and that the northern oppression will fetter and manacle the hands of the southern people. Wherein does the dissimilarity consist? Does not our existence as a nation depend on our union? Is it to be supposed that their principles will be so constuprated, and that they will be so blind to their own true interests, as to alienate the affections of the Southern States, and adopt measures which will produce discontents, and terminate in a dissolution of a union as necessary to their happiness as to ours? Will not brotherly affection rather be cultivated? Will not the great principles of reciprocal friendship and mutual amity be constantly inculcated, so as to conciliate all parts of the Union? This will be inevitably necessary, from the unity of their interests with ours. To suppose that they would act contrary to these principles, would be to suppose them to be not {634} only destitute of honor and probity, but void of reason — not only bad, but mad men.

The honorable gentleman has warned us to guard against European politics. Shall we not be more able to set their machinations at defiance, by uniting our councils and strength, than by splitting into factions and divisions? Our divisions, and consequent debility, are the objects most ardently wished for by the nations of Europe. What cause induced Great Britain, and other European nations which had settlements in America, to keep their colonies in an infantine condition? What cause leads them to exclude our vessels from the West Indies? The fear of our becoming important and powerful. Will not they be perpetually stimulated by this fear? Will not they incessantly endeavor to depress us by force or stratagem? Is there no danger to be apprehended from Spain, whose extensive and invaluable possessions are in our vicinity? Will that nation rejoice at an augmentation of our strength or wealth?

## NOTE

But we are told that we need not be afraid of Great Britain. Will that great, that warlike, that vindictive nation lose the desire of revenging her losses and disgraces? Will she passively

overlook flagrant violations of the treaty? Will she lose the desire of retrieving those laurels which are buried in America? Should I transfuse into the breast of a Briton that *amor patriæ* which so strongly predominates in my own, he would say, While I have a guinea, I shall give it to recover lost America!

But, says another gentleman, the maritime powers of Europe look with anxious and jealous eyes on you. While you are helpless, they will let you alone; but if you attempt to become respectable, they will crush you! Is this the language or consolation of an American? Must we acquiesce to continue in this situation? We should, by this way of reasoning, sacrifice our own honor and interests, to please those supercilious nations, and promote their interests; and, with every means of acquiring a powerful fleet, would never have a ship of the line. To promote their glory, we should become wretched and contemptible. Our national glory, our honor, our interests, forbid this disgraceful conduct. It may be said that the ancients, who deserved and acquired glory, have lost their liberty. Call to mind the many nations of Indians and cannibals that have lost it likewise. {635} And who would not rather be a Roman, than one of those who hardly deserve to be enumerated among the human species?

This question is as important as the revolution which severed us from the British empire. It rests now to be determined whether America has in reality gained by that change Which has been thought so glorious, and whether those hecatombs of American heroes, whose blood was so freely shed at the shrine of liberty, fell in vain, or whether we Shall establish such a government as shall render America respectable and happy. I wish her not only to be internally possessed of political and civil liberty, but to be formidable, terrible, and dignified in war, and not depend on the ambitious princes of Europe for tranquillity, security, or safety, I ask, if the most petty of those princes, even the dey of Algiers, were to make war upon us, if the other states of Europe should keep a neutrality, whether we should not be reduced to the greatest distress? Is it not in the power of any maritime power to seize our vessels, and destroy our commerce, with impunity?

But we are told that the New Englanders mean to take our trade from us, and make us hewers of wood and carriers of water; and, the next moment, that they will emancipate our slaves! But how inconsistent is this! They tell you that the admission of the importation of slaves for twenty years shows that their policy is to keep us weak; and yet, the next moment, they tell you that they intend to set them free! If it be their object to corrupt and enervate us, will they emancipate our slaves? Thus they complain and argue against it on contradictory principles. The Constitution is to turn the world topsy-turvy, to make it answer their various purposes!

Can it be said that liberty of conscience is in danger? I observe on the side of the Constitution those who have been champions of religious liberty, an attack on which I would as soon resist as one on civil liberty. Do they employ consistent arguments to show that it is in danger? They inform you that Turks, Jews, Infidels, Christians, arm all other sects, may be Presidents, and command the fleet and army, there being no test to be required; and yet the tyrannical and inquisitorial Congress will ask me, as a private citizen, what is my opinion on religion, and punish {636} me if it does not conform to theirs. I cannot think the gentleman could be serious when he made these repugnant and incompatible objections.

With respect to previous amendments, what will be the consequence? Virginia first discovered the defects of the existing confederacy. When the legislature was sitting, a few years ago, they sent an invitation to the other states to make amendments to it. After some preparatory steps, the late federal Convention was called. To this were sent select deputies from all the states except Rhode Island. After five months spent in tedious and painful investigation, they, with great difficulty, devised the paper on the table; and it has been adopted by every state which has considered and discussed it. Virginia is about dictating again to the other states. Eight states have exercised their sovereignty in ratifying it. Yet, with a great deal of humility, we ask them to rescind, and make such alterations as the *ancient dominion* shall think proper. States are but an aggregate of individuals. Would not an individual spurn at such a requisition? They will say, It has been laid before you, and if you do not like it, consider the consequences. We are as free, sister Virginia, and as independent, as you are; we do not like to be dictated to by you. But, say gentlemen, we can afterwards come into the Union; we may come in at another time; that is, if they do not accede to our dictatorial mandate. They are not of such yielding, pliant stuff, as to revoke a decision founded on their most solemn deliberations, to gratify our capricious wishes.

After hearing the arguments on this subject, and finding such a variety of contradictory objections, I am the more averse to solicit another convention, from which I should expect great discord, and no good effect at all. Not doubting the sincerity of gentlemen's protestations, I say, the mode pointed out in the Constitution is much better; for, according to their mode, the Union would never be complete till the thirteen states had acceded to it, and eight states must rescind and revoke what they have done. By the paper before you, if two thirds of the states think amendments necessary, Congress are obliged to call a convention to propose amendments, which are to be submitted to the legislatures, or conventions, in three fourths of the states, the acquiescence of which will render them binding. Now, is there not a {637} greater probability of obtaining the one than the other? Will not nine states more probably agree to any amendments than thirteen? The doctrine of chances is in favor of it.

Unless we in vain look for a perfect constitution we ought to take it. In vain you will seek, from India to the pole, for a perfect constitution. Though it may have certain defects, yet I doubt whether any system more perfect can be obtained at this time. Let us no longer pursue chimerical and ridiculous systems. Let us try it: experience is the best test. It will bear equally on all the states from New Hampshire to Georgia; and as it will operate equally on all, they will all call for amendments; and whatever the spirit of America calls for, must doubtless take place immediately.

I consider Congress as ourselves, as our fellow-citizens, and no more different from us than our delegates in the state legislature. I consider them as having all a fellow-feeling for us, and that they will never forget that this government is that of the people. Under this impression, I conclude that they will never dare to go beyond the bounds prescribed in the Constitution, and that, as they are eligible and removable by ourselves, there is sufficient responsibility; for where the power of election frequently reverts to the people, and that reversion is unimpeded, there can be no danger. Upon the whole, this is the question — Shall it be adopted or rejected? With respect to previous amendments, they are equal to rejection. They are abhorrent to my mind. I consider them as the greatest of evils. I think myself bound to vote against every measure which

I conceive to be a total rejection, than which nothing, in my conceptions, can be more imprudent, destructive, and calamitous.

## **Mr. TYLER.**

Mr. Chairman, I should have been satisfied with giving my vote on the question to-day; but, as I wish to hand down to posterity my opposition to this system, I conceive it to be my duty to declare the principles on which I disapprove it, and the cause of my opposition. I have seriously considered the subject in my mind, and when I consider the effects which may happen to this country from its adoption, I tremble at it. My opposition to it arose first from general principles, independent of any local consideration. But when I find that the Constitution is expressed in indefinite terms, in terms which the gentlemen who composed it do not all concur in the meaning of, — I say that, {638} when it is thus liable to objections and different constructions, I find no rest in my mind. Those clauses which answer different constructions will be used to serve particular purposes. If the able members who composed it cannot agree on the construction of it, shall I be thought rash or wrong to pass censure on its ambiguity?

The worthy member last up has brought us to a degrading situation — that we have no right to propose amendments. I should have expected such language had we already adopted a Constitution which will preclude us from this advantage. If we propose to them to reconsider what they have done, and not rescind it, will it be dictating to them? I do not undertake to say that our amendments will bind other states: I hope no gentleman will be so weak as to say so. But no gentleman on the other side will deny our right of proposing amendments. Wherefore is it called dictatorial? It is not my wish that they should rescind but so much as will secure our peace and liberty. We wish to propose such amendments to the sister states as will reconcile all the states. Will gentlemen think this will dissolve the Union?

Among all the chimeras adduced on this occasion, we are intimidated with the fear of being attacked by the petty princes of Europe. The little predatory nations of Europe are to cross the Atlantic and fall upon us; and to avoid this, we must adopt this government, with all its defects. Are we to be frightened into its adoption?

The gentleman has objected to previous amendments, because the people did not know them. Have they seen their subsequent amendments?

[Here Mr. Innes rose, and explained the difference — that previous amendments would be binding on the people, though they had never seen them, and should have no opportunity of considering them before they should operate; but that subsequent amendments, being only recommendatory in their nature, could be reviewed by the people before they would become a part of the system; and, if they disapproved of them, they might direct their delegates in Congress to alter and modify them.]

## **Mr. TYLER**

then proceeded: I have seen their subsequent amendments, and, although they hold out something like the thing we wish, yet they have not entered pointedly and substantially into it. What have they said about direct taxation? They have said nothing on this subject. Is there any

limitation of, or restriction on, the federal judicial {639} power? I think not. So that gentlemen hold out the idea of amendments which will not alter one dangerous part of it. It contains many dangerous articles. No gentleman here can give such a construction of it as will give general satisfaction. Shall we be told that we shall be attacked by the Algerines, and that disunion will take place, unless we adopt it? Such language as this I did not expect here. Little did I think that matters would come to this, when we separated from the mother country. There, sir, every man is amenable to punishment. There is far less responsibility in this government. British tyranny would have been more tolerable. By our present government, every man is secure in his person, and the enjoyment of his property. There is no man who is not liable to be punished for misdeeds. I ask, What is it that disturbs men whose liberty is in the highest zenith? Human nature will always be the same. Men never were, nor ever will, be satisfied with their happiness.

They tell you that one letter's alteration will destroy it. I say that it is very far from being perfect. I ask, if it were put in immediate operation, whether the people could bear it — whether two bodies can tax the same species of property. The idea of two omnipotent powers is inconsistent. The natural tendency must be, either a revolt, or the destruction of the state governments, and a consolidation of them all into one general system. If we are to be consolidated, let it be on better grounds. So long as climate will have effect on men, so long will the different climates of the United States render us different. Therefore a consolidation is contrary to our nature, and can only be supported by an arbitrary government.

*Previous and subsequent amendments are now the only dispute;* and when gentlemen say that there is a greater probability of obtaining the one than the other, they accompany their assertions with no kind of argument. What is the reason that amendments cannot be got after ratification? Because we have granted power. Because the amendments you propose will diminish their power, and undo some clauses in that paper. This argument proves to me that they cannot be serious. It has been plainly proved to you that it is impracticable. Local advantages are given up, as well as the regulation of trade, When it is the case, will the little {640} states agree to an alteration? When gentlemen insist on this, without producing any argument, they will find no credulity in me. Another convention ought to be had, whether the amendments be previous or subsequent. They say another convention is dangerous. How is this proved? It is only their assertion. Gentlemen tell us we shall be mined without adoption. Is this reasonable? It does not appear so to me.

Much has been said on the subject of war by foreigners, and the Indians; but a great deal has been said in refutation of it. Give me leave to say that, from the situation of the powers of Europe at this time, no danger is to be apprehended from thence. Will the French go to war with you, if you do not pay them what you owe them? Will they thereby destroy that balance, to preserve which they have taken such immense trouble? But Great Britain will go to war with you, unless you comply with the treaty. Great Britain, which, to my sorrow, has monopolized our trade, is to go to war with us unless the law of treaties be binding. Is this reasonable? It is not the interest of Britain to quarrel with us. She will not hazard any measure which may tend to take our trade out of her hands. It is not the interest of Holland to see us destroyed or oppressed. It is the interest of every nation in Europe to keep up the balance of power, and therefore they will not suffer any nation to attack us, without immediately interfering.

But much is said of the propriety of our becoming a great and powerful nation. There is a great difference between offensive and defensive war. If we can defend ourselves, it is sufficient. Shall we sacrifice the peace and happiness of this country, to enable us to make wanton war?

My conduct throughout the revolution will justify me. I have invariably wished to oppose oppressions. It is true that I have now a paltry office, I am willing to give it up — away with it! It has no influence on my present conduct. I wish Congress to have the regulation of trade. I was of opinion that a partial regulation alone would not suffice. I was among those members who, a few years ago, proposed that regulation. I have lamented that I have put my hand to it, since this measure may have grown out of it. It was the hopes of our people to have their trade on a respectable footing. But it never entered into my head that {641} we should quit liberty, and throw ourselves into the hands of an energetic government. Do you want men to be more free, or less free, than they are? Gentlemen have been called upon to show the causes of this measure. None have been shown. Gentlemen say we shall be ruined unless we adopt it. We must give up our opinions. We cannot judge for ourselves. I hope gentlemen, before this, have been satisfied that such language is improper. All states which have heretofore been lavish in the concession of power and relinquishment of privileges have lost their liberty. It has been often observed (and it cannot be too often observed) that liberty ought not to be given up without knowing the terms. The gentlemen themselves cannot agree in the construction of various clauses of it; and so long as this is the case, so long shall liberty be in danger.

Gentlemen say we are jealous. I am not jealous of this house. I could trust my life with them. If this Constitution were safer, I should not be afraid. But its defects warrant my Suspicions and fears. We are not passing laws now, but laying the foundation on which laws are to be made. We ought, therefore, to be cautious how we decide. When I consider the Constitution in all its parts, I cannot but dread its operation. It contains a variety of powers too dangerous to be vested in any set of men whatsoever. Its power of direct taxation, the supremacy of the laws of the Union, and of treaties, are exceedingly dangerous. I have never heard any manner of calling the President to account for his conduct, nor even the members of the democratic branch of the government. We may turn out our ten members, but what can we do with the other fifty-five? The wisdom of Great Britain gave each state its own legislative assembly and judiciary, and a right to tax themselves. When they attempted to infringe that right, we declared war. This system violates that right. In the year 1781 the Assembly were obliged to pass a law, that forty members could pass laws. I have heard many members say that it was a great departure from the constitution, and that it would lead to aristocracy. If we could not trust forty, can we trust ten? Those who lay a tax ought to be amenable to the payment of a proportionate share of it. I see nothing in their subsequent amendments going to this point — that we shall have a right to tax ourselves.

{642} But gentlemen say that this would destroy the Constitution. Of what avail, then, will their subsequent amendments be? Will gentlemen satisfy themselves that, when they adopt this Constitution, their country will be happy? Is not the country divided? Is it a happy government, which divides the people, and sets brother in opposition to brother? This measure has produced anarchy and confusion. We ought to have been unanimous, and gone side by side, as we went through the revolution. Instead of unanimity, it has produced a general diversity of opinions, which may terminate in the most unhappy consequences. We only wish to do away ambiguities, and establish our rights on clear and explicit terms. If this be done, we shall all be like one man

— we shall unite and be happy. But if we adopt it in its present form, unanimity or concord can never take place. After adoption, we can never expect to see it amended; because they will consider requests and solicitations for amendments as in a high degree dictatorial. They will say, You have signed and sealed, and you cannot now retract.

When I review all these considerations, my heart is full, and can never be at peace till I see these defects removed. Our only consolation is the virtue of the present age. It is possible that, when they see the country divided, these politicians will reconcile the minds of their countrymen, by introducing such alterations as shall be deemed necessary. Were it not for this hope, I should be in despair. I shall say no more, but that I wish my name to be seen in the yeas and nays, that it may be known that my opposition arose from a full persuasion and conviction of its being dangerous to the liberties of my country.

## **Mr. STEPHEN**

addressed the chairman, but in so low a voice that he could not be distinctly heard. He described, in a feeling manner, the unhappy situation of the country, and the absolute necessity of preventing a dismemberment of the confederacy. I was, said he, sent hither to adopt the Constitution as it is; but such is my regard for my fellow-citizens, that I would concur in amendments. The gentlemen on the other side have adduced no reasons or proofs to convince us that the amendments should become a part of the system before ratification. What reason have we to suspect that persons who are chosen from among ourselves {643} will not agree to the introduction of such amendments as will be desired by the people at large?

In all safe and free governments, there ought to be a judicious mixture in the three different kinds of government. This government is a compound of those different kinds. But the democratic kind preponderates, as it ought to do. The members of one branch are immediately chosen by the people; and the people also elect, in a secondary degree, the members of the other two. At present we have no confederate government. It exists but in name. The honorable gentleman asked, Where is the genius of America? What else but that genius has stimulated the people to reform that government which woful experience has proved to be totally inefficient? What has produced the unison of sentiments in the states on this subject? I expected that filial duty and affection would have impelled him to inquire for the genius of Virginia — that genius which formerly resisted British tyranny, and, in the language of manly intrepidity and fortitude, said to that nation, Thus far, and no farther, shall you proceed!

What has become of that genius which spoke that magnanimous language — that genius which produced the federal Convention? Yonder she is, in mournful attire, her hair dishevelled, distressed with grief and sorrow, supplicating our assistance against gorgons, fiends, and hydras, which are ready to devour her and carry desolation throughout her country. She bewails the decay of trade and neglect of agriculture — her farmers discouraged — her ship-carpenters, blacksmiths, and all other tradesmen, unemployed. She casts her eyes on these, and deploras her inability to relieve them. She sees and laments that the profit of her commerce goes to foreign states. She further bewails that all she can raise by taxation is inadequate to her necessities. She sees religion die by her side, public faith prostituted, and private confidence lost between man and man. Are the hearts of her citizens so deaf to compassion that they will not go to her relief?

If they are so infatuated, the dire consequences may be easily foreseen. Expostulations must be made for the defection of Virginia, when Congress meets. They will inquire where she has lately discovered so much political wisdom — she that gave an immense tract of country to relieve the general distresses. Wherein consists her {644} superiority to her friends of South Carolina and the respectable state of Massachusetts, who, to prevent a dissolution of the Union, adopted the Constitution, and proposed such amendments as they thought necessary, placing confidence in the other states, that they would accede to them?

After making several other remarks, he concluded by declaring that, in his opinion, they were about to determine whether we should be one of the United States or not.

## **Mr. ZACHARIAH JOHNSON.**

Mr. Chairman, I am now called upon to decide the greatest of all questions — a question which may involve the felicity or misery of myself and posterity. I have hitherto listened attentively to the arguments adduced by both sides, and attended to hear the discussion of the most complicated parts of the system by gentlemen of great abilities. Having now come to the ultimate stage of the investigation, I think it my duty to declare my sentiments on the subject. When I view the necessity of government among mankind, and its happy operation when judiciously constructed; and when I view the principles of this Constitution, and the satisfactory and liberal manner in which they have been developed by the gentleman in the chair, and several other gentlemen; and when I view, on the other hand, the strained construction which has been put, by the gentlemen on the other side, on every word and syllable, in endeavoring to prove oppressions which can never possibly happen, — my judgment is convinced of the safety and propriety of this system. This conviction has not arisen from a blind acquiescence or dependence on the assertions and opinions of others, but from a full persuasion of its rectitude, after an attentive and mature consideration of the subject; the arguments of other gentlemen having only confirmed the opinion which I had previously formed, and which I was determined to abandon, should I find it to be ill founded.

As to the principle of representation, I find it attended to in this government in the fullest manner. It is founded on absolute equality. When I see the power of electing the representatives — the principal branch — in the people at large — in those very persons who are the constituents of the state legislatures; when I find that the other branch is chosen by the state legislature; that the executive is eligible in a secondary degree by the people likewise, and that the {645} terms of elections are short, and proportionate to the difficulty and magnitude of the objects which they are to act upon; and when, in addition to this, I find that no person holding *any office* under the United States shall be a member of either branch, — I say, when I review all these things, that I plainly see a security of the liberties of this country, to which we may safely trust. Were this government defective in this fundamental principle of representation, it would be so radical that it would admit of no remedy.

I shall consider several other parts which are much objected to. As to the regulation of the militia, I feel myself doubly interested. Having a numerous offspring, I am careful to prevent the establishment of any regulation that might entail oppression on them. When gentlemen of high abilities in this house, and whom I respect, tell us that the militia may be subjected to martial law

in time of peace, and whensoever Congress may please, I am much astonished. My judgment is astray, and exceedingly undiscerning, if it can bear such a construction. Congress has only the power of arming and disciplining them. The states have the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress. When called into the actual service of the United States, they shall be subject to the marching orders of the United States. Then, and then only, it ought to be so. When we advert to the plain and obvious meaning of the words, without twisting and torturing their natural signification, we must be satisfied that this objection is groundless. Had we adverted to the true meaning, and not gone farther, we should not be here to-day, but should have come to a decision long ago. We are also told that religion is not secured; that religious tests are not required. You will find that the exclusion of tests will strongly tend to establish religious freedom. If tests were required, and if the Church of England, or any other, were established, I might be excluded from any office under the government, because my conscience might not permit me to take the test required. The diversity of opinions and variety of sects in the United States have justly been reckoned a great security with respect to religious liberty. The difficulty of establishing a uniformity of religion in this country is immense. The extent of the country is very great. The multiplicity of sects is very great likewise. [The people are not to be disarmed of their weapons. They are left in full possession of them.](#) The government is administered by the representatives of the people, voluntarily and freely chosen.

Under these circumstances, should any one attempt to establish their own system, in prejudice of the rest, they would be universally detested and opposed, and easily frustrated. This is a principle which secures religious liberty most firmly. The government will depend on the assistance of the people in the day of distress. This is the case in all governments. It never was otherwise. They object to this government because it is strong and energetic, and, with respect to the rich and poor, that it will be favorable to the one and oppressive to the other. It is right it should be energetic. This does not show that the poor shall be more oppressed than the rich. Let us examine it. If it admits that private and public justice should be done, it admits what is just. As to the indolent and fraudulent, nothing will reclaim these but the hand of force and compulsion. Is there any thing in this government which will shew that it will bear hardly and unequally on the honest and industrious part of the community? I think not. As to the mode of taxation, the proportion of each state, being known, cannot be exceeded; and such proportion will be raised, in the most equitable manner, of the people, according to their ability. There is nothing to warrant a supposition that the poor will be equally taxed with the wealthy and opulent.

I shall make a comparison, to illustrate my observations, between the state and the general government. In our state government, so much admired by the worthy gentleman over the way, though there are 1700 militia in some counties, and but 150 in others, yet every county sends two members, to assist in legislating for the whole community. There is disproportion between the respectable county of Augusta, which I have the honor to represent, and the circumscribed, narrow county of Warwick. Will any gentleman tell us that this is a more equal representation than is fixed in the Constitution, whereby 30,000 are to send one representative, in whatever place they may reside? By the same state system. the poor, in many instances, pay as much as the rich. Many laws occur to my mind where I could show you that the representation and taxation bear hard on those who live {647} in large, remote, back counties. The mode of taxation is more oppressive to us than to the rest of the Community. Last fall, when the principle of taxation was

debated, it was determined that tobacco should be received in discharge of taxes; but this did not relieve us, for it would not fetch what it cost us, as the distance is so great, and the carriage so difficult. Other specific articles were not received in payment of taxes; so that we had no other alternative than to pay specie, which was a peculiar hardship. I could point out many other disadvantages which we labor under; but I shall not now fatigue the house.

It is my lot to be among the poor people. The most that I can claim or flatter myself with, is to be of the middle rank. I wish no more, for I am contented. But I shall give my opinion unbiased and uninfluenced, without erudition or eloquence, but with firmness and candor; and in so doing I will satisfy my Conscience. If this Constitution be bad, it will bear equally as hard on me as on any other member of the society. It will bear hard on my children, who are as dear to me as any man's children can be to him. Having their felicity and happiness at heart, the vote I shall give in its favor can only be imputed to a conviction of its utility and propriety. When I look for responsibility, I fully find it in that paper. When the members of the government depend on ourselves for their appointment, and will bear an equal share of the burdens imposed on the people, — when their duty is inseparably connected with their interests, — I conceive there can be no danger. Will they forfeit the friendship and confidence of their countrymen, and counteract their own interest? As they will probably have families, they cannot forget them. When one of them sees that Providence has given him a numerous family, he will be averse to lay taxes on his own posterity. They cannot escape them. They will be as liable to be taxed as any other persons in the community. Neither is he sure that he shall enjoy the place again, if he breaks his faith. When I take these things into consideration, I think there is sufficient responsibility.

As to the amendments now on your table, besides the impropriety of proposing them to be obtained previous to ratification, they appear to me to be evidently and clearly objectionable. Look at the bill of rights; it is totally mutilated {648} and destroyed, in that paper. The 15th article of the bill of rights of Virginia is omitted entirely in this proposed bill of rights. That article says that "no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles." This article is the best of the whole. Take away this, and all is gone. Look at the first article of our bill of rights. It says that all men are by nature equally free and independent. Does that paper acknowledge this? No; it denies it.

They tell us that they see a progressive danger of bringing about emancipation. The principle has begun since the revolution. Let us do what we will, it will come round. Slavery has been the foundation of that impiety and dissipation which have been so much disseminated among our countrymen. If it were totally abolished, it would do much good.

Gentlemen say that we destroy our own principles by subsequent amendments. They say that it is acting inconsistently with our reasons. Let us examine this position. Here is a principle of united wisdom founded on mutual benefits; and, as experience may show defects, we stipulate that, when they shall happen, they shall be amended; that, when a majority finds defects, we will search a remedy and apply it. There are two ways of amending it pointed out in the system itself. When introduced, either way, it is to be binding.

I am happy to see that happy day approaching when we lose sight of dissensions and discord, which are the greatest sources of political misfortunes. Division is a dreadful thing. This Constitution may have defects. There can be no human institution without defects. We must go out of this world to find it otherwise. The annals of mankind do not show us one example of a perfect constitution.

When I see such a diversity of opinions among gentlemen on this occasion, it brings to my recollection a portion of history which strongly warns us to be moderate and cautious.

The historical facts to which I allude happened in a situation similar to our own. When the Parliament of England beheaded King Charles I., conquered their enemies, obtained liberty, and established a kind of republic, one would think {649} that they would have had sufficient wisdom and policy to preserve that freedom and independence which they had with such difficulty acquired. What was the consequence? That they would not bend to the sanction of laws or legal authority. For the want of an efficient and judicious system of republican government, confusion and anarchy took place. Men became so lawless, so destitute of principle, and so utterly ungovernable, that, to avoid greater calamities, they were driven to the expedient of sending for the son of that monarch whom they had beheaded, that he might become their master. This is like our situation in some degree. It will completely resemble it, should we lose our liberty as they did. It warns and cautions us to shun their fate, by avoiding the causes which produced it. Shall we lose our blood and treasure, which we lost in the revolution, and permit anarchy and misery to complete the ruin of this country? Under these impressions, and for these reasons, I am for adopting the Constitution without previous amendments. I will go any length afterwards, to reconcile it to gentlemen, by proposing subsequent amendments. The great and wise state of Massachusetts has taken this step. The great and wise state of Virginia might safely do the same. I am contented to rest my happiness on that footing.

## **Mr. HENRY.**

Mr. Chairman, when we were told of the difficulty of obtaining previous amendments, I contended that they might be as easily obtained as subsequent amendments. We are told that nine states have adopted it. If so, when the government gets in motion, have they not a right to consider our amendments as well as if we adopted first? If we remonstrate, may they not consider and admit our amendments? But now, sir, when we have been favored with a view of their subsequent amendments, I am confirmed in what I apprehended; and that is, subsequent amendments will make our condition worse; for they are placed in such a point of view as will make this Convention ridiculous. I speak in plain, direct language. It is extorted from me. If this Convention will say, that the very right by which amendments are desired is not secured, then I say our rights are not secured. As we have the right of desiring amendments, why not exercise it? But gentlemen deny this right, It follows, of course, that, if this right be not secured, our other rights are not. The proposition of subsequent amendments {650} is only to lull our apprehensions. We speak the language of contradiction and inconsistency, to say that rights are secured, and then say that they are not. Is not this placing this Convention in a contemptible light? Will not this produce contempt of us in Congress, and every other part of the world? Will gentlemen tell me that they are in earnest about these amendments?

I am convinced they mean nothing serious. What are the rights which they do not propose to secure — which they reject? — for I contend there are many essential and vital rights which are omitted. One is the power of direct taxation. Gentlemen will not even give this invaluable right a place among their subsequent amendments. And do gentlemen mean seriously that they will oppose us on this ground on the floor of Congress? If Virginia thinks it one of her dearest rights, she need not expect to have it amended. No, sir; it will be opposed. Taxes and excises are to be laid on us. The people are to be oppressed, and the state legislature prostrated. Very material amendments are omitted. With respect to your militia, we only request that, if Congress should refuse to find arms for them, this country may lay out their own money to purchase them. But what do the gentlemen on the other side say? As much as that they will oppose you in this point also; for, if my recollection has not failed me, they have discarded this also. And shall we be deprived of this privilege? We propose to have it, in case there shall be a necessity to claim it. And is this claim incompatible with the safety of this country — with the grandeur and strength of the United States? If gentlemen find peace and rest on their minds, when the relinquishment of our rights is declared to be necessary for the aggrandizement of the government, they are more contented than I am.

Another thing which they have not mentioned, is the power of *treaties*. Two thirds of the senators present can make treaties; and they are, when made, to be the supreme law of the land, and are to be paramount to the state constitutions. We wish to guard against the temporary suspension of our great national rights. We wish some qualification of this dangerous power. We wish to modify it. One amendment which has been wished for, in this respect, is, that no treaty should be made without the {651} consent of a considerable majority of both houses. I might go on and enumerate many other great rights entirely neglected by their subsequent amendments; but I shall pass over them in silence. I am astonished at what my worthy friend (Mr. Innes) said — that we have no right of proposing previous amendments. That honorable gentleman is endowed with great eloquence — eloquence splendid, magnificent, and sufficient to shake the human mind! He has brought the whole force of America against this state. He has also strongly represented our comparative weakness, with respect to the powers of Europe. But when I review the actual state of things, I see that dangers from thence are merely ideal. His reasoning has no effect on me. He cannot shake my political faith. He admits our power over subsequent amendments, though not over previous amendments. Where is the distinction between them? If we have a right to depart from the letter of our commission in one instance, we have in the other; for subsequent amendments have no higher authority than previous. We shall be absolutely certain of escaping danger in the one case, but not in the other. I think the apprehension expressed by another honorable gentleman has no good foundation. He apprehended civil discord if we did not adopt. I am willing to concede that he loves his country. I will, for the sake of argument, allow that I am one of the meanest of those who love their country. But what does this amount to? The great and direct end of government is liberty. Secure our liberty and privileges, and the end of government is answered. If this be not effectually done, government is an evil. What amendments does he propose which secure our liberty? I ask pardon if I make a mistake, but it seems to me that his proposed subsequent amendments do not secure one single right. They say that your rights are secured in the paper on the table, so that these subsequent amendments are a mere supererogation. They are not necessary, because the objects intended to be secured by them are secured already. What is to become of the trial by jury? Had its security been made a part of the Constitution, it would have been sufficiently guarded. But as it is, in that

proposition it is by no means explicitly secured. Is it not trifling to admit the necessity of securing it, and not do it in a positive, unequivocal manner? I wish I could place it in any other view {652} than a trifling one. It is only intended to attack every project of introducing amendments. If they are serious, why do they not join us, and ask, in a manly, firm, and resolute manner, for these amendments? Their view is to defeat every attempt to amend. When they speak of their subsequent recommendations, they tell you that amendments must be got, and the next moment they say they are unnecessary!

I beg pardon of this house for having taken up more time than came to my share, and I thank them for the patience and polite attention with which I have been heard. If I shall be in the minority, I shall have those painful sensations which arise from a conviction of *being overpowered in a good cause*. Yet I will be a peaceable citizen. My head, my hand, and my heart, shall be at liberty to retrieve the loss of liberty, and remove the defects of that system in a constitutional way. I wish not to go to violence, but will wait with hopes that the spirit which predominated in the revolution is not yet gone, nor the cause of those who are attached to the revolution yet lost. I shall therefore patiently wait in expectation of seeing that government changed, so as to be compatible with the safety, liberty, and happiness, of the people.

## Gov. RANDOLPH.

Mr. Chairman, one parting word I humbly supplicate.

The suffrage which I shall give in favor of the Constitution will be ascribed, by malice, to motives unknown to my breast. But, although for every other act of my life I shall seek refuge in the mercy of God, for this I request his justice only. Lest, however, some future annalist should, in the spirit of party vengeance, deign to mention my name, let him recite these truths — *that I went to the federal Convention with the strongest affection for the Union; that I acted therein in full conformity with this affection; that I refused to subscribe, because I had, as I still have, objections to the Constitution*, and wished a free inquiry into its merits; and that the accession of eight states reduced our deliberations to the single question of Union or no Union.

---

Mr. President now resumed the chair, and Mr. Matthews reported, that the committee had, according to order, again had the proposed Constitution under their consideration, and had gone through the same, and come {653} to several resolutions thereupon, which he read in his place, and afterwards delivered in at the clerk's table, where the same were again read, and are as followeth: —

"Whereas the powers granted under the proposed Constitution are the gift of the people, and every power not granted thereby remains with them, and at their will, — no right, therefore, of any denomination, can be cancelled, abridged, restrained, or modified, by the Congress, by the Senate or House of Representatives, acting in any capacity, by the President, or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes; and, among other essential rights, liberty of conscience and of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States.

"And whereas any imperfections, which may exist in the said Constitution, ought rather to be examined in the mode prescribed therein for obtaining amendments, than by a delay, with a hope of obtaining previous amendments, to bring the Union into danger,

"*Resolved*, That it is the opinion of this committee, that the said Constitution be ratified. But in order to relieve the apprehensions of those who may be solicitous for amendments, —

"*Resolved*, That it is the opinion of this committee, that whatsoever amendments may be deemed necessary, be recommended to the consideration of the Congress which shall first assemble under the said Constitution, to be acted upon according to the mode prescribed in the 5th article thereof."

The 1st resolution being read a second time, a motion was made, and the question being put, to amend the same by substituting, in lieu of the said resolution and its preamble, the following resolution, —

"*Resolved*, That, previous to the ratification of the new Constitution of government recommended by the late federal Convention, a declaration of rights, asserting, and securing from encroachment, the great principles of civil and religious liberty, and the unalienable rights of the people, together with amendments to the most exceptionable parts of the said Constitution of government, ought to be referred by this Convention to the other states in the American confederacy for their consideration," —

It passed in the negative — ayes, 80; noes, 88.

On motion of Mr. Patrick Henry, seconded by Mr. Theodorick Bland, the ayes and noes, on the said question, were taken, as follows: —

- **AYES.**
- Edmund Custis,
- John Pride,
- Edmund Booker
- William Cabell,
- Samuel Jordan Cabell,
- John Trigg,
- Charles Clay,
- H. Lee, of Bourbon,
- John Jones,
- Binns Jones,
- Charles Patteson,
- David Bell,
- Robert Alexander,
- Edmund Winston,
- Thomas Read,
- Benjamin Harrison,
- John Tyler,
- David Patteson,
- Stephen Pankey,
- Joseph Michaux,
- Thomas H. Drew,
- French Strother,
- Joel Early,
- Joseph Jones,
- William Watkins,
- Meriwether Smith,
- James Upshaw,
- John Fowler,
- Samuel Richardson,
- Joseph Haden,
- John Early,

- Thomas Arthurs,
- John Guerrant,
- William Sampson,
- Isaac Coles,
- George Carrington,
- Parke Goodall,
- J. Carter Littlepage,
- Thomas Cooper,
- John Mart,
- Thomas Roane,
- Holt Richeson,
- {654}
- Benjamin Temple,
- S. Thompson Mason,
- William White,
- Jonathan Patteson,
- Christopher Robertson,
- John Logan,
- Henry Pawling,
- John Miller,
- Green Clay,
- Samuel Hopkins,
- Richard Kennon,
- Thomas Allen,
- Alexander Robertson,
- John Evans,
- Walter Crocket,
- Abraham Trigg,
- Matthew Walton,
- John Steele,
- Robert Williams,
- J. Wilson, of Pittsylvania,
- Thomas Turpin,
- Patrick Henry,
- Robert Lawson,
- Edmund Ruffin,
- Theodorick Bland,
- William Grayson,
- Cuthbert Bullitt,
- Thomas Carter,
- Henry Dickenson,
- James Monroe,
- John Dawson,
- George Mason,
- Andrew Buchanan,
- John Powell Briggs,
- Thomas Edmunds,
- Richard Carey,
- Samuel Edminson,
- James Montgomery.
  
- **NOES.**

- E. Pendleton, *President*,
- George Parker,
- George Nicholas,
- Wilson Nicholas,
- Zachariah Johnson,
- Archibald Stuart,
- William Dark,
- Adam Stephen,
- Martin M'Ferran,
- William Fleming,
- James Taylor, of Caroline,
- Paul Carrington,
- Miles King,
- Worlich Westwood,
- David Stuart,
- Charles Simms,
- Humphrey Marshall,
- Martin Pickett,
- Humphrey Brooke,
- J. Sherman Woodcock,
- Alexander White,
- Warner Lewis,
- Thomas Smith,
- George Clendinen,
- John Stewart,
- William Mason,
- Daniel Fisher,
- Andrew Woodrow,
- Ralph Humphreys,
- George Jackson,
- John Prunty,
- Isaac Vanmeter,
- Abel Seymour,
- Governor Randolph,
- John Marshall,
- Nathaniel Burwell,
- Robert Andrews,
- James Johnson,
- Robert Breckenridge,
- Rice Bullock,
- William Fleet,
- Burdet Ashton,
- William Thornton,
- J. Gordon, of Lancaster,
- Henry Towles,
- Levin Powell,
- Wm. Overton Callis,
- Ralph Wormley, Jr.,
- Francis Corbin,
- William M'Clerry,
- Willis Riddick,
- Solomon Shepherd,
- William Clayton,

- Burwell Bassett,
- James Webb,
- James Taylor, of Norfolk,
- John Stringer,
- Littleton Eyre,
- Walter Jones,
- Thomas Gaskins,
- Archibald Woods,
- Ebenezer Zone,
- James Madison,
- J. Gordon, of Orange,
- William Ronald,
- Anthony Walke,
- Thomas Walke,
- Benjamin Wilson,
- J. Wilson, of Randolph,
- Walker Tomlin,
- William Peachy,
- William M'Kee,
- Andrew Moore,
- Thomas Lewis,
- Gabriel Jones,
- Jacob Rinker,
- John Williams,
- Benjamin Blunt,
- Samuel Kello,
- John Hartwell Cocke,
- John Allen,
- Cole Digges,
- H. Lee, of Westmoreland,
- Bushrod Washington,
- John Blair,
- George Wythe,
- James Innes,
- Thomas Matthews.

And then, the *main question* being put that the Convention do agree with the committee in the said 1st resolution, it was resolved in the *affirmative* — ayes, 89; noes, 79.

On the motion of Mr. George Mason, seconded by Mr. Patrick Henry, the ayes and noes, on the said main question, were taken, as follows: —

- **AYES.**
- E. Pendleton, *President*,
- George Parker,
- George Nicholas,
- Wilson Nicholas,
- Zachariah Johnson,
- Archibald Stuart,
- William Dark,
- Adam Stephen,
- Martin M'Ferran,

- William Fleming,
- James Taylor, of Caroline,
- Paul Carrington,
- David Patteson,
- Miles King,
- Worlich Westwood,
- David Stuart,
- Charles Simms,
- Humphrey Marshall,
- Martin Pickett,
- Humphrey Brooke,
- John S. Woodcock,
- {655}
- Alexander White,
- Warner Lewis,
- Thomas Smith,
- George Clendinen,
- John Stewart,
- William Mason,
- Daniel Fisher,
- Andrew Woodrow,
- Ralph Humphreys,
- George Jackson,
- John Prunty,
- Isaac Vanmeter,
- Abel Seymour,
- Governor Randolph,
- John Marshall,
- Nathaniel Burwell,
- Robert Andrews,
- James Johnson,
- Robert Breckenridge,
- Rice Bullock,
- William Fleet,
- Burdet Ashton,
- William Thornton,
- J. Gordon, of Lancaster,
- Henry Towles,
- Levin Powell,
- W. Overton Callis,
- Ralph Wormley, Jun.,
- Francis Corbin,
- William M'Clerry,
- Willis Riddick,
- Solomon Shepherd,
- William Clayton,
- Burwell Bassett,
- James Webb,
- J. Taylor, of Norfolk,
- John Stringer,
- Littleton Eyre,
- Walter Jones,
- Thomas Gaskins,

- Archibald Woods,
- Ebenezer Zane,
- James Madison,
- James Gordon, of Orange,
- William Ronald,
- Anthony Walke,
- Thomas Walke,
- Benjamin Wilson,
- J. Wilson, of Randolph,
- Walker Tomlin,
- William Peachy,
- William M'Kee,
- Andrew Moore,
- Thomas Lewis,
- Gabriel Jones,
- Jacob Rinker,
- John Williams,
- Benjamin Blunt,
- Samuel Kello,
- John Hartwell Cocke,
- John Allen,
- Cole Digges,
- H. Lee, of Westmoreland,
- Bushrod Washington,
- John Blair,
- George Wythe,
- James Innes,
- Thomas Matthews.

- **NOES.**
- Edmund Custis,
- John Pride,
- Edmund Brooker,
- William Cabell,
- Samuel Jordan Cabell,
- John Trigg,
- Charles Clay,
- Henry Lee, of Bourbon,
- John Jones,
- Binns Jones,
- Charles Patteson,
- David Bell,
- Robert Alexander,
- Edmund Winston,
- Thomas Read,
- John Tyler,
- Stephen Pankey,
- Joshua Michaux,
- Thomas H. Drew,
- French Strother,
- Joel Early,
- Joseph Jones,

- William Walkins,
- Meriwether Smith,
- James Upshaw,
- John Fowler,
- Samuel Richardson,
- Joseph Haden,
- John Early,
- Thomas Arthurs,
- John Guerrant,
- William Sampson,
- Isaac Coles,
- George Carrington,
- Parker Goodall,
- John Carter Littlepage,
- Thomas Cooper,
- John Marr,
- Thomas Roane,
- Holt Richeson,
- Benjamin Temple,
- Stephens T. Mason,
- William White,
- Jonathan Patteson,
- Christopher Robertson,
- John Logan,
- Henry Pawling,
- John Miller,
- Green Clay,
- Samuel Hopkins,
- Richard Kennon,
- Thomas Alien,
- Alexander Robertson,
- John Evans,
- Walter Crocket,
- Abraham Trigg,
- Matthew Walton,
- John Steele,
- Robert Williams,
- J. Wilson, of Pittsylvania,
- Thomas Turpin,
- Patrick Henry,
- Robert Lawson,
- Edmund Ruffin,
- Theodorick Bland,
- William Grayson,
- Cuthbert Bullitt,
- Thomas Carter,
- Henry Dickenson,
- James Monroe,
- John Dawson,
- George Mason,
- Andrew Buchanan,
- John Howell Briggs,
- Thomas Edmunds,

- Richard Cary,
- Samuel Edminson,
- James Montgomery.

The 2d resolution being then read a second time, a motion was made, and, the question being put to amend the same by striking out the preamble thereto, it was resolved in the affirmative.

And then, the main question being put, that the Convention do agree with the committee in the 2d resolution so amended, it was resolved in the affirmative.

On motion, *Ordered*, That a committee be appointed to prepare and {656} report a form of ratification pursuant to the first resolution; and that Governor Randolph, Mr. Nicholas, Mr. Madison, Mr. Marshall, and Mr. Corbin, compose the said committee.

On motion, *Ordered*, That a committee be appointed to prepare and report such amendments as by them shall be deemed necessary, to be recommended, pursuant to the second resolution; and that the Hon. George Wythe, Mr. Harrison, Mr. Matthews, Mr. Henry, Governor Randolph, Mr. George Mason, Mr. Nicholas, Mr. Grayson, Mr. Madison, Mr. Tyler, Mr. John Marshall, Mr. Monroe, Mr. Ronald, Mr. Bland, Mr. Meriwether Smith, Mr. Paul Carrington, Mr. Innes, Mr. Hopkins, Mr. John Blair, and Mr. Simms, compose the said committee.

His excellency, Governor RANDOLPH, reported, from the committee appointed, according to order, *a form of ratification*, which was read and agreed to by the Convention, in the words following: VIRGINIA, TO WIT:

"We, the delegates of the people of Virginia, duly elected in pursuance of a recommendation from the General Assembly, and now met in Convention, having fully and freely investigated and discussed the proceeding of the federal Convention, and being prepared, as well as the most mature deliberation hath enabled us, to decide thereon, Do, in the name and in behalf of the people of Virginia, declare and make known, that the powers granted under the Constitution, being derived from the people of the United States, be resumed by them whensoever the same shall be perverted to their injury or oppression, and that every power, *not granted thereby, remains with them, and at their will*; that, therefore, no right, of any denomination, can be cancelled, abridged, restrained, or modified, by the Congress, by the Senate or House of Representatives, acting in any capacity, by the President, or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes; and that, among other essential rights, the liberty of conscience and of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States.

"With these impressions, with a solemn appeal to the Searcher of hearts for the purity of our intentions, and under the conviction that whatsoever imperfections may exist in the Constitution ought rather to be examined in the mode prescribed therein, than to bring the Union into danger by delay, with a hope of obtaining amendments previous to the ratifications, —

"We, the said delegates, in the name and behalf of the people of Virginia, do by these presents, *assent to and ratify the Constitution*, recommended on the seventeenth day of September, one thousand seven hundred and eighty-seven, by the federal Convention, for the government of the United States; hereby announcing to all those whom it may concern, that the said Constitution is binding upon the said people, according to an authentic copy hereto annexed, in the words following."

[For the Constitution, see the commencement of Vol. I.]

---

## THURSDAY, *June 26, 1788.*

An *engrossed form of the ratification* agreed to yesterday, containing the proposed Constitution of government, as recommended by the federal Convention on the seventeenth day of September, one thousand seven {657} hundred and eighty-seven, being prepared by the secretary, was read and signed by the president, in behalf of the Convention.

On motion, *Ordered*, That the said ratification be transmitted by the president, in the name of this Convention, to the United States in Congress assembled.

On motion, *Ordered*, That there be allowed to the president of this Convention, for his services, the sum of forty shillings per day, including his daily pay as a member; to the secretary, the sum of forty pounds; to the chaplain, the sum of thirty-two pounds; to the serjeant, the sum of twenty-four pounds; to the clerk of the committee of privileges, the sum of twenty pounds; and to each of the door-keepers, the sum of fifteen pounds, for their respective services.

---

## FRIDAY, *June 27, 1788.*

Another *engrossed form of the ratification*, agreed to on Wednesday last, containing the proposed Constitution of government, as recommended by the federal Convention on the seventeenth day of September, one thousand seven hundred and eighty-seven, being prepared by the secretary, was read and signed by the president, in behalf of the Convention.

On motion, *Ordered*, That the said ratification be deposited by the secretary of this Convention in the archives of the General Assembly of this state.

Mr. WYTHE reported, from the committee appointed, such *amendments* to the proposed Constitution of government for the United States as were by them deemed necessary to be recommended to the consideration of the Congress which shall first assemble under the said Constitution, to be acted upon according to the mode prescribed in the 5th article thereof; and he read the same in his place, and afterwards delivered them in at the clerk's table, where the same were again read, and are asfollows: —

"That there be a declaration or bill of rights asserting, and securing from encroachment, the essential and unalienable rights of the people, in some such manner as the following: —

- "1st. That there are certain natural rights, of which men, when they form a social compact, cannot deprive or divest their posterity; among which are the enjoyment of life and liberty, with the means of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.
- "2d. That all power is naturally invested in, and consequently de, rived from, the people; that magistrates therefore are their *trustees* and agents, at all times amenable to them.
- "3d. That government ought to be instituted for the common benefit, protection, and security of the people; and that the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive to the good and happiness of mankind.
- "4th. That no man or set of men are entitled to separate or exclusive public emoluments or privileges from the community, but in consideration of public services, which not being descendible, neither ought the offices of magistrate, legislator, or judge, or any other public office, to be hereditary.
- "5th. That the legislative, executive, and judicial powers of government {658} should be separate and distinct; and, that the members of the two first may be restrained from oppression by feeling and

participating the public burdens, they should, at fixed periods, be reduced to a private station, return into the mass of the people, and the vacancies be supplied by certain and regular elections, in which all or any part of the former members to be eligible or ineligible, as the rules of the Constitution of government, and the laws, shall direct.

- "6th. That the elections of representatives in the legislature ought to be free and frequent, and all men having sufficient evidence of permanent common interest with, and attachment to, the community, ought to have the right of suffrage; and no aid, charge, tax, or fee, can be set, rated, or levied, upon the people without their own consent, or that of their representatives, so elected; nor can they be bound by any law to which they have not, in like manner, assented, for the public good.
- "7th. That all power of suspending laws, or the execution of laws, by any authority, without the consent of the representatives of the people in the legislature, is injurious to their rights, and ought not to be exercised.
- "8th. That, in all criminal and capital prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence, and be allowed counsel in his favor, and to a fair and speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty, (except in the government of the land and naval forces;) nor can he be compelled to give evidence against himself.
- "9th. That no freeman ought to be taken, imprisoned, or disseized of his freehold, liberties, privileges, or franchises, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the law of the land.
- "10th. That every freeman restrained of his liberty is entitled to a remedy, to inquire into the lawfulness thereof, and to remove the same, if unlawful, and that such remedy ought not to be denied nor delayed.
- "11th. That, in controversies respecting property, and in suits between man and man, the ancient trial by jury is one of the greatest securities to the rights of the people, and to remain sacred and inviolable.
- "12th. That every freeman ought to find a certain remedy, by recourse to the laws, for all injuries and wrongs he may receive in his person, property, or character. He ought to obtain right and justice freely, without sale, completely and without denial, promptly and without delay; and that all establishments or regulations contravening these rights are oppressive and unjust.
- "13th. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
- "14th. That every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers, and property; all warrants, therefore, to search suspected places, or seize any freeman, his papers, or property, without information on oath (or affirmation of a person religiously scrupulous of taking an oath) of legal and sufficient cause, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend any suspected person, without specially naming or describing the place or person, are dangerous, and ought not to be granted.
- "15th. That the people have a right peaceably to assemble together to {659} consult for the common good, or to instruct their representatives; and that every freeman has a right to petition or apply to the legislature for redress of grievances.
- "16th. That the people have a right to freedom of speech, and of writing and publishing their sentiments; that the freedom of the press is one of the greatest bulwarks of liberty, and ought not to be violated.
- "17th. That the people have a right to keep and bear arms; that a well-regulated militia, composed of the body of the people trained to arms, is the proper, natural, and safe defence of a free state; that standing armies, in time of peace, are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the community will admit; and that, in all cases, the military should be under strict subordination to, and governed by, the civil power.
- "18th. That no soldier in time of peace ought to be quartered in any house without the consent of the owner, and in time of war in such manner only as the law directs.
- "19th. That any person religiously scrupulous of bearing arms ought to be exempted, upon payment of an equivalent to employ another to bear arms in his stead.
- "20th. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established, by law, in preference to others."

## AMENDMENTS TO THE CONSTITUTION.

- "1st. That each state in the Union shall respectively retain every power, jurisdiction, and right, which is not by this Constitution delegated to the Congress of the United States, or to the departments of the federal government.
- "2d. That there shall be one representative for every thirty thousand, according to the enumeration or census mentioned in the Constitution, until the whole number of representatives amounts to two hundred; after which, that number shall be continued or increased, as Congress shall direct, upon the principles fixed in the Constitution, by apportioning the representatives of each state to some greater number of people, from time to time, as population increases.
- "3d. When the Congress shall lay direct taxes or excises, they shall immediately inform the executive power of each state, of the quota of such state, according to the census herein directed, which is proposed to be thereby raised; and if the legislature of any state shall pass a law which shall be effectual for raising such quota at the time required by Congress, the taxes and excises laid by Congress shall not be collected in such state.
- "4th. That the members of the Senate and House of Representatives shall be ineligible to, and incapable of holding, any civil office under the authority of the United States, during the time for which they shall respectively be elected.
- "5th. That the journals of the proceedings of the Senate and House of Representatives shall be published at least once in every year. except such {660} parts thereof, relating to treaties, alliances, or military operations, as, in their judgment, require secrecy.
- "6th. That a regular statement and account of the receipts and expenditures of public money shall be published at least once a year.
- "7th. That no commercial treaty shall be ratified without the concurrence of two thirds of the whole number of the members of the Senate; and no treaty ceding, contracting, restraining, or suspending, the territorial rights or claims of the United States, or any of them, or their, or any of their rights or claims to fishing in the American seas, or navigating the American rivers, shall be made, but in cases of the most urgent and extreme necessity; nor shall any such treaty be ratified without the concurrence of three fourths of the whole number of the members of both houses respectively.
- "8th. That no navigation law, or law regulating commerce, shall be passed without the consent of two thirds of the members present, in both houses.
- "9th. That no standing army, or regular troops, shall be raised, or kept up, in time of peace, without the consent of two thirds of the members present, in both houses.
- "10th. That no soldier shall be enlisted for any longer term than four years, except in time of war, and then for no longer term than the continuance of the war.
- "11th. That each state respectively shall have the power to provide for organizing, arming, and disciplining its own militia, whensoever Congress shall omit or neglect to provide for the same. That the militia shall not be subject to martial law, except when in actual service, in time of war, invasion, or rebellion; and when not in the actual service of the United States, shall be subject only to such fines, penalties, and punishments, as shall be directed or inflicted by the laws of its own state.
- "12th. That the exclusive power of legislation given to Congress over the federal town and its adjacent district, and other places, purchased or to be purchased by Congress of any of the states, shall extend only to such regulations as respect the police and good government thereof.
- "13th. That no person shall be capable of being President of the United States for more than eight years in any term of sixteen years.
- "14th. That the judicial power of the United States shall be vested in one Supreme Court, and in such courts of admiralty as Congress may from time to time ordain and establish in any of the different states. The judicial power shall extend to all cases in law and equity arising under treaties made, or which shall be made, under the authority of the United States; to all cases affecting ambassadors, other foreign ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, and between parties claiming lands under the grants of different states. In all cases affecting ambassadors, other foreign ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction; in all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, as to matters of law only, except in cases of equity, and of admiralty, and maritime jurisdiction, in which the Supreme Court shall have appellate

jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make: but the judicial power of {661} the United States shall extend to no case where the cause of action shall have originated before the ratification of the Constitution, except in disputes between states about their territory, disputes between persons claiming lands under, the grants of different states, and suits for debts due to the United States.

- "15th. That, in criminal prosecutions, no man shall be restrained in the exercise of the usual and accustomed right of challenging or excepting to the jury.
- "16th. That Congress shall not alter, modify, or interfere in the times, places, or manner of holding elections for senators and representatives, or either of them, except when the legislature of any state shall neglect, refuse, or be disabled, by invasion or rebellion, to prescribe the same.
- "17th. That those clauses which declare that Congress shall not exercise certain powers, be not interpreted, in any manner whatsoever, to extend the powers of Congress; but that they be construed either as making exceptions to the specified powers where this shall be the case, or otherwise, as inserted merely for greater caution.
- "18th. That the laws ascertaining the compensation of senators and representatives for their services, be postponed, in their operation, until after the election of representatives immediately Succeeding the passing thereof; that excepted which shall first be passed on the subject.
- "19th. That some tribunal other than the Senate be provided for trying impeachments of senators.
- "20th. That the salary of a judge shall not be increased or diminished during his continuance in office, otherwise than by general regulations of salary, which may take place on a revision of the subject at stated periods of not less than seven years, to commence from the time such salaries shall be first ascertained by Congress."

---

And the Convention do, in the name and behalf of the people of this commonwealth, enjoin it upon their representatives in Congress to exert all their influence, and use all reasonable and legal methods, to obtain a ratification of the foregoing alterations and provisions, in the manner provided by the 5th article of the said Constitution; and, in all congressional laws to be passed in the mean time, to conform to the spirit of these amendments, as far as the said Constitution will admit.

And so much of the said amendments as is contained in the first twenty articles, constituting the bill of rights, being read again, *Resolved*, That this Convention doth concur therein.

The other amendments to the said proposed Constitution, contained in twenty-one articles, being then again read, a motion was made, and the question being put, — to amend the same by striking out the third article, containing these words, —

"When Congress shall lay direct taxes or excises, they shall immediately inform the executive power of each state of the quota of such state, according to the census herein directed, which is proposed to be thereby raised; and if the legislature of any state shall pass a law which shall be effectual for raising such quota at the time required by Congress; the taxes and excises laid by Congress shall not be collected in such state," —

It passed in the negative — ayes, 65; noes, 85.

{662} On motion of Mr. George Nicholas, seconded by Mr. Benjamin Harrison, the ayes and noes on the said question were taken, as followeth: —

- **AYES.**
- George Parker,
- George Nicholas,
- Wilson Nicholas,
- Zachariah Johnson,

- Archibald Stuart,
- William Dark,
- Adam Stephen,
- Martin M'Ferran,
- J. Taylor, of Caroline,
- David Stuart,
- Charles Simms,
- John Prunty,
- Abel Seymour,
- Governor Randolph,
- John Marshall,
- Nathaniel Burwell,
- Robert Andrews,
- James Johnson,
- Rice Bullock,
- Burdet Ashton,
- William Thornton,
- Henry Towles,
- Archibald Woods,
- James Madison,
- J. Gordon, of Orange,
- William Ronald,
- Thomas Walke,
- Anthony Walke,
- Benjamin Wilson,
- John Wilson,
- William Peachy,
- Andrew Moore,
- Thomas Lewis,
- Humphrey Marshall,
- Martin Pickett,
- Humphrey Brooke,
- John S. Woodcock,
- Alexander White,
- Warner Lewis,
- Thomas Smith,
- John Stewart,
- Daniel Fisher,
- Alexander Woodrow,
- George Jackson,
- Levin Powell,
- Wm. Overton Callis,
- Ralph Wormley, Jun.,
- Francis Corbin,
- William M'Clerry,
- James Webb,
- James Taylor, of Norfolk,
- John Stringer,
- Littleton Eyre,
- Walter Jones,
- Thomas Gaskins,
- Gabriel Jones,
- Jacob Rinker,

- John Williams,
- Benjamin Blunt,
- Samuel Kello,
- John Allen,
- Cole Digges,
- Bushrod Washington,
- George Wythe,
- Thomas Matthews.
  
- **NOES.**
- E. Pendleton, President,
- William Clayton,
- Burwell Bassett,
- Matthew Walton,
- John Steele,
- Robert Williams,
- John Wilson,
- Thomas Turpin,
- Patrick Henry,
- Edmund Ruffin,
- Theodorick Bland,
- William Grayson,
- Cuthbert Bullitt,
- Walter Tomlin,
- William M'Kee,
- Thomas Carter,
- Henry Dickenson,
- James Monroe,
- John Dawson,
- George Mason,
- Andrew Buchanan,
- John Hartwell Cocke,
- John Howell Briggs,
- Thomas Edmonds,
- Richard Carey,
- Samuel Edminson,
- James Montgomery,
- Edmund Custis,
- John Pride,
- William Cabell,
- Samuel Jordan Cabell,
- John Trigg,
- Charles Clay,
- William Fleming,
- Henry Lee, of Bourbon,
- John Jones,
- Binns Jones,
- Charles Patteson,
- David Bell,
- Robert Alexander,
- Edmund Winston,
- Thomas Read,

- Paul Carrington,
- Benjamin Harrison,
- John Tyler,
- David Patteson,
- Stephen Pankey, Jun.,
- Joseph Michaux,
- French Strother,
- Joseph Jones,
- Miles King,
- Joseph Haden,
- John Early,
- Thomas Arthurs,
- John Guerrant,
- William Sampson,
- Isaac Coles,
- George Carrington,
- Parke Goodall,
- John Carter Littlepage,
- Thomas Cooper,
- William Fleete,
- Thomas Roane,
- Holt Richeson,
- Benjamin Temple,
- J. Gordon, of Lancaster,
- Stephens T. Mason,
- William White,
- Jonathan Patteson,
- John Logan,
- Henry Pawling,
- John Miller,
- Green Clay,
- Samuel Hopkins,
- Richard Kennon,
- Thomas Allen,
- Alexander Robertson,
- Walter Crocket,
- Abraham Trigg,
- Solomon Shepherd.

And then, the main question being put, that this Convention doth concur with the committee in the said amendments,

—

It was resolved in the affirmative.

{663} On motion, *Ordered*, That the foregoing amendments be fairly engrossed upon parchment, signed by the president of this Convention, and by him transmitted, together with the ratification of the federal Constitution, to the United States in Congress assembled.

On motion, *Ordered*, That a fair, engrossed copy of the ratification of the federal Constitution, with the subsequent amendments this day agreed to, signed by the president, and attested by the secretary of this Convention, be transmitted by the president, in the name of the Convention, to the executive or legislature of each state in the Union.

*Ordered*, That the secretary do cause the journal of the proceedings of this Convention to be fairly entered into a well-bound book, and, after being signed by the president, and attested by the secretary, that he deposit the same in the archives of the privy council, or council of state.

On motion, *Ordered*, That the printer to this Convention do strike, forthwith, fifty copies of the ratification and subsequent amendments of the federal Constitution, for the use of each county in the commonwealth.

On motion, *Ordered*, That the public auditor be requested to adjust the accounts of the printer to the Convention for his services, and of the workmen who made some temporary repairs and alterations in the new academy, for the accommodation of the Convention, and to grant his Warrant on the treasurer for the sum due the respective claimants.

On motion, *Resolved, unanimously*, That the thanks of the Convention be presented to *the president*, for his able, upright, and impartial discharge of the duties of that office.

Whereupon *the president* made his acknowledgment to the Convention, for so distinguished a mark of its approbation.

And then the Convention adjourned, "*sine die*."

Signed, EDMUND PENDLETON, President.

Attest, JOHN BECKLEY, Secretary.

---

# DEBATES IN THE CONVENTION OF THE STATE OF NORTH CAROLINA, ON THE ADOPTION OF THE FEDERAL CONSTITUTION.

{1} *At a Convention, begun and held at Hillsborough, the 21st day of July, in the year of our Lord one thousand seven hundred and eighty-eight, and of the Independence of America the 13th, in pursuance of a resolution of the last General Assembly, for the purpose of deliberating and determining on the proposed Plan of Federal Government, —*

A MAJORITY of those who were duly elected as members of this Convention being met at the church, they proceeded to the election of a president, when his excellency, Samuel Johnston, Esq., was unanimously chosen, and conducted to the chair accordingly.

The house then elected Mr. John Hunt and Mr. James Taylor clerks to the Convention, and also appointed door-keepers, &c.

The house then appointed a select committee to prepare and propose certain *rules* and *regulations* for the government of the Convention in the discussion of the Constitution.

The committee consisted of Messrs. Davie, Person, Iredell, I. M'Donald, Battle, Spaight, and the Hon. Samuel Spencer, Esq.

The Convention then appointed a committee of three members from each district, as a committee of privileges and elections, consisting of Messrs. Spencer, Irwin, Caldwell, Person, A. Mebane, Joseph Taylor, M'Dowall, J. Brown, J. Johnston. Davie, Peebles, E. Gray, Gregory, Iredell, Cabarrus, I. G. Blount, Keais, B. Williams, T. Brown, Maclaine, Foster, Clinton, J. Willis, Grove, J. Stewart, Martin, and Tipton

The Convention then adjourned till to-morrow morning.

## TUESDAY, *July 22, 1788.*

The Convention met according to adjournment.

The committee appointed for that purpose reported certain rules and regulations for the government of the Convention, which were twice read, and, with the exception of one article, were agreed to, and are as follows, viz: —

{2}

- "1. When the president assumes the chair, the members shall take their seats.
- "2. At the opening of the Convention, each day, the minutes of the preceding day shall be read, and be in the power of the Convention to be corrected, after which any business addressed to the chair may be proceeded upon.

- "3. No member shall be allowed to speak but in his place, and, after rising and addressing himself to the president, shall not proceed until permitted by the president.
- "4. No member speaking shall be interrupted but by a call to order by the president, or by a member through the president.
- "5. No person shall pass between the president and the person speaking.
- "6. No person shall be called upon for any words of heat, but on the day on which they were spoken.
- "7. No member to be referred to in debate by name.
- "8. The president shall be heard without interruption, and when he rises, the member up shall sit down.
- "9. The president himself, or by request, may call to order any member who shall transgress the rules; if a second time, the president may refer to him by name; the Convention may then examine and censure the member's conduct, he being allowed to extenuate or justify.
- "10. When two or more members are up together, the president shall determine who rose first.
- "11. A motion made and seconded shall be repeated by the president. A motion shall be reduced to writing if the president requires it. A motion may be withdrawn by the member making it, before any decision is had upon it.
- "12. The name of him who makes, and the name of him who seconds, the motion, shall be entered upon the minutes.
- "13. No member shall depart the service of the house without leave.
- "14. Whenever the house shall be divided upon any question, two or more tellers shall be appointed by the president, to number the members on each side.
- "15. No member shall come into the house, or remove from one place to another, with his hat on, except those of the Quaker profession.
- "16. Every member of a committee shall attend at the call of his chairman.
- "17. The yeas and nays may be called and entered on the minutes, when any two members require it.
- "18. Every member actually attending the Convention shall be in his place at the time to which the Convention stands adjourned, or within half an hour thereof."

Mr. Lenoir moved, and was seconded by Mr. Person, that the return for Dobbs county should be read, which was accordingly read; whereupon Mr. Lenoir presented the petition of sundry of the inhabitants of Dobbs county, complaining of an illegal election in the said county, and praying relief; which being also read, on motion of Mr. Lenoir, seconded by Mr. Davie, *Resolved*, That the said petition be referred to the committee of elections.

Mr. Spaight presented the deposition of Benjamin Caswell, sheriff of Dobbs county, and a copy of the poll of an election held in the said county, for members to this Convention, and the depositions of William {3} Croom, Neil Hopkins, Robert White, John Hartsfield, Job Smith, and Frederick Baker, which, being severally read, were referred to the committee of elections.

Mr. Cabarrus presented the depositions of Charles Markland, Jun., and Luther Spalding, relative to the election of Dobbs county; which, being read, were referred to the committee of elections.

The Convention then adjourned to 10 o'clock to-morrow morning.

**WEDNESDAY, *July 23, 1788.***

The house met according to adjournment.

**Mr. Gregory,**

from the committee of elections, to whom were referred the returns from Dobbs county, and sundry other papers, and the petition of sundry of the inhabitants of Dobbs county relative to the election of the said county, delivered in a report; which, being read, was agreed to in the following words, viz: —

*"Resolved,* That it is the opinion of this committee, that the sitting members returned from the county of Dobbs vacate their seats, as it does not appear that a majority of the county approved of a new election under the recommendation of his excellency, the governor; but the contrary is more probable.

"That it appears to this committee, that there was a disturbance and riot at the first election, (which was held on the days appointed by the resolve of the General Assembly,) before all the tickets could be taken out of the box, and the box was then taken away by violence; at which time it appears there were a sufficient number of tickets remaining in the box to have given a majority of the whole poll to five others of the candidates, besides those who had a majority of the votes at the time when the disturbance and riot happened. It is, therefore, the opinion of this committee, that the sheriff could have made no return of any five members elected; nor was there any evidence before the committee by which they could determine, with certainty, which candidates had a majority of votes of the other electors.

"The committee are therefore of opinion that the first election is void, as well as the latter."

On a motion made by Mr. Galloway, seconded by Mr. Macon, —

*"Resolved,* That the Bill of Rights and Constitution of this state, the Articles of Confederation, the resolve of Congress of the 21st of February, 1787, recommending a Convention of Delegates to meet at Philadelphia the second Monday in May, 1787, for the purpose of revising the said Articles of Confederation, together with the act of Assembly of this state, passed at Fayetteville, the 6th day of January, 1787, entitled 'An act for appointing deputies from this state to a Convention proposed to be held in the city of Philadelphia in May next, for the purpose of revising the Federal Constitution:' as also the resolve of Congress of the 28th September last, accompanying the report of the Federal Convention, together with the said report, and the resolution of the last General Assembly, be now read."

The Bill of Rights and Constitution of this state, the Articles of Confederation, the act of Assembly of this state above referred to, and the resolution of Congress of the 28th September last, were accordingly read.

The honorable the president then laid before the Convention official accounts of the ratification of the proposed Federal Constitution by the {4} states of Massachusetts and South Carolina; which were ordered to be filed with the Secretary, subject to the perusal of the members

**Mr. JAMES GALLOWAY**

moved that the Constitution Should be discussed clause by clause.

**Mr. WILLIE JONES**

moved that the question upon the Constitution should be immediately put. He said that the Constitution had so long been the subject of the deliberation of every man in this country, and that the members of the Convention had had such ample opportunity to consider it, that he believed every one of them was prepared to give his vote then upon the question; that the situation of the public funds would not admit of lavishing the public money, but required the utmost economy and frugality; that, as there was a large representation from this state, an immediate decision would save the country a considerable sum of money. He thought it, therefore, prudent to put the question immediately.

He was seconded by Mr. PERSON, who added to the reasoning of, Mr. Jones, that he should be sorry if any man had come hither without having determined in his mind a question which must have been so long the object of his consideration.

**Mr. IREDELL**

then arose, and addressed the president thus: —

Mr. President, I am very much surprised at the motion which has been made by the gentleman from Halifax. I am greatly astonished at a proposal to decide immediately, without the least deliberation, a question which is perhaps the greatest that ever was submitted to any body of men. There is no instance of any convention upon the continent, in which the subject has not been fully debated, except in those states which adopted the Constitution unanimously. If it be thought proper to debate at large an act of Assembly, trivial in its nature, and the operation of which may continue but a few months, are we to decide on this great and important question without a moment's consideration? Are we to give a dead vote upon it? If so, I would wish to know why we are met together. If it is to be resolved now by dead votes, it would have been better that every elector, instead of voting for persons to come here, should, in their respective counties, have voted or ballotted for or against the Constitution. A decision by that mode would have been as rational and just as by this, and would have been better on economical principles, as it would have saved the public the expense of our meeting here.

{5} This is a subject of great consideration. It is a Constitution which has been formed after much deliberation. It has had the sanction of men of the first characters for their probity and understanding. It has also had the solemn ratification of ten states in the Union. A Constitution like this, sir, ought not to be adopted or rejected in a moment. If, in consequence of either, we should involve our country in misery and distress, what excuse could we make for our conduct?

Is it reconcilable with our duty to our constituents? Would it be a conscientious discharge of that trust which they have so implicitly reposed in us? Shall it be said, sir, of the representatives of North Carolina, that near three hundred of them assembled for the express purpose of deliberating upon the most important question that ever came before a people, refused to discuss it, and discarded all reasoning as useless? It is undoubtedly to be lamented that any addition should be made to the public expense, especially at this period, when the public funds are so low; but if it be ever necessary on any occasion, it is necessary on this, when the question perhaps involves the safety or ruin of our country. For my own part, I should not choose to determine on any question without mature reflection; and on this occasion, my repugnance to a hasty decision is equal to the magnitude of the subject. A gentleman has said, he should be sorry if any member had come here without having determined in his mind on a subject he had so long considered. I should be sorry, sir, that I could be capable of coming to this house predetermined for or against the Constitution. I readily confess my present opinion is strongly in its favor. I have listened to every objection, that I had an opportunity of hearing, with attention, but have not yet heard any that I thought would justify its rejection, even if it had not been adopted by so many states. But notwithstanding this favorable opinion I entertain of it, I have not come here resolved, at all events, to vote for its adoption. I have come here for information, and to judge, after all that can be said upon it, whether it really merits my attachment or not. My constituents did me the honor to elect me unanimously, without the least solicitation on my part. They probably chose me because my sentiments were the same with their own. But highly as I value this honor, and much as I confess my ambition prompted me to aspire to it, had I been told that I {6} should not be elected unless I promised to obey their directions, I should have disdained to serve on such dishonorable terms. Sir, I shall vote perfectly independent, and shall certainly avow a change of my present opinion, if I can be convinced it is a wrong one. I shall not, in such a case, be restrained by the universal opinion of the part of the country from which I came. I shall not be afraid to go back, and tell my constituents, "Gentlemen, I have been convinced I was in an error. I found, on consideration, that the opinion which I had taken up was ill founded, and have voted according to my sincere sentiments at the time, though contrary to your wishes." I know that the honor and integrity of my constituents are such, that they would approve of my acting on such principles, rather than any other. They are the principles, however, I think it my duty to act upon, and shall govern my conduct.

This Constitution ought to be discussed in such a manner that every possible light may be thrown upon it. If those gentlemen who are so sanguine in their opinion that it is a bad government will freely unfold to us the reasons on which their opinion is founded, perhaps we may all concur in it. I flatter myself that this Convention will imitate the conduct of the conventions of other states, in taking the best possible method of considering its merits, by debating it article by article. Can it be supposed that any gentlemen here are so obstinate and tenacious of their opinion, that they will not recede from it when they hear strong reasons offered? Has not every gentleman here, almost, received useful knowledge from a communication with others? Have not many of the members of this house, when members of Assembly, frequently changed their opinions on subjects of legislation? If so, surely a subject of so complicated a nature, and which involves such serious consequences, as this, requires the most ample discussion, that we may derive every information that can enable us to form a proper judgment. I hope, therefore, that we shall imitate the laudable example of the other states, and go into a committee of the whole house, that the Constitution may be discussed clause by clause.

I trust we shall not go home and tell our constituents that we met at Hillsborough, were afraid to enter into a discussion of the subject, but precipitated a decision without a moment's consideration.

**Mr. WILLIE JONES.**

Mr. President, my reasons for proposing an immediate decision were, that I was prepared to give my vote, and believed that others were equally prepared as myself. If gentlemen differ from me in the propriety of this motion, I will submit. I agree with the gentleman that economical considerations are not of equal importance with the magnitude of the subject. He said that it would have been better, at once, for the electors to vote in their respective counties than to decide it here without discussion. Does he forget that the act of Assembly points out another mode?

**Mr. IREDELL**

replied, that what he meant was, that the Assembly might as well have required that the electors should vote or ballot for or against the Constitution in their respective counties, as for the Convention to decide it in this precipitate manner.

**Mr. JAMES GALLOWAY.**

Mr. President, I had no supposition that the gentleman on my right (Mr. Jones) was afraid of a discussion. It is not so with me, nor do I believe that it is so with any gentleman here. I do not like such reflections, and am surprised that gentlemen should make them.

**Mr. IREDELL**

declared that he meant not to reflect on any gentleman; but, for his part, he would by no means choose to go home and tell his constituents that he had voted without any previous consideration.

After some desultory conversation, the Convention adjourned tilt to-morrow, 10 o'clock.

**THURSDAY, *July 24, 1788.***

The Convention met according to adjournment.

**Rev. Mr. CALDWELL.**

Mr. President, the subject before us is of a complicated nature. In order to obviate the difficulty attending its discussion, I conceive that it will be necessary to lay down such rules or maxims as ought to be the fundamental principles of every free government; and after laying down such rules, to compare the Constitution with them, and see whether it has attended to them; for if it be not founded on such principles, it cannot be proper for our adoption. [Here he read those rules which he said appeared to him most proper.]

**Mr. JAMES GALLOWAY.**

Mr. President, I had the {8} honor yesterday of proposing the mode which I thought most eligible for our proceeding. I wish the subject to be fairly, coolly, and candidly discussed, that we may not go away without knowing why we came hither. My intention is, that we should enter into a committee of the whole house, where we shall be at liberty to discuss it. Though I do not object to the proposition of the honorable member, as the groundwork of our proceeding, I hope he will withdraw his motion, and I shall second him in the committee.

**Mr. CALDWELL**

had no objection to that proposition.

**Mr. PERSON**

opposed the motion of entering into a committee. He conceived it would be a useless waste of time, as they would be obliged to reconsider the whole Constitution in Convention again.

**Mr. DAVIE**

largely expatiated on the necessity of entering into a committee. He said, that the legislature, in voting so large a representation, did not mean that they should go away without investigating the subject, but that their collective information should be more competent to a just decision; that the best means was, to deliberate and confer together like plain, honest men. He did not know how the ardor of opposition might operate upon some gentlemen, yet he trusted that others had temper and moderation. He hoped that the motion of the member from Rockingham would be agreed to, and that the Constitution would be discussed clause by clause. He then observed, that, if they laid down a number of original principles, they must go through a double investigation; that it would be necessary to establish these original principles, and compare them with the Constitution; that it was highly improbable that they should agree on those principles; that he had a respect for the understanding of the honorable member, and trusted he would reflect, that difference in opinion arose from the nature of things; and that a great deal of time might be taken up to no purpose, if they should neither agree on those principles nor their application. He said, he hoped they would not treat this important business like a military enterprise, but proceed upon it like a deliberative body, and that the debates would be conducted with decency and moderation.

**The Convention then resolved itself into a committee of the whole house, Mr. Elisha Battle in the chair.**

**Mr. CALDWELL.**

Mr. Chairman, those maxims which I conceive to be the fundamental principles of every safe and free government, are — 1st. A government is a compact between the rulers and the people, 2d. Such a compact ought to be lawful in itself. 3d. It ought to be lawfully executed. 4th. Unalienable rights ought not to be given up, if not necessary. 5th. The compact ought to be mutual. And, 6th. It ought to be plain, obvious, and easily understood. Now, sir, if these

principles be just, by comparing the Constitution with them, we shall be able to judge whether it is fit for our adoption.

**Mr. IREDELL.**

Mr. Chairman, I concur entirely in the sentiments lately urged by the gentleman from Halifax, and am convinced we shall be involved in very great difficulties if we adopt the principles offered by the gentleman from Guilford. To show the danger and impolicy of this proceeding, I think I can convince the committee in a moment, that his very first principle is erroneous. In other countries, where the origin of government is obscure, and its formation different from ours, government may be deemed a contract between the rulers and the people. What is the consequence? A compact cannot be annulled but by the consent of both parties; therefore, unless the rulers are guilty of oppression, the people, on the principle of a compact, have no right to new-model their government. This is held to be the principle of some monarchical governments in Europe. Our government is founded on much nobler principles. The people are known with certainty to have originated it themselves. Those in power are their servants and agents; and the people, without their consent, may new-model their government whenever they think proper, not merely because it is oppressively exercised, but because they think another form will be more conducive to their welfare. It is upon the footing of this very principle that we are now met to consider of the Constitution before us. If we attempt to lay down any rules here, it will take us as much time to establish their validity as to consider the system itself.

**Mr. CALDWELL**

observed, that, though this government did not resemble the European governments, it still partook of the nature of a compact; that he conceived those principles which he proposed to be just, but was willing that {10} any others, which should be thought better, should be substituted in their place.

**Mr. MACLAINE.**

Mr. Chairman, the gentleman has taken his principles from sources which cannot hold here. In England, the government is a compact between the king and the people. I hope it is not so here. We shall have no officers in the situation of a king. The people here are the origin of all power. Our governors are elected temporarily. We can remove them occasionally, and put others in their stead. We do not bind ourselves. We are to consider whether this system will promote our happiness.

**Mr. GOUDY.**

Mr. Chairman, I wonder that these gentlemen, learned in the law, should quibble upon words. I care not whether it be called a *compact*, *agreement*, *covenant*, *bargain*, or what. Its intent is a concession of power, on the part of the people, to their rulers. We know that private interest governs mankind generally. Power belongs originally to the people; but if rulers be not well guarded, that power may be usurped from them. People ought to be cautious in giving away power. These gentlemen say there is no occasion for general rules: every one has one for himself.

Every one has an unalienable right of thinking for himself. There can be no inconvenience from laying down general rules. If we give away more power than we ought, we put ourselves in the situation of a man who puts on an iron glove, which he can never take off till he breaks his arm. Let us beware of the iron glove of tyranny. Power is generally taken from the people by imposing on their understanding, or by fetters. Let us lay down certain rules to govern our proceedings. It will be highly proper, in my opinion, and I very much wonder that gentlemen should object to it.

**Mr. IREDELL.**

Mr. Chairman, the gentleman who spoke last mistook what the gentleman from Wilmington and myself have said. In my opinion, there ought to be a line drawn, as accurately as possible, between the power which is given and that which is retained. In this system, the line is most accurately drawn by the positive grant of the powers of the general government. But a compact between the rulers and the ruled, which gentlemen compare this government with, is certainly not the principle of our government. Will any man say that, if there be a compact, { 11 } it can be altered without the consent of both parties? Those who govern, unless they grossly abuse their trust, (which is held an implied violation of the compact, and therefore a dissolution of it,) have a right to say they do not choose the government should be changed. But have any of the officers of our government a right to say so if the people choose to change it? Surely they have not. Therefore, as a general principle, it can never apply to a government where the people are avowedly the fountain of all power. I have no manner of objection to the most explicit declaration that all power depends upon the people; because, though it will not strengthen their rights, it may be the means of fixing them on a plainer foundation. One gentleman has said that we were quibbling upon words. If I know my own heart, I am incapable of quibbling on words. I act on as independent principles as any gentleman upon the floor. If I make use of quibbles, there are gentlemen here who can correct me.

If my premises are wrong, let them be attacked. If my conclusions be wrong, let me be put right. I am sorry that, in debating on so important a subject, it could be thought that we were disputing about words. I am willing to apply as much time as is necessary for our deliberations. I have no objection to any regular way of discussing the subject; but this way of proceeding will waste time, and not answer any purpose. Will it not be in the power of any gentleman, in the course of the debates, to say that this plan militates against those principles which the reverend gentleman recommends? Will it not be more proper to urge its incompatibility with those principles during that discussion, than to attempt to establish their exclusive validity previous to our entering upon the new plan of government? By the former mode, those rules and the Constitution may be considered together. By the latter, much time may be wasted to no purpose. I trust, therefore, that the reverend gentleman will withdraw his motion.

**Mr. RUTHERFORD.**

Mr. Chairman, I conceive those maxims will be of utility. I wish, as much as any one, to have a full and free discussion of the subject. To facilitate this desirable end, it seems highly expedient that some groundwork should be laid, some line drawn, to guide our proceedings. I trust, then, that the reverend gentleman's proposal will be agreed to.

**Mr. SPENCER.**

I conceive that it will retard the business to accede to the proposal of the learned gentleman. The observation which has been made in its behalf does not apply to the present circumstances. When there is a king or other governor, there is a compact between him and the people. It is then a covenant. But in this case, in regard to the government which it is proposed we should adopt, there are no governors or rulers, we being the people who possess all power. It strikes me that, when a society of free people agree on a plan of government, there are no governors in existence; but those who administer the government are their servants. Although several of those principles are proper, I hope they will not be part of one discussion, but that every gentleman will consider and discuss the subject with all the candor, moderation, and deliberation, which the magnitude and importance of the subject require.

**Mr. CALDWELL**

observed, that he would agree that any other word should be substituted to the word compact; but, after all that had been said, the Constitution appeared to him to be of the nature of a compact. It could not be fully so called till adopted and put in execution; when so put in execution, there were actual governors in existence.

**Mr. DAVIE.**

Mr. President, what we have already said may convince the reverend gentleman what a long time it will take us to discuss the subject in the mode which he has proposed: those few solitary propositions which he has put on paper, will make but a small part of the principles of this Constitution. I wish the gentleman to reflect how dangerous it is to confine us to any particular rules. This system is most extensive in its nature, involving not only the principles of governments in general, but the complicated principles of federal governments. We should not, perhaps, in a week lay down all the principles essential to such a Constitution. Any gentleman may, in the course of the investigation, mention any maxims he thinks proper, and compare them with the Constitution. It would take us more time to establish these principles, than to consider the Constitution itself. It will be wrong to tie any man's hands. I hope the question will be put.

**Mr. PERSON**

insisted on the propriety of the principles, and that they ought to be laid on the table with the Declaration of Rights, Constitution of the state, and the Confederation.

**Mr. LENOIR**

approved of the principles, but disapproved of being bound by any rules.

**Mr. MACLAINE**

was of the same opinion as to the impropriety of being bound.

**Mr. JAMES GALLOWAY**

wished to leave the hands of the members free, but he thought these principles were unexceptionable. He saw no inconvenience in adopting them, and wished they would be agreed to.

**Mr. LENOIR**

answered, that the matter had been largely debated. He said, that he thought the previous question ought to be put, whether they should lay down certain principles to be governed by, or leave every man to judge as his own breast suggested.

After some little altercation, the previous question was put — for the principles, 90; against them, 163; majority against them, 73.

**His excellency, Gov. JOHNSTON,**

then moved to discuss it by sections. This was opposed, because it would take up too much time.

After some altercation about the mode of considering the Constitution,

**Mr. IREDELL**

arose, and spoke as follows: —

Mr. President, whatever delay may attend it, a discussion is indispensable. We have been sent hither, by the people, to consider and decide this important business for them. This is a sacred trust, the honor and importance of which, I hope, are deeply impressed on every member here. We ought to discuss this Constitution thoroughly in all its parts. It was useless to come hither, and dishonorable, unless we discharge that trust faithfully. God forbid that any one of us should be determined one way or the other. I presume that every man thinks it his duty to hold his mind open to conviction; that whatever he may have heard, whether against or for the Constitution, he will recede from his present opinion, if reasons of sufficient validity are offered. The gentleman from Granville has told us, that we had since March to consider it, and that he hoped every member was ready to give Iris vote upon it. 'Tis true, we have had since that time to consider it, and I hope every member has taken pains to inform himself. I trust they have conscientiously considered it; that they have read on both sides of the question, and are resolved to vote according to the dictates of their consciences. I can truly say, that I believe there are few members in this house who have taken more pains to consider {14} it than myself. But I am still by no means confident that I am right. I have scarcely ever conversed on the subject with any man of understanding, who has not thrown some new light upon the subject which escaped me before. Those gentlemen who are so self-sufficient that they believe that they are never in the wrong, may arrogate infallibility to themselves, and conclude deliberation to be useless. For my part, I have often known myself to be in the wrong, and have ever wished to be corrected. There is nothing dishonorable in changing an opinion. Nothing is more fallible than human judgment. No gentleman will say that his is not fallible. Mine, I am sure, has often proved so. The serious

importance of the subject merits the utmost attention; an erroneous decision may involve truly awful and calamitous consequences. It is incumbent on us, therefore, to decide it with the greatest deliberation. The Constitution is at least entitled to a regular discussion. It has had the sanction of many of the best and greatest men upon the continent — of those very men to whom, perhaps, we owe the privilege of debating now. It has also been adopted by ten states since. Is it probable that we are less fallible than they are? Do we suppose our knowledge and wisdom to be superior to their aggregate wisdom and information? I agree that this question ought to be determined on the footing of reason, and not on that of authority; and if it be found defective and unwise, I shall be for rejecting it; but it is neither decent nor right to refuse it a fair trial. A system supported by such characters merits at least a serious consideration. I hope, therefore, that the Constitution will be taken up paragraph by paragraph. It will then be in the power of any gentlemen to offer his opinion on every part, and by comparing it with other opinions, he may obtain useful information. If the Constitution be so defective as it is represented, then the inquiry will terminate in favor of those who oppose it. But if, as I believe and hope, it be discovered to be so formed as to be likely to promote the happiness of our country, then I hope the decision will be, accordingly, in its favor. Is there any gentleman so indifferent to a union with our sister states, as to hazard disunion rashly, without considering the consequences? Had my opinion been different from what it is, I am sure I should have hesitated and reflected a long time before I had offered it against such respectable authorities. I am sorry { 15 } for the expense which may be incurred, when the community is so distressed; but this is a trivial consideration compared to the consequences of a rash proceeding upon this important question. Were any member to determine against it without proper consideration, and afterwards, upon his return home, on an impartial consideration, to be convinced it was a good system, his reflections on the temerity and precipitation of his conduct might destroy his peace of mind forever. I doubt not the members in general who condemn it, do so from a sincere belief that the system is a bad one; but at the same time, I believe there are many who are ready to relinquish that opinion, if they can be convinced it is erroneous, and that they sincerely wish for a fair and full discussion of the subject. For these reasons I am of opinion that the motion made by the honorable member is proper to be adopted.

**Mr. RUTHERFORD**

was surprised at the arguments used by gentlemen, and wished to know how they should vote, whether on the paragraphs, and how the report should be made when the committee rose.

**His excellency, Gov. JOHNSTON.**

If we reject any one part, we reject the whole. We are not to form a constitution, but to say whether we shall adopt a Constitution to which ten states have already acceded. If we think it a bad government, it is not binding to us; we can reject it. If it be proper for our adoption, we may adopt it. But a rejection of a single article will amount to a rejection of the whole.

**Mr. RUTHERFORD.**

The honorable gentleman has mistaken me. Sorry I am that it is so late taken up by North Carolina, if we are to be influenced and persuaded in this manner. I am unhappy to hear gentlemen of learning and integrity preach up the doctrine of adoption by ten states. Sir, it is my

opinion that we ought to decide it as if no state had adopted it. Are we to be thus intimidated into a measure of which we may disapprove?

The question was then put, and carried by a great majority, to discuss the Constitution clause by clause.

**The preamble of the Constitution was then read.**

**Mr. CALDWELL.**

Mr. Chairman, if they mean, *We, the people*, — the people at large, — I conceive the expression is improper. Were not they who framed this Constitution {16} the representatives of the legislatures of the different states? In my opinion, they had no power, from the people at large, to use their name, or to act for them. They were not delegated for that purpose.

**Mr. MACLAINE.**

The reverend gentleman has told us, that the expression, *We, the people*, is wrong, because the gentlemen who framed it were not the representatives of the people. I readily grant that they were delegated by states. But they did not think that they were the people, but intended it for the people, at a future day. The sanction of the state legislatures was in some degree necessary. It was to be submitted by the legislatures to the people; so that, when it is adopted, it is the act of the people. When it is the act of the people, their name is certainly proper. This is very obvious and plain to any capacity.

**Mr. DAVIE.**

Mr. Chairman, the observation of the reverend gentleman is grounded, I suppose, on a supposition that the Federal Convention exceeded their powers. This objection has been industriously circulated; but I believe, on a candid examination, the prejudice on which this error is founded will be done away. As I had the honor, sir, to be a member of the Convention, it may be expected I would answer an objection personal in its nature, and which contains rather a reflection on our conduct, than an objection to the merits of the Constitution. After repeated and decisive proofs of the total inefficiency of our general government, the states deputed the members of the Convention to revise and strengthen it. And permit me to call to your consideration that, whatever form of confederate government they might devise, or whatever powers they might propose to give this new government, no part of it was binding until the whole Constitution had received the solemn assent of the people. What was the object of our mission? "To decide upon the most effectual means of removing the defects of our federal union." This is a general, discretionary authority to propose any alteration they thought proper or necessary. Were not the state legislatures afterwards to review our proceedings? Is it not immediately through their recommendation that the plan of the Convention is submitted to the people? And this plan must still remain a dead letter, or receive its operation from the fiat of this Convention. Although the Federal Convention might recommend the concession {17} of the most extensive powers, yet they could not put one of them into execution. What have the Convention done that can merit this species of censure? They have only recommended a plan of government containing some additional powers to those enjoyed under the present feeble system; amendments not only necessary, but which were the express object of the deputation. When we

investigate this system candidly and accurately, and compare all its parts with one another, we shall find it absolutely necessary to confirm these powers, in order to secure the tranquillity of the states and the liberty of the people. Perhaps it would be necessary, to form a true judgment of this important question, to state some events, and develop some of those defects, which gave birth to the late Convention, and which have produced this revolution in our federal government. With the indulgence of the committee, I will attempt this detail with as much precision as I am capable of. The general objects of the union are, 1st, to protect us against foreign invasion; 2d, to defend us against internal commotions and insurrections; 3d, to promote the commerce, agriculture, and manufactures, of America. These objects are requisite to make us a safe and happy people, and they cannot be attained without a firm and efficient system of union.

As to the first, we cannot obtain any effectual protection from the present Confederation. It is indeed universally acknowledged, that its inadequacy in this case is one of its greatest defects. Examine its ability to repel invasion. In the late glorious war, its weakness was unequivocally experienced. It is well known that Congress had a *discretionary right* to raise men and money; but they had no power to do either. In order to preclude the necessity of examining the whole progress of its imbecility, permit me to call to your recollection one single instance. When the last great stroke was made which humbled the pride of Britain, and put us in possession of peace and independence, so low were the finances and credit of the United States, that our army could not move from Philadelphia, until the minister of his most Christian majesty was prevailed upon to draw bills to defray the expense of the expedition. These were not obtained on the credit or interest of Congress, but by the personal influence of the commander-in-chief.

Had this great project miscarried, what fatal events might {18} have ensued! It is a very moderate presumption, that what has once happened may happen again. The next important consideration, which is involved in the external powers of the Union are *treaties*. Without a power in the federal government to compel the performance of our engagements with foreign nations, we shall be perpetually involved in destructive wars. The Confederation is extremely defective in this point also. I shall only mention the British treaty as a satisfactory proof of this melancholy fact. It is well known that, although this treaty was ratified in 1784, it required the Sanction of a law of North Carolina in 1787; and that our enemies, presuming on the weakness of our federal government, have refused to deliver up several important posts within the territories of the United States, and still hold them, to our shame and disgrace. It is unnecessary to reason on facts, the perilous consequences of which must in a moment strike every mind capable of reflection.

The next head under which the general government may be considered, is the regulation of commerce, The United States should be empowered to compel foreign nations into commercial regulations that were either founded on the principles of justice or reciprocal advantages. Has the present Confederation effected any of these things? Is not our commerce equally unprotected abroad by arms and negotiation? Nations have refused to enter into treaties with us. What was the language of the British court on a proposition of this kind? Such as would insult the pride of any man of feeling and independence. — "You can make engagements, but you cannot compel your citizens to comply with them. We derive greater profits from the present situation of your commerce than we could expect under a treaty; and you have no kind of power that can compel us to surrender any advantage to you." This was the language of our enemies; and while our

government remains as feeble as it has been, no nation will form any connection with us that will involve the relinquishment of the least advantage. What has been the consequence? A general decay of trade, the rise of imported merchandise, the fall of produce, and an uncommon decrease of the value of lands. Foreigners have been reaping the benefits and emoluments which our citizens ought to enjoy. An unjustifiable perversion of justice has pervaded almost all the states, and every thing presented to {19} our view a spectacle of public poverty and private wretchedness!

While this is a true representation of our situation, can our general government recur to the ordinary expedient of *loans*? During the late war, large sums were advanced to us by foreign states and individuals. Congress have not been enabled to pay even the interest of these debts, with honor and punctuality. The requisitions made on the states have been every where unproductive, and some of them have not paid a stiver. These debts are a part of the price of our liberty and independence — debts which ought to be regarded with gratitude and discharged with honor. Yet many of the individuals who lent us money in the hour of our distress, are now reduced to indigence in consequence of our delinquency. So low and hopeless are the finances of the United States, that, the year before last, Congress were obliged to borrow money even to pay the interest of the principal which we had borrowed before. This wretched resource of turning interest into principal, is the most humiliating and disgraceful measure that a nation could take, and approximates with rapidity to absolute ruin. Yet it is the inevitable and certain consequence of such a system as the existing Confederation.

There are several other instances of imbecility in that system. It cannot secure to us the enjoyment of our own territories, or even the navigation of our own rivers. The want of power to establish a uniform rule for naturalization through the United States is also no small defect, as it must unavoidably be productive of disagreeable controversies with foreign nations. The general government ought in this, as in every other instance, to possess the means of preserving the peace and tranquillity of the Union. A striking proof of the necessity of this power recently happened in Rhode Island: A man who had run off with a vessel and cargo, the property of some merchants in Holland, took sanctuary in that place: application was made for him as a citizen of the United Netherlands by the minister, but, as he had taken the oath of allegiance, the state refused to deliver him up, and protected him in his villany. Had it not been for the peculiar situation of the states at that time, fatal consequences might have resulted from such a conduct, and the contemptible state of Rhode Island might have involved the whole Union in a war.

{20} The encroachments of some states on the rights of others, and of all on those of the Confederacy, are incontestable proofs of the weakness and imperfection of that system. Maryland lately passed a law granting exclusive privileges to her own vessels, contrary to the Articles of the Confederation. Congress had neither power nor influence to alter it; all they could do was to send a contrary recommendation. It is provided, by the 6th Article of the Confederation, that no compact shall be made between two or more states without the consent of Congress; yet this has been recently violated by Virginia and Maryland, and also by Pennsylvania and New Jersey. North Carolina and Massachusetts have had a considerable body of forces on foot, and those in this state raised for two years, notwithstanding the express provision in the Confederation that no force should be kept up by any state in time of peace.

As to internal tranquillity, — without dwelling on the unhappy commotions in our own back counties, — I will only add that, if the rebellion in Massachusetts had been planned and executed with any kind of ability, that state must have been ruined; for Congress were not in a situation to render them any assistance.

Another object of the federal union is, to promote the agriculture and manufactures of the states — objects in which we are so nearly concerned. Commerce, sir, is the nurse of both. The merchant furnishes the planter with such articles as he cannot manufacture himself, and finds him a market for his produce. Agriculture cannot flourish if commerce languishes; they are mutually dependent on each other. Our commerce, as I have before observed, is unprotected abroad, and without regulation at home, and in this and many of the states ruined by partial and iniquitous laws — laws which, instead of having a tendency to protect property and encourage industry, led to the depreciation of the one, and destroyed every incitement to the other — laws which basely warranted and legalized the payment of just debts by *paper*, which represents nothing, or property of very trivial value.

These are some of the leading causes which brought forward this new Constitution. It was evidently necessary to infuse a greater portion of strength into the national government. But Congress were but a single body, with whom it was dangerous to lodge additional powers. Hence arose {21} the necessity of a different organization. In order to form some balance, the departments of government were separated, and as a necessary check, the legislative body was composed of *two branches*. Steadiness and wisdom are better insured when there is a second branch, to balance and check the first. The stability of the laws will be greater when the popular branch, which might be influenced by local views, or the violence of party, is checked by another, whose longer continuance in office will render them more experienced, more temperate, and more competent to decide rightly.

The Confederation derived its sole support from the state legislatures. This rendered it weak and ineffectual. It was therefore necessary that the foundations of this government should be laid on the broad basis of the people. Yet the state governments are the pillars upon which this government is extended over such an immense territory, and are essential to its existence. The House of Representatives are immediately elected by the people. The senators represent the sovereignty of the states; they are directly chosen by the state legislatures, and no legislative act can be done without their concurrence. The election of the executive is in some measure under the control of the legislatures of the states, the electors being appointed trader their direction.

The difference, in point of magnitude and importance, in the members of the confederacy, was an additional reason for the division of the legislature into two branches, and for establishing an equality of suffrage in the Senate. The protection of the small states against the ambition and influence of the larger members, could only be effected by arming them with an equal power in one branch of the legislature. On a contemplation of this matter, we shall find that the jealousies of the states could not be reconciled any other way. The lesser states would never have concurred unless this check had been given them, as a security for their political existence, against the power and encroachments of the great states. It may be also proper to observe, that the executive is separated in its functions from the legislature, as well as the nature of the case would admit, and the judiciary from both.

Another radical vice in the old System, which was necessary to be corrected, and which will be understood without a long deduction of reasoning, was, that it legislated on states, instead of individuals; and that its powers could not {22} be executed but by fire or by the sword — by military force, and not by the intervention of the civil magistrate. Every one who is acquainted with the relative situation of the states, and the genius of our citizens, must acknowledge that, if the government was to be carried into effect by military force, the most dreadful consequences would ensue. It would render the citizens of America the most implacable enemies to one another. If it could be carried into effect against the small states, yet it could not be put in force against the larger and more powerful states. It was therefore absolutely necessary that the influence of the magistrate should be introduced, and that the laws should be carried home to individuals themselves.

In the formation of this system, many difficulties presented themselves to the Convention.

Every member saw that the existing system would ever be ineffectual, unless its laws operated on individuals, as military coercion was neither eligible nor practicable. Their own experience was fortified by their knowledge of the inherent weakness of all confederate governments. They knew that all governments merely federal had been short-lived, or had existed from principles extraneous from their constitutions, or from external causes which had no dependence on the nature of their governments. These considerations determined the Convention to depart from that solecism in politics — the principle of legislation for states in their political capacities.

The great extent of country appeared to some a formidable difficulty; but a confederate government appears, at least in theory, capable of embracing the various interests of the most extensive territory. Founded on the state governments solely, as I have said before, it would be tottering and inefficient. It became, therefore, necessary to bottom it on the people themselves, by giving them an immediate interest and agency in the government. There was, however, some real difficulty in conciliating a number of jarring interests, arising from the incidental but unalterable difference in the states in point of territory, situation, climate, and rivalry in commerce. Some of the states are very extensive, others very limited: some are manufacturing states, others merely agricultural: some of these are exporting states, while the carrying and navigation business are in the possession of others. It was not easy to reconcile such a multiplicity of {23} discordant and clashing interests. Mutual concessions were necessary to come to any concurrence. A plan that would promote the exclusive interests of a few states would be injurious to others. Had each state obstinately insisted on the security of its particular local advantages, we should never have come to a conclusion. Each, therefore, amicably and wisely relinquished its particular views. The Federal Convention have told you, that the Constitution which they formed "was the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of their political situation rendered indispensable" I hope the same laudable spirit will govern this Convention in their decision on this important question.

The business of the Convention was to amend the Confederation by giving it additional powers. The present form of Congress being a single body, it was thought unsafe to augment its powers, without altering its organization. The act of the Convention is but a mere proposal, similar to the production of a private pen. I think it a government which, if adopted, will cherish and protect the happiness and liberty of America; but I hold my mind open to conviction. I am ready to

recede from my opinion if it be proved to be ill-founded. I trust that every man here is equally ready to change an opinion he may have improperly formed. The weakness and inefficiency of the old Confederation produced the necessity of calling the Federal Convention. Their plan is now before you; and I hope, on a deliberate consideration, every man will see the necessity of such a system. It has been the subject of much jealousy and censure out of doors. I hope gentlemen will now come forward with their objections, and that they will be thrown out and answered with candor and moderation.

**Mr. CALDWELL**

wished to know why the gentlemen who were delegated by the states, styled themselves *We, the people*. He said that he only wished for information.

**Mr. IREDELL**

answered, that it would be easy to satisfy the gentleman; that the style, *We, the people*, was not to be applied to the members themselves, but was to be the style of the Constitution, when it should be ratified in their respective states.

**Mr. JOSEPH TAYLOR.**

Mr. Chairman, the very wording of this Constitution seems to carry with it an {24} assumed power. *We, the people*, is surely an assumed power. Have they said, *We*, the delegates of the people? It seems to me that, when they met in Convention, they assumed more power than was given them. Did the people give them the power of using their name? This power was in the people. They did not give it up to the members of the Convention. If, therefore, they had not this power, they assumed it. It is the interest of every man, who is a friend to liberty, to oppose the assumption of power as soon as possible. I see no reason why they assumed this power. Matters may be carried still farther. This is a consolidation of all the states. Had it said, *We, the states*, there would have been a federal intention in it. But, sir, it is clear that a consolidation is intended. Will any gentleman say that a consolidated government will answer this country? It is too large. The man who has a large estate cannot manage it with convenience. I conceive that, in the present case, a consolidated government can by no means suit the genius of the people. The gentleman from Halifax (Mr. Davie) mentioned reasons for such a government. They have their weight, no doubt; but at a more convenient time we can show their futility. We see plainly that men who come from New England are different from us. They are ignorant of our situation; they do not know the state of our country. They cannot with safety legislate for us. I am astonished that the servants of the legislature of North Carolina should go to Philadelphia, and, instead of speaking of the state of North Carolina, should speak of the *people*. I wish to stop power as soon as possible; for they may carry their assumption of power to a more dangerous length. I wish to know where they found the power of saying *We, the people*, and of consolidating the states.

**Mr. MACLAINE.**

Mr. Chairman, I confess myself astonished to hear objections to the preamble. They say that the delegates to the Federal Convention assumed powers which were not granted them; that they

ought not to have used the words *We, the people*. That they were not the delegates of the people, is universally acknowledged. The Constitution is only a mere proposal. Had it been binding on us, there might be a reason for objecting. After they had finished the plan, they proposed that it should be recommended to the people by the several state legislatures. {25} If the people approve of it, it becomes their act. Is not this merely a dispute about words, without any meaning whatever? Suppose any gentleman of this Convention had drawn up this government, and we thought it a good one; we might respect his intelligence and integrity, but it would not be binding upon us. We might adopt it if we thought it a proper system, and then it would be our act. Suppose it had been made by our enemies, or had dropped from the clouds; we might adopt it if we found it proper for our adoption. By whatever means we found it, it would be our act as soon as we adopted it. It is no more than a blank till it be adopted by the people. When that is done here, is it not the people of the state of North Carolina that do it, joined with the people of the other states who have adopted it? The expression is, then, right. But the gentleman has gone farther, and says that the people of New England are different from us. This goes against the Union altogether. They are not to legislate for us; we are to be represented as well as they. Such a futile objection strikes at all union. We know that without union we should not have been debating now. I hope to hear no more objections of this trifling nature, but that we shall enter into the spirit of the subject at once.

**Mr. CALDWELL**

observed, that he only wished to know why they had assumed the name of the people.

**Mr. JAMES GALLOWAY.**

Mr. Chairman, I trust we shall not take up more time on this point. I shall just make a few remarks on what has been said by the gentleman from Halifax. He has gone through our distresses, and those of the other states. As to the weakness of the Confederation, we all know it. A sense of this induced the different states to send delegates to Philadelphia. They had given them certain powers; we have seen them, they are now upon the table. The result of their deliberations is now upon the table also. As they have gone out of the line which the states pointed out to them, we, the people, are to take it up and consider it. The gentlemen who framed it have exceeded their powers, and very far. They will be able, perhaps, to give reasons for so doing. If they can show us any reasons, we will, no doubt, take notice of them. But, on the other hand, if our civil and religious liberties are not secured, and proper checks provided, we have the power in {26} our own hands to do with it as we think proper. I hope gentlemen will permit us to proceed.

The clerk then read the 1st section of the 1st article.

**Mr. CALDWELL.**

Mr. Chairman, I am sorry to be objecting, but I apprehend that all the legislative powers granted by this Constitution are not vested in a Congress consisting of the Senate and the House of Representatives, because the Vice-President has a right to put a check on it. This is known to every gentleman in the Convention. How can all the legislative powers granted in that

Constitution be vested in the Congress, if the Vice-President is to have a vote in case the Senate is equally divided? I ask for information, how it came to be expressed in this manner, when this power is given to the Vice-President.

**Mr. MACLAINE**

declared, that he did not know what the gentleman meant.

**Mr. CALDWELL**

said, that the Vice-President is made a part of the legislative body, although there was an express declaration, that all the legislative powers were vested in the Senate and House of Representatives, and that he would be glad to know how these things consisted together.

**Mr. MACLAINE**

expressed great astonishment at the gentleman's criticism. He observed, that the Vice-President had only a casting vote in case of an equal division in the Senate — that a provision of this kind was to be found in all deliberative bodies — that it was highly useful and expedient — that it was by no means of the nature of a check which impedes or arrests, but calculated to prevent the operation of the government from being impede — that, if the gentleman could show any legislative power to be given to any but the two houses of Congress, his objection would be worthy of notice.

Some other gentlemen said, they were dissatisfied with Mr. Maclaine's explanation — that the Vice-President was not a member of the Senate, but an officer of the United States, and yet had a legislative power, and that it appeared to them inconsistent — that it would have been more proper to have given the casting vote to the President.

His excellency, Gov. JOHNSTON, added to Mr. Maclaine's reasoning, that it appeared to him a very good and proper regulation — that, if one of the Senate was to be appointed Vice-President, the state which he represented would {27} either lose a vote if he was not permitted to vote on every occasion, or if he was, he might, in some instances, have two votes — that the President was already possessed of the power of preventing the passage of a law by a bare majority; yet laws were said not to be made by the President, but by the two houses of Congress exclusively.

**Mr. LENOIR.**

Mr. Chairman, I have a greater objection on this ground than that which has just been mentioned. I mean, sir, the legislative power given to the President himself. It may be admired by some, but not by me. He, sir, with the Senate, is to make treaties, which are to be the supreme law of the land. This is a legislative power given to the President, and implies a contradiction to that part which says that all legislative power is vested in the two houses.

**Mr. SPAIGHT**

answered, that it was thought better to put that power into the hands of the senators as representatives of the states — that thereby the interest of every state was equally attended to in the formation of treaties — but that it was not considered as a legislative act at all.

**Mr. IREDELL.**

Mr. Chairman, this is an objection against the inaccuracy of the sentence. I humbly conceive it will appear accurate on a due attention. After a bill is passed by both houses, it is to be shown to the President. Within a certain time, he is to return it. If he disapproves of it, he is to state his objections in writing; and it depends on Congress afterwards to say whether it shall be a law or not. Now, sir, I humbly apprehend that, whether a law passes by a bare majority, or by two thirds, (which are required to concur after he shall have stated objections,) what gives active operation to it is, the will of the senators and representatives. The President has no power of legislation. If he does not object, the law passes by a bare majority; and if he objects, it passes by two thirds. His power extends only to cause it to be reconsidered, which secures a greater probability of its being good. As to his power with respect to treaties, I shall offer my sentiments on it when we come properly to it.

**Mr. MACLAINE**

intimated, that if any gentleman was out of order,<sup>[1]</sup> it was the gentleman from Wilkes (Mr. Lenoir) {28} — that treaties were the supreme law of the land in all countries, for the most obvious reasons — that laws, or legislative acts, operated upon individuals, but that treaties acted upon states — that, unless they were the supreme law of the land, they could have no validity at all — that the President did not act in this case as a legislator, but rather ill his executive capacity.

**Mr. LENOIR**

replied that he wished to be conformable to the rules of the house, but he still thought the President was possessed of legislative powers, while he could make treaties, joined with the Senate.

**Mr. IREDELL.**

Mr. Chairman, I think the gentleman is in order. When treaties are made, they become as valid as legislative acts. I apprehend that every act of the government, legislative, executive, or judicial, if in pursuance of a constitutional power, is the law of the land. These different acts become the acts of the state by the instrumentality of its officers. When, for instance, the governor of this state grants a pardon, it becomes the law of the land, and is valid. Every thing is the law of the land, let it come from what power it will, provided it be consistent with the Constitution.

**Mr. LENOIR**

answered, that that comparison did not hold.

**Mr. IREDELL**

continued. If the governor grants a pardon, it becomes a law of the land. Why? Because he has power to grant pardons by the Constitution. Suppose this Constitution is adopted, and a treaty made; that treaty is the law of the land. Why? Because the Constitution grants the power of making treaties.

Several members expressed dissatisfaction at the inconsistency (as they conceived it) of the expressions, when —

**Mr. JAMES GALLOWAY**

observed, that their observations would be made more properly when they come to that clause which gave the casting vote to the Vice-President, and the qualified negative to the President.

The first three clauses of the 2d section read.

**Mr. MACLAINE.**

Mr. Chairman, as many objections have been made to biennial elections, it will be necessary to obviate them. I beg leave to state their superiority to annual elections. Our elections have been annual for some years. People are apt to be attached to old customs. Annual {29} elections may be proper in our state governments, but not in the general government. The seat of government is at a considerable distance; and in case of a disputed election, it would be so long before it could be settled, that the state would be totally without representation. There is another reason, still more cogent, to induce us to prefer biennial to annual elections. The objects of state legislation are narrow and confined, and a short time will render a man sufficiently acquainted with them; but those of the general government are infinitely more extensive, and require a much longer time to comprehend them. The representatives to the general government must be acquainted not only with the internal situation and circumstances of the United States, but also with the state of our commerce with foreign nations, and our relative situation to those nations. They must know the relative situation of those nations to one another, and be able to judge with which of them, and in what manner, our commerce should be regulated. These are good reasons to extend the time of elections to two years. I believe you remember, — and perhaps every member here remembers, — that this country was very happy under biennial elections. In North Carolina, the representatives were formerly chosen by ballot biennially. It was changed under the royal government, and the mode pointed out by the king. Notwithstanding the contest for annual elections, perhaps biennial elections would still be better for this country. Our laws would certainly be less fluctuating.

**Mr. SHEPPERD**

observed, that he could see no propriety in the friends of the new system making objections, when none were urged by its opposers; that it was very uncommon for a man to make objections and answer them himself; and that it would take an immense time to mention every objection which had been mentioned in the country.

**Mr. MACLAINE.**

It is determined already by the Convention to debate the Constitution section by section. Are we then to read it only? Suppose the whole of it is to be passed over without saying any thing; will not that amount to a dead vote? Sir, I am a member of this Convention; and if objections are made here, I will answer them to the best of my ability. If I see gentlemen pass by in silence such parts as they vehemently decry out of doors, or such {30} parts as have been loudly complained of in the country, I Shall answer them also.

After some desultory conversation, Mr. WILLIE JONES observed, that he would easily put the friends of the Constitution in a way of discussing it. Let one of them, said he, make objections and another answer them.

**Mr. DAVIE.**

Mr. Chairman, I hope that reflections of a personal nature will be avoided as much as possible. What is there in this business should make us jealous of each other? We are all come hither to serve one common cause of one country. Let us go about it openly and amicably. There is no necessity for the employment of underhanded means. Let every objection be made. Let us examine the plan of government submitted to us thoroughly. Let us deal with each other with candor. I am sorry to see so much impatience so early in the business.

**Mr. SHEPPERD**

answered, that he spoke only because he was averse to unnecessary delays, and that he had no finesse or design at all.

**Mr. RUTHERFORD**

wished the system to be thoroughly discussed. He hoped that he should be excused in making a few observations, in the Convention, after the committee rose, and that he trusted gentlemen would make no reflections.

**Mr. BLOODWORTH**

declared, that every gentleman had a right to make objections in both cases, and that he was sorry to hear reflections made.

**Mr. GOUDY.**

Mr. Chairman, this clause of taxation will give an advantage to some states over the others. It will be oppressive to the Southern States. Taxes are equal to our representation. To augment our taxes, and increase our burdens, our negroes are to be represented. If a state has fifty thousand negroes, she is to send one representative for them. I wish not to be represented with negroes, especially if it increases my burdens.

**Mr. DAVIE.**

Mr. Chairman, I will endeavor to obviate what the gentleman last up said. I wonder to see gentlemen so precipitate and hasty on a subject of such awful importance. It ought to be considered, that some of us are slow of apprehension, or not having those quick conceptions, and luminous understandings, of which other gentlemen may be possessed. The gentleman "does not wish to be {31} represented with negroes." This, sir, is an unhappy species of population; but we cannot at present alter their situation. The Eastern States had great jealousies on this subject. They insisted that their cows and horses were equally entitled to representation; that the one was property as well as the other. It became our duty, on the other hand, to acquire as much weight as possible in the legislation of the Union; and, as the Northern States were more populous in whites, this only could be done by insisting that a certain proportion of our slaves should make a part of the computed population. It was attempted to form a rule of representation from a compound ratio of wealth and population; but, on consideration, it was found impracticable to determine the comparative value of lands, and other property, in so extensive a territory, with any degree of accuracy; and population alone was adopted as the only practicable rule or criterion of representation. It was urged by the deputies of the Eastern States, that a representation of two fifths would be of little utility, and that their entire representation would be unequal and burdensome — that, in a time of war, slaves rendered a country more vulnerable, while its defence devolved upon its free inhabitants. On the other hand, we insisted that, in time of peace, they contributed, by their labor, to the general wealth, as well as other members of the community — that, as rational beings, they had a right of representation, and, in some instances, might be highly useful in war. On these principles the Eastern States gave the matter up, and consented to the regulation as it has been read. I hope these reasons will appear satisfactory. It is the same rule or principle which was proposed some years ago by Congress, and assented to by twelve of the states. It may wound the delicacy of the gentleman from Guilford, (Mr. Goudy,) but I hope he will endeavor to accommodate his feelings to the interest and circumstances of his country.

**Mr. JAMES GALLOWAY**

said, that he did not object to the representation of negroes, so much as he did to the fewness of the number of representatives. He was surprised how we came to have but five, including those intended to represent negroes. That, in his humble opinion, North Carolina was entitled to that number independent of the negroes.

**Mr. SPAIGHT**

endeavored to satisfy him, that the Convention {32} had no rule to go by in this case — that they could not proceed upon the ratio mentioned in the Constitution till the enumeration of the people was made — that some states had made a return to Congress of their numbers, and others had not — that it was mentioned that we had had time, but made no return — that the present number was only temporary — that in three years the actual census would be taken, and our number of representatives regulated accordingly.

**His excellency, Gov. JOHNSTON,**

was perfectly satisfied with the temporary number. He said that it could not militate against the people of North Carolina, because they paid in proportion; that no great inconvenience could happen, in three years, from their paying less than their full proportion; that they were not very flush of money, and that he hoped for better times in the course of three years.

The rest of the 2d section read.

**Mr. JOSEPH TAYLOR**

objected to the provision made for impeaching. He urged that there could be no security from it, as the persons accused were triable by the Senate, who were a part of the legislature themselves; that, while men were fallible, the senators were liable to errors, especially in a case where they were concerned themselves.

**Mr. IREDELL.**

## **IMPEACH**

Mr. Chairman, I was going to observe that this clause, vesting the power of **impeachment** in the House of Representatives, is one of the greatest securities for a due execution of all public offices. Every government requires it. Every man ought to be amenable for his conduct, and there are no persons so proper to complain of the public officers as the representatives of the people at large. The representatives of the people know the feelings of the people at large, and will be ready enough to make complaints. If this power were not provided, the consequences might be fatal. It will be not only the means of punishing misconduct, but it will prevent misconduct. A man in public office who knows that there is no tribunal to punish him, may be ready to deviate from his duty; but if he knows there is a tribunal for that purpose, although he may be a man of no principle, the very terror of punishment will perhaps deter him. I beg leave to mention that every man has a right to express his opinion, and point out any part of the Constitution which he either thinks defective, or has heard {33} represented to be so. What will be the consequence if they who have objections do not think proper to communicate them, and they are not to be mentioned by others? Many gentlemen have read many objections, which perhaps have made impressions on their minds, though they are not communicated to us. I therefore apprehend that the member was perfectly regular in mentioning the objections made out of doors. Such objections may operate upon the minds of gentlemen, who, not being used to convey their ideas in public, conceal them out of diffidence.

**Mr. BLOODWORTH**

## **IMPEACH**

wished to be informed, whether **this sole power of impeachment**, given to the House of Representatives, deprived the state of the power of impeaching any of its members.

**Mr. SPAIGHT**

## IMPEACH

answered, that this **impeachment** extended only to the officers of the United States — that it would be improper if the same body that **impeached** had the power of trying — that, therefore, the Constitution had wisely given the power of **impeachment** to the House of Representatives, and that of trying **impeachments** to the Senate.

Mr. JOSEPH TAYLOR.

## IMPEACH

Mr. Chairman, the objection is very strong. If there be but one body to try, where are we? If any tyranny or oppression should arise, how are those who perpetrated such oppression to be tried and punished? By a tribunal consisting of the very men who assist in such tyranny. Can any tribunal be found, in any community, who will give judgment against their own actions? Is it the nature of man to decide against himself? I am obliged to the worthy member from New Hanover for assisting me with objections. None can impeach but the representatives; and the **impeachments** are to be determined by the senators, who are one of the branches of power which we dread under this Constitution.

His excellency, Gov. JOHNSTON.

## IMPEACH

Mr. Chairman, the worthy member from Granville surprises me by his objection. It has been explained by another member, that only officers of the United States were impeachable. I never knew any instance of a man being **impeached** for a legislative act; nay, I never heard it suggested before. No member of the House of Commons, in England, has ever been impeached before the Lords, nor any lord, for a legislative misdemeanor. A {34} representative is answerable to no power but his constituents. He is accountable to no being under heaven but the people who appointed him.

Mr. TAYLOR

replied, that it now appeared to him in a still worse light than before.

Mr. BLOODWORTH

observed, that as this was a Constitution for the United States, he should not have made the observation he did, had the subject not been particularly mentioned — that the words "sole power of **impeachment**" were so general, and might admit of such a latitude of construction, as to extend to every legislative member upon the continent, so as to preclude the representatives of the different states from **impeaching**.

Mr. MACLAINE.

## IMPEACH

Mr. Chairman, if I understand the gentleman rightly, he means that Congress may impeach all the people or officers of the United States. If the gentleman will attend, he will see that this is a government for confederated states; that, consequently, it can never intermeddle where no power is given. I confess I can see no more reason to fear in this case than from our own General Assembly. A power is given to our own state Senate to try **impeachments**. Is it not necessary to point out some tribunal to try great offences? Should there not be some mode of punishment for the offences of the officers of the general government? Is it not necessary that such officers should be kept within proper bounds? The officers of the United States are excluded from offices of honor, trust, or profit, under the United States, on **impeachment** for, and conviction of, high crimes and misdemeanors. This is certainly necessary. This exclusion from offices is harmless in comparison with the regulation made, in similar cases, in our own government. Here it is expressly provided how far the punishment shall extend, and that it shall extend no farther. On the contrary, the limits are not marked in our own Constitution, and the punishment may be extended too far. I believe it is a certain and known fact, that members of the legislative body are never, as such, liable to **impeachment**, but are punishable by law for crimes and misdemeanors in their personal capacity. For instance; the members of Assembly are not liable to **impeachment**, but, like other people, are amenable to the law for crimes and misdemeanors committed as individuals. But in Congress, a member of either house can be no officer.

Gov. JOHNSTON.

## IMPEACH

Mr. Chairman, I find that making objections is useful. I never thought of the objection made by the member from New Hanover. I never thought that **impeachments** extended to any but officers of the United States. When you look at the judgment to be given on **impeachments**, you will see that the punishment goes no farther than to remove and disqualify civil officers of the United States, who shall, on **impeachment**, be convicted of high misdemeanors. Removal from office is the punishment — to which is added future disqualification. How could a man be removed from office who had no office? An officer of this state is not liable to the United States. Congress could not disqualify an officer of this state. No body can disqualify, but that body which creates. We have nothing to apprehend from that article. We are perfectly secure as to this point. I should laugh at any judgment they should give against any officer of our own.

Mr. BLOODWORTH.

From the complexion of the paragraph it appeared to me to be applicable only to officers of the United States; but the gentleman's own reasoning convinces me that he is wrong. He says he would laugh at them. Will the gentleman laugh when the extension of their powers takes place? It is only by our adoption they can have any power.

Mr. IREDELL.

## IMPEACH

Mr. Chairman, the argument of the gentleman last up is founded upon misapprehension. Every article refers to its particular object. We must judge of expressions from the subject matter concerning which they are used. The sole power of **impeachment** extends only to objects of the Constitution. The Senate shall only try **impeachments** arising under the Constitution. In order to confirm and illustrate that position, the gentleman who spoke before explained it in a manner perfectly satisfactory to my apprehension — "under this Constitution." What is the meaning of these words" They signify those arising under the government of the United States. When this government is adopted, there will be two governments to which we shall owe obedience. To the government of the Union, in certain defined cases — to our own state government in every other case. If the general government were to disqualify me from any office which I held in North Carolina under its laws, I would refer to the Constitution, and say that they {36} violated it, as it only extended to officers of the United States.

### Mr. BLOODWORTH.

The penalty is only removal from office. It does not mention from what office. I do not see any thing in the expression that convinces me that I was mistaken. I still consider it in the same light.

### Mr. PORTER

wished to be informed, if every officer, who was a creature of that Constitution, was to be tried by the Senate — whether such officers, and those who had complaints against them, were to go from the extreme parts of the continent to the seat of government, to adjust disputes.

### Mr. DAVIE

## IMPEACH

answered, that **impeachments** were confined to cases under the Constitution, but did not descend to petty offices; that if the gentleman meant that it would be troublesome and inconvenient to recur to the federal courts in case of oppressions by officers, and to carry witnesses such great distances, he would satisfy the gentleman, that Congress would remove such inconveniences, as they had the power of appointing inferior tribunals, where such disputes would be tried.

### Mr. J. TAYLOR.

## IMPEACH

Mr. Chairman, I conceive that, if this Constitution be adopted, we shall have a large number of officers in North Carolina under the appointment of Congress. We shall undoubtedly, for instance, have a great number of tax-gatherers. If any of these officers shall do wrong, when we come to fundamental principles, we find that we have no way to punish them but by going to

Congress, at an immense distance, whither we must carry our witnesses. Every gentleman must see, in these cases, that oppressions will arise, I conceive that they cannot be tried elsewhere. I consider that the Constitution will be explained by the word "sole." If they did not mean to retain a general power of **impeaching**, there was no occasion for saying the "sole power." I consider therefore that oppressions will arise. If I am oppressed, I must go to the House of Representatives to complain. I consider that, when mankind are about to part with rights, they ought only to part with those rights which they can with convenience relinquish, and not such as must involve them in distresses.

Mr. SPAIGHT

## IMPEACH

In answer to Mr. Taylor, observed that, though the power of **impeachment** was given, yet it did not {37} say that there was no other manner of giving redress — that it was very certain and clear that, if any man was injured by an officer of the United States, he could get redress by a suit at law.

Mr. MACLAINE.

## IMPEACH

Mr. Chairman, I confess I never heard before that a tax-gatherer was worthy of **impeachment**. It is one of the meanest and least offices. **Impeachments** are only for high crimes and misdemeanors. If any one is injured in his person or property, he can get redress by a suit at law. Why does the gentleman talk in this manner? It shows what wretched shifts gentlemen are driven to. I never heard, in my life, of such a silly objection. A poor, insignificant, petty officer amenable to **impeachment!**

Mr. IREDELL.

## NOTE

Mr. Chairman, the objection would be right if there was no other mode of punishing. But it is evident that an officer may be tried by a court of **common law**. He may be tried in such a court for **common-law offences**, whether **impeached** or not. As it is to be presumed that inferior tribunals will be constituted, there will be no occasion for going always to the Supreme Court, even in cases where the federal courts have exclusive jurisdiction. Where this exclusive cognizance is not given them, redress may be had in the **common-law** courts in the state; and I have no doubt such regulations will be made as will put it out of the power of officers to distress the people with impunity.

Gov. JOHNSTON

## NOTE

observed, that men who were in very high offices could not be come at by the ordinary course of justice; but when called before this high tribunal and convicted, they would be stripped of their dignity, and reduced to the rank of their fellow-citizens, and then the courts of **common law** might proceed against them.

**FRIDAY, July 25, 1788.**

The Convention met according to adjournment.

Mr. BATTLE in the chair.

**1st article of the 3d section read.**

**Mr. CABARRUS**

wished to be informed of the reason why the *senators* were to be elected for so long a time.

**Mr. IREDELL.**

Mr. Chairman, I have waked for some time in hopes that a gentleman better qualified than myself {38} would explain this part. Every objection to every part of this Constitution ought to be answered as fully as possible.

I believe, sir, it was the general sense of all America, with the exception only of one state, in forming their own state constitutions, that the legislative body should be divided into two branches, in order that the people might have a double security. It will often happen that, in a single body, a bare majority will carry exceptionable and pernicious measures. The violent faction of a party may often form such a majority in a single body, and by that means the particular views or interests of a part of the community may be consulted, and those of the rest neglected or injured. Is there a single gentleman in this Convention, who has been a member of the legislature, who has not found the minority in the most important questions to be often right? Is there a man here, who has been in either house, who has not at some times found the most solid advantages from the coöperation or opposition of the other? If a measure be right, which has been approved of by one branch, the other will probably confirm it; if it be wrong, it is fortunate that there is another branch to oppose or amend it. These principles probably formed one reason for the institution of a Senate, in the form of government before us. Another arose from the peculiar nature of that government, as connected with the government of the particular states.

The general government will have the protection and management of the general interests of the United States. The local and particular interests of the different states are left to their respective legislatures. All affairs which concern this state only are to be determined by our representatives coming from all parts of the state; all affairs which concern the Union at large are to be determined by representatives coming from all parts of the Union. Thus, then, the general government is to be taken care of, and the state governments to be preserved. The former is done by a numerous representation of the people of each state, in proportion to its importance. The

latter is effected by giving each state an equal representation in the Senate. The people will be represented in one house, the state legislatures in the other.

Many are of the opinion that the power of the Senate is {39} too great; but I cannot think so, considering the great weight which the House of Representatives will have. Several reasons may be assigned for this. The House of Representatives will be more numerous than the Senate. They will represent the immediate interests of the people. They will originate all money bills, which is one of the greatest securities in any republican government. The respectability of their constituents, who are the free citizens of America, will add great weight to the representatives; for a power derived from the people is the source of all real honor, and a demonstration of confidence which a man of any feeling would be more ambitious to possess, than any other honor or any emolument whatever. There is, therefore, always a danger of such a house becoming too powerful, and it is necessary to counteract its influence by giving great weight and authority to the other. I am warranted by well-known facts in my opinion that the representatives of the people at large will have more weight than we should be induced to believe from a slight consideration.

The British government furnishes a very remarkable instance to my present purpose. In that country, sir, is a king, who is hereditary — a man, who is not chosen for his abilities, but who, though he may be without principles or abilities, is by birth their sovereign, and may impart the vices of his character to the government. His influence and power are so great, that the people would bear a great deal before they would attempt to resist his authority. He is one complete branch of the legislature may make as many peers as he pleases, who are immediately members of another branch; he has the disposal of almost all offices in the kingdom, commands the army and navy, is head of the church, and has the means of corrupting a large proportion of the representatives of the people, who form the third branch of the legislature. The House of Peers, which forms the second branch, is composed of members who are hereditary, and, except as to money bills, (which they are not allowed either to originate or alter,) hath equal authority with the other house. The members of the House of Commons, who are considered to represent the people, are elected for seven years, and they are chosen by a small proportion of the people, and, I believe I may say, a large majority of them by actual corruption. Under these circumstances, one would {40} suppose their influence, compared to that of the king and the lords, was very inconsiderable. But the fact is, that they have, by degrees, increased their power to an astonishing degree, and, when they think proper to exert it, can command almost any thing they please. This great power they enjoy, by having the name of representatives of the people, and the exclusive right of originating money bills. What authority, then, will our representatives not possess, who will really represent the people, and equally have the right of originating money bills?

The manner in which our Senate is to be chosen gives us an additional security. Our senators will not be chosen by a king, nor tainted by his influence. They are to be chosen by different legislatures in the Union. Each is to choose two. It is to be supposed that, in the exercise of this power, the utmost prudence and circumspection will be observed. We may presume that they will select two of the most respectable men in the state, two men who had given the strongest proofs of attachment to the interests of their country. The senators are not to hold estates for life in the legislature, nor to transmit them to their children. Their families, friends, and estates, will be pledged for their fidelity to their country. Holding no office under the United States, they will

be under no temptation of that kind to forget the interest of their constituents. There is every probability that men elected in this manner will, in general, do their duty faithfully. It may be expected, therefore, that they will coöperate in every laudable act, but strenuously resist those of a contrary nature. To do this to effect, their station must have some permanency annexed to it.

As the representatives of the people may probably be more popular, and it may be sometimes necessary for the Senate to prevent factious measures taking place, which may be highly injurious to the real interests of the public, the Senate should not be at the mercy of every popular clamor. Men engaged in arduous affairs are often obliged to do things which may, for the present, be disapproved of, for want of full information of the case, which it is not in every man's power immediately to obtain. In the mean time, every one is eager to judge, and many to condemn; and thus many an action is for a time unpopular, the true policy and justice of which afterwards very plainly appear. These observations {41} apply even to acts of legislation concerning domestic policy: they apply much more forcibly to the case of foreign negotiations, which will form one part of the business of the Senate. I hope we shall not be involved in the labyrinths of foreign politics. But it is necessary for us to watch the conduct of European powers, that we may be on our defence, and ready in case of an attack. All these things will require a continued attention; and, in order to know whether they were transacted rightly or not, it must take up a considerable time.

A certain permanency in office is, in my opinion, useful for another reason. Nothing is more unfortunate for a nation than to have its affairs conducted in an irregular manner. Consistency and stability are necessary to render the laws of any society convenient for the people. If they were to be entirely conducted by men liable to be called away soon, we might be deprived, in a great measure, of their utility; their measures might be abandoned before they were fully executed, and others, of a less beneficial tendency, substituted in their stead. The public also would be deprived of that experience which adds so much weight to the greatest abilities.

The business era senator will require a great deal of knowledge, and more extensive information than can be acquired in a short time. This can be made evident by facts well known. I doubt not the gentlemen of this house, who have been members of Congress, will acknowledge that they have known several instances of men who were members of Congress, and were there many months before they knew how to act, for want of information of the real state of the Union. The acquisition of full information of this kind must employ a great deal of time; since a general knowledge of the affairs of all the states, and of the relative situation of foreign nations, would be indispensable. Responsibility, also, would be lessened by a short duration; for many useful measures require a good deal of time, and continued operations, and no man should be answerable for the ill success of a scheme which was taken out of his hands by others.

For these reasons, I hope it will appear that six years are not too long a duration for the Senate. I hope, also, it will be thought that, so far from being injurious to the liberties {42} and interest of the public, it will form an additional security to both, especially when the next clause is taken up, by which we shall see that one third of the Senate is to go out every second year, and two thirds must concur in the most important cases; so that, if there be only one honest man among the two thirds that remain, added to the one third which has recently come in, this will be sufficient to prevent the rights of the people being sacrificed to any unjust ambition of that body.

I was in hopes some other gentleman would have explained this paragraph, because it introduces an entire change in our system; and every change ought to be founded on good reasons, and those reasons made plain to the people. Had my abilities been greater, I should have answered the objection better. I have, however, done it in the best manner in my power, and I hope the reasons I have assigned will be satisfactory to the committee.

**Mr. MACLAINE.**

Mr. Chairman, a gentleman yesterday made some objections to the power of the Vice-President, and insisted that he was possessed of legislative powers; that, in case of equality of voice in the Senate, he had the deciding vote, and that of course he, and not the Senate, legislated. I confess I was struck with astonishment at such an objection, especially as it came from a gentleman of character. As far as my understanding goes, the Vice-President is to have no acting part in the Senate, but a mere casting vote. In every other instance, he is merely to preside in the Senate in order to regulate their deliberations. I think there is no danger to be apprehended from him in particular, as he is to be chosen in the same manner with the President, and therefore may be presumed to possess a great share of the confidence of all the states. He has been called a useless officer. I think him very useful, and I think the objection very trifling. It shows the uniform opposition gentlemen are determined to make. It is very easy to cavil at the finest government that ever existed.

**Mr. DAVIE.**

Mr. Chairman, I will state to the committee the reasons upon which this officer was introduced. I had the honor to observe to the committee, before, the causes of the particular formation of the Senate — that it was owing, with other reasons, to the jealousy of the states, and, particularly, to the extreme jealousy of the lesser states of the {43} power and influence of the larger members of the confederacy. It was in the Senate that the several political interests of the states were to be preserved, and where all their powers were to be perfectly balanced. The commercial jealousy between the Eastern and Southern States had a principal share in this business. It might happen, in important cases, that the voices would be equally divided. Indecision might be dangerous and inconvenient to the public. It would then be necessary to have some person who should determine the question as impartially as possible. Had the Vice-President been taken from the representation of any of the states, the vote of that state would have been under local influence in the second. It is true he must be chosen from some state; but, from the nature of his election and office, he represents no one state in particular, but all the states. It is impossible that any officer could be chosen more impartially. He is, in consequence of his election, the creature of no particular district or state, but the officer and representative of the Union. He must possess the confidence of the states in a very great degree, and consequently be the most proper person to decide in cases of this kind. These, I believe, are the principles upon which the Convention formed this officer.

**6th clause of the 3d section read.**

**Mr. JAMES GALLOWAY**

wished gentlemen to offer their objections. That they must have made objections to it, and that they ought to mention them here.

**Mr. JOHN BLOUNT**

## **IMPEACH**

said, that the sole power of **impeachment** had been objected to yesterday, and that it was urged, officers were to be carried from the farthest parts of the states to the seat of government. He wished to know if gentlemen were satisfied.

**Mr. MACLAINE.**

## **IMPEACH**

Mr. Chairman, I have no inclination to get up a second time, but some gentlemen think this subject ought to be taken notice of. I recollect it was mentioned by one gentleman, that petty officers might be **impeached**. It appears to me, sir, to be the most horrid ignorance to suppose that every officer, however trifling his office, is to be **impeached** for every petty offence; and that every man, who should be injured by such petty officers, could get no redress but by this mode of **impeachment**, at the seat of government, at the distance of several hundred {44} miles, whither he would be obliged to summon a great number of witnesses. I hope every gentleman in this committee must see plainly that **impeachments** cannot extend to inferior officers of the United States. Such a construction cannot be supported without a departure from the usual and well-known practice both in England and America. But this clause empowers the House of Representatives, which is the grand inquest of the Union at large, to bring great offenders to justice. It will be a kind of state trial for high crimes and misdemeanors. I remember it was objected yesterday, that the House of Representatives had the sole power of **impeachment**. The word "sole" was supposed to be so extensive as to include **impeachable** offences against particular states. Now, for my part, I can see no impropriety in the expression. The word relates to the general objects of the Union, It can only refer to offences against the United States; nor can it be tortured so as to have any other meaning, without a perversion of the usual meaning of language. The House of Representatives is to have the sole power of **impeachment**, and the Senate the sole power of trying. And here is a valuable provision, not to be found in other governments.

## **NOTE - IMPEACH**

In England, the Lords, who try **impeachments**, declare solemnly, upon honor, whether the persons impeached be guilty or not. But here the senators are on oath. This is a very happy security. It is further provided, that, when the President is tried, (for he is also liable to be impeached,) the chief justice shall preside in the Senate; because it might be supposed that the Vice-President might be connected, together with the President, in the same crime, and would therefore be an improper person to judge him. It would be improper for another reason. On the removal of the President from office, it devolves on the Vice-President. This being the case, if

the Vice-President should be judge, might he not look at the office of President, and endeavor to influence the Senate against him? This is a most excellent caution. It has been objected by some, that the President is in no danger from a trial by the Senate, because he does nothing without its concurrence. It is true, he is expressly restricted not to make treaties without the concurrence of two thirds of the senators present, nor appoint officers without the concurrence of the Senate, (not requiring two thirds.) {45} The concurrence of all the senators, however, is not required in either of those cases. They may be all present when he is impeached, and other senators in the mean time introduced. The chief justice, we ought to presume, would not countenance a collusion. One dissenting person might divulge their misbehavior. Besides, he is impeachable for his own misdemeanors, and as to their concurrence with him, it might be effected by misrepresentations of his own, in which case they would be innocent, though he be guilty. I think, therefore, the Senate a very proper body to try him. Notwithstanding the mode pointed out for impeaching and trying, there is not a single officer but may be tried and indicted at **common law**; for it is provided, that a judgment, in cases of **impeachment**, shall not extend farther than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law. Thus you find that no offender can escape the danger of punishment. Officers, however, cannot be oppressed by an unjust decision of a bare majority; for it further provides, that no person shall be convicted without the concurrence of two thirds of the members present; so that those gentlemen who formed this government have been particularly careful to distribute every part of it as equally as possible. As the government is solely instituted for the United States, so the power of **impeachment** only extends to officers of the United States. The gentleman who is so much afraid of **impeachment** by the federal legislature, is totally mistaken in his principles.

#### **Mr. J. TAYLOR.**

Mr. Chairman, my apprehension is, that this clause is connected with the other, which gives the sole power of **impeachment**, and is very dangerous. When I was offering an objection to this part, I observed that it was supposed by some, that no **impeachments** could be preferred but by the House of Representatives. I concluded that perhaps the collectors of the United States, or gatherers of taxes, might impose on individuals in this country, and that these individuals might think it too great a distance to go to the seat of federal government to get redress, and would therefore be injured with impunity. I observed that there were some gentlemen, whose abilities are great, who construe {46} construe it in a different manner. They ought to be kind enough to carry their construction not to the mere letter, but to the meaning. I observe that, when these great men are met in Congress, in consequence of this power, they will have the power of appointing all the officers of the United States. My experience in life shows me that the friends of the members of the legislature will get the offices. These senators and members of the House of Representatives will appoint their friends to all offices. These officers will be great men, and they will have numerous deputies under them. The receiver-general of the taxes of North Carolina must be one of the greatest men in the country. Will he come to me for his taxes? No. He will send his deputy, who will have special instructions to oppress me. How am I to be redressed? I shall be told that I must go to Congress, to get him impeached. This being the case, whom am I to impeach? A friend of the representatives of North Carolina. For, unhappily for us,

these men will have too much weight for us; they will have friends in the government who will be inclined against us, and thus we may be oppressed with impunity.

I was sorry yesterday to hear personal observations drop from a gentleman in this house. If we are not of equal ability with the gentleman, he ought to possess charity towards us, and not lavish such severe reflections upon us in such a declamatory manner.

These are considerations I offer to the house. These oppressions may be committed by these officers. I can see no mode of redress. If there be any, let it be pointed out. As to personal aspersions, with respect to me, I despise them. Let him convince me by reasoning, but not fall on detraction or declamation.

**Mr. MACLAINE.**

## **NOTE**

Mr. Chairman, if I made use of any asperity to that gentleman yesterday, I confess I am sorry for it. It was because such an observation came from a gentleman of his profession. Had it come from any other gentleman in this Convention, who is not of his profession, I should not be surprised. But I was surprised that it should come from a gentleman of the law, who must know the contrary perfectly well. If his memory had failed him, he might have known by consulting his library. His books would have told him that no petty officer was ever impeachable. {47} When such trivial, ill-founded objections were advanced, by persons who ought to know better, was it not sufficient to irritate those who were determined to decide the question by a regular and candid discussion?

Whether or not there will be a receiver-general in North Carolina, if we adopt the Constitution, I cannot take upon myself to say. I cannot say how Congress will collect their money. It will depend upon laws hereafter to be made. These laws will extend to other states as well as to us. Should there be a receiver-general in North Carolina, he certainly will not be authorized to oppress the people. His deputies can have no power that he could not have himself. As all collectors and Other officers will be bound to act according to law, and will, in all probability, be obliged to give security for their conduct, we may expect they will not dare to oppress. The gentleman has thought proper to lay it down as a principle, that these receivers-general will give special orders to their deputies to oppress the people. The President is the superior officer, who is to see the laws put in execution. He is amenable for any maladministration in his office. Were it possible to suppose that the President should give wrong instructions to his deputies, whereby the citizens would be distressed, they would have redress in the ordinary courts of **common law**. But, says he, parties injured must go to the seat of government of the United States, and get redress there. I do not think it will be necessary to go to the seat of the general government for that purpose. No persons will be obliged to attend there, but on extraordinary occasions; for Congress will form regulations so as to render it unnecessary for the inhabitants to go thither, but on such occasions.

My reasons for this conclusion are these: I look upon it as the interest of all the people of America, except those in the vicinity of the seat of government, to make laws as easy as possible

for the people, with respect to local attendance. They will not agree to drag their citizens unnecessarily six or seven hundred miles from their homes. This would be equally inconvenient to all except those in the vicinity of the seat of government, and therefore will be prevented. But, says the gentleman from Granville, what redress have we when we go to that place? These great officers will be the friends of the representatives of North Carolina. It is {48} possible they may, or they may not. They have the power to appoint officers for each state from what place they please. It is probable they will appoint them out of the state in which they are to act. I will, however, admit, for the sake of argument, that those federal officers who will be guilty of misdemeanors in this state will be near relations of the representatives and senators of North Carolina. What then? Are they to be tried by them only? Will they be the near friends of the senators and representatives of the other states? If not, his objection goes for nothing. I do not understand what he says about detraction and declamation. My character is well known. I am no declaimer; but when I see a gentleman, ever so respectable, betraying his trust to the public, I will publish it loudly; and I say this is not detraction or declamation.

Gov. JOHNSTON.

## IMPEACH

Mr. Chairman, **impeachment** is very different in its nature from what the learned gentleman from Granville supposes it to be. If an officer commits an offence against an individual, he is amenable to the courts of law. If he commits crimes against the state, he may be indicted and punished. **Impeachment** only extends to high crimes and misdemeanors in a *public office*. It is a mode of trial pointed out for great misdemeanors against the public. But I think neither that gentleman nor any other person need be afraid that officers who commit oppressions will pass with impunity. It is not to be apprehended that such officers will be tried by their cousins and friends. Such cannot be on the jury at the trial of the cause; it being a principle of law that no person interested in a cause, or who is a relation of the party, can be a juror in it. This is the light in which it strikes me. Therefore the objection of the gentleman from Granville must necessarily fall to the ground on that principle.

Mr. MACLAINE.

## IMPEACH

Mr. Chairman, I must obviate some objections which have been made. It was said, by way of argument, that they could impeach and remove any officer, whether of the United States or any particular state. This was suggested by the gentleman from New Hanover. Nothing appears to me more unnatural than such a construction. The Constitution says, in one place, that the House of Representatives shall have the sole power of **impeachment**. In the clauses under debate, it provides that the Senate shall {49} have the sole power to try all **impeachments**, and then subjoins, that judgment, in cases of **impeachment**, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States. And in the 4th section of the 2d article, it says that the President, Vice-President, and all civil officers of the United States, shall be removed from office on **impeachment** for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Now, sir, what can be more clear and obvious than this? The several clauses relate to the same subject, and ought to be considered together. If considered separately and unconnectedly, the meaning is still clear. They relate to the government of the Union altogether. Judgment on **impeachment** only extends to removal from office, and future disqualification to hold offices under the United States. Can those be removed from offices, and disqualified to hold offices under the United States, who actually held no office *under the United States*? The 4th section of the 2d article provides expressly for the removal of the President, Vice-President, and all civil officers of the United States, on **impeachment** and conviction. Does not this clearly prove that none but officers of the United States are impeachable? Had any other been impeachable, why was not provision made for the case of their conviction? Why not point out the punishment in one case as well as in others? I beg leave to observe, that this is a Constitution which is not made with any reference to the government of any particular state, or to officers of particular states, but to the government of the United States at large.

We must suppose that every officer here spoken of must be an officer of the United States. The words discover the meaning as plainly as possible. The sentence which provides that "judgment, in cases of **impeachment**, shall not extend further than to removal from office," is joined by a conjunction copulative to the other sentence, — "and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States," — which incontrovertibly proves that officers of the United States only are referred to. No other grammatical construction can be put upon it. But there is no necessity to refer to grammatical constructions, since the whole plainly refers to the government of {50} the United States at large. The general government cannot intermeddle with the internal affairs of the state governments. They are in no danger from it. It has been urged that it has a tendency to a consolidation. On the contrary, it appears that the state legislatures must exist in full force, otherwise the general government cannot exist itself. A consolidated government would never secure the happiness of the people of this country. It would be the interest of the people of the United States to keep the general and individual governments as separate and distinct as possible.

**Mr. BLOODWORTH.**

Mr. Chairman, I confess I am obliged to the honorable gentleman for his construction. Were he to go to Congress, he might put that construction on the Constitution. But no one can say what construction Congress will put upon it. I do not distrust him, but I distrust them, I wish to leave no dangerous latitude of construction.

**The 1st clause of the 4th section read.**

**Mr. SPENCER.**

Mr. Chairman, it appears to me that this clause, giving this control over the time, place, and manner, of holding elections, to Congress, does away the right of the people to choose the representatives every second year, and impairs the right of the state legislatures to choose the senators. I wish This matter to be explained.

**Gov. JOHNSTON.**

Mr. Chairman, I confess that I am a very great admirer of the new Constitution, but I cannot comprehend the reason of this part. The reason urged is, that every government ought to have the power of continuing itself, and that, if the general government had not this power, the state legislatures might neglect to regulate elections, whereby the government might be discontinued. As long as the state legislatures have it in their power not to choose the senators, this power in Congress appears to me altogether useless, because they can put an end to the general government by refusing to choose senators. But I do not consider this such a blemish in the Constitution as that it ought, for that reason, to be rejected. I observe that every state which has adopted the Constitution, and recommended amendments, has given directions to remove this objection; and I hope, if this state adopts it, she will do the same.

**Mr. SPENCER.**

Mr. Chairman, it is with great {51} reluctance that I rise upon this important occasion. I have considered with some attention the subject before us. I have paid attention to the Constitution itself, and to the writings on both sides. I considered it on one side as well as on the other, in order to know whether it would be best to adopt it or not. I would not wish to insinuate any reflections on those gentlemen who formed it. I look upon it as a great performance. It has a great deal of merit in it, and it is, perhaps, as much as any set of men could have done. Even if it be true, what gentlemen have observed, that the gentlemen who were delegates to the Federal Convention were not instructed to form a new constitution, but to amend the Confederation, this will be immaterial, if it be proper to be adopted. It will be of equal benefit to us, if proper be adopted in the whole, or in such parts as will be necessary, whether they were expressly delegated for that purpose or not. This appears to me to be a reprehensible clause; because it seems to strike at the state legislatures, and seems to take away that power of elections which reason dictates they ought to have among themselves. It apparently looks forward to a consolidation of the government of the United States, when the state legislatures may entirely decay away.

This is one of the grounds which have induced me to make objections to the new form of government. It appears to me that the state governments are not sufficiently secured, and that they may be swallowed up by the great mass of powers given to Congress. If that be the case, such power should not be given; for, from all the notions which we have concerning our happiness and well-being, the state governments are the basis of our happiness, security, and prosperity. A large extent of country ought to be divided into such a number of states as that the people may conveniently carry on their own government. This will render the government perfectly agreeable to the genius and wishes of the people. If the United States were to consist of ten times as many states, they might all have a degree of harmony. Nothing would be wanting but some cement for their connection. On the contrary, if all the United States were to be swallowed up by the great mass of powers given to Congress, the parts that are more distant in this great empire would be governed with less and {52} less energy. It would not suit the genius of the people to assist in the government. Nothing would support government, in such a case as that, but military coercion. Armies would be necessary in different parts of the United States. The expense which they would cost, and the burdens which they would render necessary to be laid upon the people, would be ruinous. I know of no way that is likely to produce the happiness

of the people, but to preserve, as far as possible, the existence of the several states, so that they shall not be swallowed up.

It has been said that the existence of the state governments is essential to that of the general government, because they choose the senators. By this clause, it is evident that it is in the power of Congress to make any alterations, except as to the place of choosing senators. They may alter the time from six to twenty years, or to any time; for they have an unlimited control over the time of elections. They have also an absolute control over the election of the representatives. It deprives the people of the very mode of choosing them. It seems nearly to throw the whole power of election into the hands of Congress. It strikes at the mode, time, and place, of choosing representatives. It puts all but the place of electing senators into the hands of Congress. This supersedes the necessity of continuing the state legislatures. This is such an article as I can give no sanction to, because it strikes at the foundation of the governments on which depends the happiness of the states and the general government. It is with reluctance I make the objection. I have the highest veneration for the characters of the framers of this Constitution. I mean to make objections only which are necessary to be made. I would not take up time unnecessarily. As to this matter, it strikes at the foundation of every thing. I may say more when we come to that part Which points out the mode of doing without the agency of the state legislatures.

**Mr. IREDELL.**

Mr. Chairman, I am glad to see so much candor and moderation. The liberal sentiments expressed by the honorable gentleman who spoke last command my respect. No time can be better employed than in endeavoring to remove, by fair and just reasoning, every objection which can be made to this Constitution. I apprehend that the honorable gentleman is mistaken as to the {53} extent of the operation of this clause. He supposes that the control of the general government over elections looks forward to a consolidation of the states, and that the general word *time* may extend to twenty, or any number of years. In my humble opinion, this clause does by no means warrant such a construction. We ought to compare other parts with it. Does not the Constitution say that representatives shall be chosen every second year? The right of choosing them, therefore, reverts to the people every second year. No instrument of writing ought to be construed absurdly, when a rational construction can be put upon it. If Congress can prolong the election to any time they please, why is it said that representatives shall be chosen every second year? *They must be chosen every second year*; but whether in the month of March, or January, or any other month, may be ascertained, at a future time, by regulations of Congress. The word *time* refers only to the particular month and day within the two years. I heartily agree with the gentleman, that, if any thing in this Constitution tended to the annihilation of the state government, instead of exciting the admiration of any than, it ought to excite the resentment and execration. No such wicked intention ought to be suffered. But the gentlemen who formed the Constitution had no such object; nor do I think there is the least ground for that jealousy. The very existence of the general government depends on that of the state governments. The state legislatures are to choose the senators. Without a Senate there can be no Congress. The state legislatures are also to direct the manner of choosing the President. Unless, therefore, there are state legislatures to direct that manner, no President can be chosen. The same observation may be made as to the House of Representatives, since, as they are to be chosen by the electors of the most numerous branch of each state legislature, if there are no state legislatures, there are no

persons to choose the House of Representatives. Thus it is evident that the very existence of the general government depends on that of the state legislatures, and of course. that their continuance cannot be endangered by it.

An occasion may arise when the exercise of this ultimate power in Congress may be necessary; as, for instance, if a state should be involved in war, and its legislature could not assemble, (as was the case of South Carolina, and {54} occasionally of some other states, during the late war;) it might also be useful for this reason — lest a few powerful states should combine, and make regulations concerning elections which might deprive many of the electors of a fair exercise of their rights, and thus injure the community, and occasion great dissatisfaction. And it seems natural and proper that every government should have in itself the means of its own preservation. A few of the great states might combine to prevent any election of representatives at all, and thus a majority might be wanting to do business; but it would not be so easy to destroy the government by the non-election of senators, because one third only are to go out at a time, and all the states will be equally represented in the Senate. It is not probable this power would be abused; for, if it should be, the state legislatures would immediately resent it, and their authority over the people will always be extremely great. These reasons induce me to think that the power is both necessary and useful. But I am sensible great jealousy has been entertained concerning it; and as perhaps the danger of a combination, in the manner I have mentioned, to destroy or distress the general government, is not very probable, it may be better to incur the risk, than occasion any discontent by suffering the clause to continue as it now stands. I should, therefore, not object to the recommendation of an amendment similar to that of other states — that this power in Congress should only be exercised when a state legislature neglected or was disabled from making the regulations required.

**Mr. SPENCER.**

Mr. Chairman, I did not mean to insinuate that designs were made, by the honorable gentlemen who composed the Federal Constitution, against our liberties. I only meant to say that the words in this place were exceeding vague. It may admit of the gentleman's construction; but it may admit of a contrary construction. In a matter of so great moment, words ought not to be so vague and indeterminate. I have said that the states are the basis on which the government of the United States. ought to rest, and which must render us secure. No man wishes more for a federal government than I do. I think it necessary for our happiness; but at the same time, when we form a government which must entail happiness or misery on posterity, nothing is of more consequence than {55} settling it so as to exclude animosity and a contest between the general and individual governments. With respect to the mode here mentioned, they are words of very great extent. This clause provides that a Congress may at any time alter such regulations, except as to the places of choosing senators. These words are so vague and uncertain, that it must ultimately destroy the whole liberty of the United States. It strikes at the very existence of the states, and supersedes the necessity of having them at all. I would therefore wish to have it amended in such a manner as that the Congress should not interfere but when the states refused or neglected to regulate elections.

**Mr. BLOODWORTH.**

Mr. Chairman, I trust that such learned arguments as are offered to reconcile our minds to such dangerous powers will not have the intended weight. The House of Representatives is the only democratical branch. This clause may destroy representation entirely. What does it say? "The times, places, and manner, of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators? Now, sir, does not this clause give an unlimited and unbounded power to Congress over the times, places, and manner, of choosing representatives? They may make the time of election so long, the place so inconvenient, and the manner so oppressive, that it will entirely destroy representation. I hope gentlemen will exercise their own understanding on this occasion, and not let their judgment be led away by these shining characters, for whom, however, I have the highest respect. This Constitution, if adopted in its present mode, must end in the subversion of our liberties. Suppose it takes place in North Carolina; can farmers elect them? No, sir. The elections may be in such a manner that men may be appointed who are not representatives of the people. This may exist, and it ought to be guarded against. As to the place, suppose Congress should order the elections to be held in the most inconvenient place in the most inconvenient district; could every person entitled to vote attend at such a place? Suppose they should order it to be laid off into so many districts, and order the election to be held within each district; yet may {56} not their power over the manner of election enable them to exclude from voting every description of men they please? The democratic branch is so much endangered, that no arguments can be made use of to satisfy my mind to it. The honorable gentleman has amused us with learned discussions, and told us he will condescend to propose amendments. I hope the representatives of North Carolina will never swallow the Constitution till it is amended.

**Mr. GOUDY.**

Mr. Chairman, the invasion of these states is urged as a reason for this clause. But why did they not mention that it should be only in cases of invasion? But that was not the reason, in my humble opinion. I fear it was a combination against our liberties. I ask, when we give them the purse in one hand, and the sword in another, what power have we left? It will lead to an aristocratical government, and establish tyranny over us. We are freemen, and we ought to have the privileges of such.

**Gov. JOHNSTON.**

Mr. Chairman, I do not impute any impure intentions to the gentlemen who formed this Constitution. I think it unwarrantable in any one to do it. I believe that were there twenty conventions appointed, and as many constitutions formed, we never could get men more able and disinterested than those who formed this; nor a constitution less exceptionable than that which is now before you. I am not apprehensive that this article will be attended with all the fatal consequences which the gentleman conceives. I conceive that Congress can have no other power than the states had. The states, with regard to elections, must be governed by the articles of the Constitution; so must Congress. But I believe the power, as it now stands, is unnecessary. I should be perfectly satisfied with it in the mode recommended by the worthy member on my right hand. Although I should be extremely cautious to adopt any constitution that would endanger the rights and privileges of the people, I have no fear in adopting this Constitution, and

then proposing amendments. I feel as much attachment to the rights and privileges of my country as any man in it; and if I thought any thing in this Constitution tended to abridge these rights, I would not agree to it. I cannot conceive that this is the case. I have not the least doubt but it will be adopted by a very great {57} majority of the states. For states who have been as jealous of their liberties as any in the world have adopted it, and they are some of the most powerful states. We shall have the assent of all the states in getting amendments. Some gentlemen have apprehensions that Congress will immediately conspire to destroy the liberties of their country. The men of whom Congress will consist are to be chosen from among ourselves. They will be in the same situation with us. They are to be bone of our bone and flesh of our flesh. They cannot injure us without injuring themselves. I have no doubt but we shall choose the best men in the community. Should different men be appointed, they are sufficiently responsible. I therefore think that no danger is to be apprehended.

**Mr. M'DOWALL.**

Mr. Chairman, I have the highest esteem for the gentleman who spoke last. He has amused us with the fine characters of those who formed that government. Some were good, but some were very imperious, aristocratical, despotic, and monarchical. If parts of it are extremely good, other parts are very bad.

The freedom of election is one of the greatest securities we have for our liberty and privileges. It was supposed by the member from Edenton, that the control over elections was only given to Congress to be used in case of invasion. I differ from him. That could not have been their intention, otherwise they could have expressed it. But, sir, it points forward to the time when there will be no state legislatures — to the consolidation of all the states. The states will be kept up as boards of elections. I think the same men could make a better constitution; for good government is not the work of a short time. They only had their own wisdom. Were they to go now, they would have the wisdom of the United States. Every gentleman who must reflect on this must see it. The adoption of several other states is urged. I hope every gentleman stands for himself, will act according to his own judgment, and will pay no respect to the adoption by the other states. It may embarrass us in some political difficulties, but let us attend to the interest of our constituents.

**Mr. IREDELL**

answered, that he stated the ease of invasion as only one reason out of many for giving the ultimate control over elections to Congress.

**Mr. DAVIE.**

Mr. Chairman, a consolidation of the states is said by some gentlemen to have been intended. They insinuate that this was the cause of their giving this power of elections. If there were any seeds in this Constitution which might, one day, produce a consolidation, it would, sir, with me, be an insuperable objection, I am so perfectly convinced that so extensive a country as this can never be managed by one consolidated government. The Federal Convention were as well convinced as the members of this house, that the state governments were absolutely necessary to

the existence of the federal government. They considered them as the great massy pillars on which this political fabric was to be extended and supported; and were fully persuaded that, when they were removed, or should moulder down by time, the general government must tumble into ruin. A very little reflection will show that no department of it can exist without the state governments.

Let us begin with the House of Representatives. Who are to vote for the federal representatives? Those who vote for the state representatives. If the state government vanishes, the general government must vanish also. This is the foundation on which this government was raised, and without which it cannot possibly exist.

The next department is the Senate. How is it formed? By the states themselves. Do they not choose them? Are they not created by them? And will they not have the interest of the states particularly at heart? The states, sir, can put a final period to the government, as was observed by a gentleman who thought this power over elections unnecessary. If the state legislatures think proper, they may refuse to choose senators, and the government must be destroyed.

Is not this government a nerveless mass, a dead carcase, without the executive power? Let your representatives be the most vicious demons that ever existed; let them plot against the liberties of America; let them conspire against its happiness, — all their machinations will not avail if not put in execution. By whom are their laws and projects to be executed? By the President. How is he created? By electors appointed by the people under the direction of the legislatures — by a union of the interest of the people and the state governments. The state governments can put a veto, at any time, on the general government, by ceasing to continue the executive power. Admitting the representatives {59} or senators could make corrupt laws, they can neither execute them themselves, nor appoint the executive. Now, sir, I think it must be clear to every candid mind, that no part of this government can be continued after the state governments lose their existence, or even their present forms. It may also be easily proved that all federal governments possess an inherent weakness, which continually tends to their destruction. It is to be lamented that all governments of a federal nature have been short-lived.

Such was the fate of the Achæan league, the Amphictyonic council, and other ancient confederacies; and this opinion is confirmed by the uniform testimony of all history. There are instances in Europe of confederacies subsisting a considerable time; but their duration must be attributed to circumstances exterior to their government. The Germanic confederacy would not exist a moment, were it not for fear of the surrounding powers, and the interest of the emperor. The history of this confederacy is but a series of factions, dissensions, bloodshed, and civil war. The confederacies of the Swiss, and United Netherlands, would long ago have been destroyed, from their imbecility, had it not been for the fear, and even the policy, of the bordering nations. It is impossible to construct such a government in such a manner as to give it any probable longevity. But, sir, there is an excellent principle in this proposed plan of federal government, which none of these confederacies had, and to the want of which, in a great measure, their imperfections may be justly attributed — I mean the principle of representation. I hope that, by the agency of this principle, if it be not immortal, it will at least be long-lived. I thought it necessary to say this much to detect the futility of that unwarrantable suggestion, that we are to be Swallowed up by a great consolidated government. Every part of this federal government is

dependent on the constitution of the state legislatures for its existence. The whole, sir, can never swallow up its parts. The gentleman from Edenton (Mr. Iredell) has pointed out the reasons of giving this control over elections to Congress, the principal of which was, to prevent a dissolution of the government by designing states. If all the states were equally possessed of absolute power over their elections, without any control of Congress, danger might justly be apprehended where one state possesses as much {60} territory as four or five others; and some of them, being thinly peopled now, will daily become more numerous and formidable. Without this control in Congress, those large states might successfully combine to destroy the general government. It was therefore necessary to control any combination of this kind.

Another principal reason was, that it would operate, in favor of the people, against the ambitious designs of the federal Senate. I will illustrate this by matter of fact. The history of the little state of Rhode Island is well known. An abandoned faction have seized on the reins of government, and frequently refused to have any representation in Congress. If Congress had the power of making the law of elections operate throughout the United States, no state could withdraw itself from the national councils, without the consent of a majority of the members of Congress. Had this been the case, that trifling state would not have withheld its representation. What once happened may happen again; and it was necessary to give Congress this power, to keep the government in full operation. This being a federal government, and involving the interests of several states, and some acts requiring the assent of more than a majority, they ought to be able to keep their representation full. It would have been a solecism, to have a government without any means of self-preservation. The Confederation is the only instance of a government without such means, and is a nerveless system, as inadequate to every purpose of government as it is to the security of the liberties of the people of America. When the councils of America have this power over elections, they can, in spite of any faction in any particular state, give the people a representation. Uniformity in matters of election is also of the greatest consequence. They ought all to be judged by the same law and the same principles, and not to be different in one state from what they are in another. At present, the manner of electing is different in different states. Some elect by ballot, and others viva voce. It will be more convenient to have the manner uniform in all the states. I shall now answer some observations made by the gentleman from Mecklenburg. He has stated that this power over elections gave to Congress power to lengthen the time for which they were elected. Let us read this clause coolly, all prejudice aside, and determine whether this construction {61} be warrantable. The clause runs thus: "The times, places, and manner, of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the place of choosing senators." I take it as a fundamental principle, which is beyond the reach of the general or individual governments to alter, that the representatives shall be chosen every second year, and that the tenure of their office shall be for two years; that senators be chosen every sixth year, and that the tenure of their office be for six years. I take it also as a principle, that the electors of the most numerous branch of the state legislatures are to elect the federal representatives. Congress has ultimately no power over elections, but what is primarily given to the state legislatures. If Congress had the power of prolonging the time, &c., as gentlemen observe, the same powers must be completely vested in the state legislatures. I call upon every gentleman candidly to declare, whether the state legislatures have the power of altering the time of elections for representatives from two to four years, or senators from six to twelve; and whether they have the power to require any other qualifications than those of the

most numerous branch of the state legislatures; and also whether they have any other power over the manner of elections, any more than the mere mode of the act of choosing; or whether they shall be held by sheriffs, as contradistinguished from any other officer; or whether they shall be by votes, as contradistinguished from ballots, or any other way. If gentlemen will pay attention, they will find that, in the latter part of this clause, Congress has no power but what was given to the states in the first part of the same clause. They may alter the manner of holding the election, but cannot alter the tenure of their office. They cannot alter the nature of the elections; for it is established, as fundamental principles, that the electors of the most numerous branch of the state legislature shall elect the federal representatives, and that the tenure of their office shall be for two years; and likewise, that the senators shall be elected by the legislatures, and that the tenure of their office shall be for six years. When gentlemen view the clause accurately, and see that Congress have only the same power which was in the state legislature, they will not be alarmed. The {62} learned doctor on my right (Mr. Spencer) has also said that Congress might lengthen the time of elections. I am willing to appeal to grammatical construction and punctuation. Let me read this, as it stands on paper, [Here he read the clause different ways, expressing the same sense.] Here, in the first part of the clause, this power over elections is given to the states, and in the latter part the same power is given to Congress, and extending only to the time of *holding*, the place of *holding*, and the manner of *holding*, the elections. Is this not the plain, literal, and grammatical construction of the clause? Is it possible to put any other construction on it, without departing from the natural order, and without deviating from the general meaning of the words, and every rule of grammatical construction? Twist it, torture it, as you may, sir, it is impossible to fix a different sense upon it. The worthy gentleman from New Hanover, (whose ardor for the liberty of his country I wish never to be damped,) has insinuated that high characters might influence the members on this occasion. I declarer for my own part, I wish every man to be guided by his own conscience and understanding, and by nothing else. Every man has not been bred a politician, nor studied the science of government; yet, when a subject is explained, if the mind is unwarped by prejudice, and not in the leading-strings of other people, gentlemen will do what is right. Were this the case, I Would risk my salvation on a right decision.

**Mr. CALDWELL.**

Mr. Chairman, those things which can be may be. We know that, in the British government, the members of Parliament were eligible only for three years, They determined they might be chosen for seven years; If Congress can alter the time, manner, and place, I think it will enable them to do what the British Parliament once did. They have declared that the elections of senators are for six years, and of representatives for two years. But they have said there was an exception to this general declaration, viz., that Congress can alter them. If the Convention only meant that they should alter them in such a manner as to prevent a discontinuation of the government, why have they not said so? It must appear to every gentleman in this Convention, that they can alter the elections to what time they please. And if the British Parliament did once give themselves the power of sitting four years longer than they had a right to do, Congress, having a standing army, and the command of the militia, may, with the same propriety, make an act to continue the members for twenty years, or even for their natural lives. This construction appears perfectly rational to me. I shall therefore think that this Convention will never swallow such a government, without securing us against danger.

**Mr. MACLAINE.**

## **GUN**

Mr. Chairman, the reverend gentleman from Guilford has made an objection which astonishes me more than any thing I have heard. He seems to be acquainted with the history of England, but he ought to consider whether his historical references apply to this country. He tells us of triennial elections being changed to septennial elections. This is an historical fact we well know, and the occasion on which it happened is equally well known. They talk as loudly of constitutional rights and privileges in England as we do here, but they have no written constitution. They have a **common law**, — which has been altered from year to year, for a very long period, — Magna Charta, and bill of rights. These they look upon as their constitution. Yet this is such a constitution as it is universally considered Parliament can change. Blackstone, in his admirable Commentaries, tells us that the power of the Parliament is transcendent and absolute, and can do and undo every thing that is not naturally impossible. The act, therefore, to which the reverend gentleman alludes, was not unconstitutional. Has any man said that the legislature can deviate from this Constitution? The legislature is to be guided by the Constitution. They cannot travel beyond its bounds. The reverend gentleman says, that, though the representatives are to be elected for two years, they may pass an act prolonging their appointment for twenty years, or for natural life, without any violation of the Constitution. Is it possible for any common understanding or sense to put this construction upon it? Such an act, sir, would be a palpable violation of the Constitution: were they to attempt it, sir, the country would rise against them. After such an unwarrantable suggestion as this, any objection may be made to this Constitution. It is necessary to give power to the government. I would ask that gentleman who is so much afraid it will destroy our liberties, why he is not as much afraid of our state legislature; for they have much more power than we are now proposing to give this general government. They have an unlimited control over the purse and sword; yet no complaints are made. Why is he not as much afraid that our legislature will call out the militia to destroy our liberties? Will the militia be called out by the general government to enslave the people — to enslave their friends, their families, themselves? The idea of the militia being made use of, as an instrument to destroy our liberties, is almost too absurd to merit a refutation. It cannot be supposed that the representatives of our general government will be worse men than the members of our state government. Will we be such fools as to send our greatest rascals to the general government? We must be both fools as well as villains to do so.

**Gov. JOHNSTON.**

Mr. Chairman, I shall offer some observations on what the gentleman said. A parallel has been drawn between the British Parliament and Congress. The powers of Congress are all circumscribed, defined, and clearly laid down. So far they may go, but no farther. But, sir, what are the powers of the British Parliament? They have no written constitution in Britain. They have certain fundamental principles and legislative acts, securing the liberty of the people; but these may be altered by their representatives, without violating their constitution, in such manner as they may think proper. Their legislature existed long before the science of government was well understood. From very early periods, you find their Parliament in full force. What is their Magna Charta? It is only an act of Parliament. Their Parliament can, at any time, alter the whole or any

part of it. In short, it is no more binding on the people than any other act which has passed. The power of the Parliament is, therefore, unbounded. But, sir, can Congress alter the Constitution? They have no such power. They are bound to act by the Constitution. They dare not recede from it. At the moment that the time for which they are elected expires, they may be removed. If they make bad laws, they will be removed; for they will be no longer worthy of confidence. The British Parliament can do every thing they please. Their bill of rights is only an act of Parliament, which may be, at any time, altered or modified, without a violation of the constitution. The people of Great Britain have no constitution to control their legislature. The king, lords, and commons, can do what they please.

**Mr. CALDWELL**

observed, that whatever nominal powers the British Parliament might possess, yet they had infringed the liberty of the people in the most flagrant manner, by giving themselves power to continue four years in Parliament longer than they had been elected for — that though they were only chosen for three years by their constituents, yet they passed an act that representatives should, for the future, be chosen for seven years — that this Constitution would have a dangerous tendency — that this clause would enable them to prolong their continuance in office as long as they pleased — and that, if a constitution was not agreeable to the people, its operation could not be happy.

**Gov. JOHNSTON**

replied, that the act to which allusion was made by the gentleman was not unconstitutional; but that, if Congress were to pass an act prolonging the terms of elections of senators or representatives, it would be clearly unconstitutional.

**Mr. MACLAINE**

observed, that the act of Parliament referred to was passed on urgent necessity, when George I. ascended the throne, to prevent the Papists from getting into Parliament; for parties ran so high at that time, that Papists enough might have got in to destroy the act of settlement which excluded the Roman Catholics from the succession to the throne.

**Mr. SPENCER.**

The gentleman from Halifax said, that the reason of this clause was, that some states might be refractory. I profess that, in my opinion, the circumstances of Rhode Island do not appear to apply. I cannot conceive the particular cause why Rhode Island should not send representatives to Congress. If they were united in one government, is it presumed that they would waive the right of representation? I have not the least reason to doubt they would make use of the privilege. With respect to the construction that the worthy member put upon the clause, were that construction established, I would be satisfied; but it is susceptible of a different explanation. They may alter the mode of election so as to deprive the people of the right of choosing. I wish to have it expressed in a more explicit manner.

**Mr. DAVIE.**

Mr. Chairman, the gentleman has certainly misconceived the matter, when he says "that the circumstances of Rhode Island do not apply." It is a fact well {66} known, of which, perhaps, he may not be possessed, that the state of Rhode Island has not been regularly represented for several years, owing to the character and particular views of the prevailing party. By the influence of this faction, who are in possession of the state government, the people have been frequently deprived of the benefit of a representation in the Union, and Congress often embarrassed by their absence. The same evil may again result from the same cause; and Congress ought, therefore, to possess constitutional power to give the people an opportunity of electing representatives, if the states neglect or refuse to do it. The gentleman from Anson has said, "that this clause is susceptible of an explanation different from the construction I put upon it." I have a high respect for his opinion, but that alone, on this important occasion, is not satisfactory: we must have some *reasons* from him to support and sanction this opinion. He is a professional man, and has held an office many years, the nature and duties of which would enable him to put a different construction on this clause, if it is capable of it.

This clause, sir, has been the occasion of much groundless alarm, and has been the favorite theme of declamation out of doors I now call upon the gentlemen of the opposition to show that it contains the mischiefs with which they have alarmed and agitated the public mind, and I defy them to support the construction they have put upon it by one single plausible reason. The gentleman from New Hanover has said, in objection to this clause, "that Congress may appoint the most inconvenient place in the most inconvenient district, and make the manner of election so oppressive as entirely to destroy representation." If this is considered as possible, he should also reflect that the state legislatures may do the same thing. But this can never happen, sir, until the whole mass of the people become corrupt, when all parchment securities will be of little service. Does that gentleman, or any other gentleman who has the smallest acquaintance with human nature or the spirit of America, suppose that the people will passively relinquish privileges, or suffer the usurpation of powers unwarranted by the Constitution? Does not the right of electing representatives revert to the people every second year? There is nothing in this clause that can impede or destroy this reversion; and {67} although the particular time of year, the particular place in a county or a district, or the particular mode in which elections are to be held, as whether by vote or ballot, be left to Congress to direct, yet this can never deprive the people of the *right* or *privilege* of election. He has also added, "that the democratical branch was in danger from this clause;" and, with some other gentlemen, took it for granted that an aristocracy must arise out of the general government. This, I take it, from the very nature of the thing, can never happen. Aristocracies grow out of the combination of a few powerful families, where the country or people upon which they are to operate are immediately under their influence; whereas the interest and influence of this government are too weak, and too much diffused, ever to bring about such an event. The confidence of the people, acquired by a wise and virtuous conduct, is the only influence the members of the federal government can ever have. When aristocracies are formed, they will arise within the individual states. It is therefore absolutely necessary that Congress should have a constitutional power to give the people at large a representation in the government, in order to break and control such dangerous combinations. Let gentlemen show when and how this aristocracy they talk of is to arise out of this Constitution. Are the first members to perpetuate themselves? Is the Constitution to be attacked

by such absurd assertions as these, and charged with defects with which it has no possible connection?

**Mr. BLOODWORTH.**

Mr. Chairman, the gentleman has mistaken me. When we examine the gentleman's arguments, they have no weight. He tells us that it is not probable "that an aristocracy can arise." I did not say that it would. Various arguments are brought forward in support of this article. They are vague and trifling. There is nothing that can be offered to my mind which will reconcile me to it while this evil exists — while Congress have this control over elections. It was easy for them to mention that this control should only be exerted when the state would neglect, or refuse, or be unable in case of invasion, to regulate elections. If so, why did they not mention it expressly?

It appears to me that some of their general observations imply a contradiction. Do they not tell us that there is no {68} danger of a consolidation? that Congress can exist no longer than the states — the massy pillars on which it is said to be raised? Do they not also tell us that the state governments are to secure us against Congress? At another time, they tell us that it was unnecessary to secure our liberty by giving them power to prevent the state governments from oppressing us. We know that there is a corruption in human nature. Without circumspection and carefulness, we shall throw away our liberties. Why is this general expression used on this great occasion? Why not use expressions that were clear and unequivocal? If I trust my property with a man and take security, shall I then barter away my rights?

**Mr. SPENCER.**

Mr. Chairman, this clause may operate in such a manner as will abridge the liberty of the people. It is well known that men in power are apt to abuse it, and extend it if possible. From the ambiguity of this expression, they may put such construction upon it as may suit them. I would not have it in such a manner as to endanger the rights of the people. But it has been said that this power is necessary to preserve their existence. There is not the least doubt but the people will keep them from losing their existence, if they shall behave themselves in such a manner as will merit it.

**Mr. MACLAINE.**

Mr. Chairman, I thought it very extraordinary that the gentleman who was last on the floor should say that Congress could do what they please with respect to elections, and be warranted by this clause. The gentleman from Halifax (Mr. Davie) has put that construction upon it which reason and common sense will put upon it. Lawyers will often differ on a point of law, but people will seldom differ about so very plain a thing as this. The clause enables Congress to alter such regulations as the states shall have made with respect to elections. What would he infer from this? What is it to alter? It is to alter the time, place, and manner, established by the legislatures, if they do not answer the purpose. Congress ought to have power to perpetuate the government, and not the states, who might be otherwise inclined. I will ask the gentleman — an I wish he may give me a satisfactory answer — if the whole is not in the power of the people, as well when the elections are regulated by Congress, as when by the states. Are not both the agents

of the people, amenable {69} to them? Is there any thing in this Constitution which gives them the power to perpetuate the sitting members? Is there any such strange absurdity? If the legislature of this state has the power to fix the time, place, and manner, of holding elections, why not place the same confidence in the general government? The members of the general government, and those of the state legislature, are both chosen by the people. They are both from among the people, and are in the same situation. Those who served in the state legislature are eligible, and may be sent to Congress. If the elections be regulated in the best manner in the state government, can it be supposed that the same man will lose all his virtue, his character and principles, when he goes into the general government, in order to deprive us of our liberty?

The gentleman from New Hanover seems to think it possible Congress will so far forget themselves as to point out such improper seasons of the year, and such inconvenient places for elections, as to defeat the privilege of the democratic branch altogether. He speaks of inconsistency in the arguments of the gentlemen. I wish he would be consistent himself. If I do not mistake the politics of that gentleman, it is his opinion that Congress had sufficient power under the Confederation. He has said, without contradiction, that we should be better without the Union than with it; that it would be better for us to be by ourselves than in the Union. His antipathy to a general government, and to the Union, is evidently inconsistent with his predilection for a federal democratic branch. We should have no democratic part of the government at all, under such a government as he would recommend. There is no such part in the old Confederation. The body of the people had no agency in that system. The members of the present general government are selected by the state legislatures, and have the power of the purse, and other powers, and are not amenable to the people at large. Although the gentleman may deny my assertions, yet this argument of his is inconsistent with his other assertions and doctrines. It is impossible for any man in his senses to think that we can exist by ourselves, separated from our sister states. Whatever gentlemen may pretend to say on this point, it must be a matter of serious alarm to every reflecting mind, to be disunited from the other states.

#### **Mr. BLOODWORTH**

begged leave to wipe off the assertion {70} of the gentleman; that he could not account for any expression which he might drop among a laughing, jocose people, but that it was well known he was for giving power to Congress to regulate the trade of the United States; that he had said that Congress had exercised power not given them by the Confederation, and that he was accurate in the assertion; that he was a freeman, and was under the control of no man.

#### **Mr. MACLAINE**

replied, that he meant no aspersions; that he only meant to point out a fact; that he had committed mistakes himself in argument, and that he supposed the gentleman not more infallible than other people.

#### **Mr. J. TAYLOR**

wished to know why the states had control over the place of electing senators, but not over that of choosing the representatives.

**Mr. SPAIGHT**

answered, that the reason of that reservation was to prevent Congress from altering the places for holding the legislative assemblies in the different states.

**Mr. JAMES GALLOWAY.**

Mr. Chairman, in the beginning I found great candor in the advocates of this government, but it is not so towards the last, I hope the gentleman from Halifax will not take it amiss, if I mention how he brought the motion forward. They began with dangers. As to Rhode Island being governed by a faction, what has that to do with the question before us? I ask, What have the state governments left for them, if the general government is to be possessed of such extensive powers, without control or limitation, without any responsibility to the states? He asks; How is it possible for the members to perpetuate themselves? I think I can show how they can do it. For instance, were they to take the government as it now stands organized. We send five members to the House of Representatives in the general government. They will go, no doubt, from or near the seaports. In other states, also, those near the sea will have more interest, and will go forward to Congress; and they can, without violating the Constitution, make a law continuing themselves, as they have control over the place, time, and manner, of elections. This may happen; and where the great principles of liberty are endangered, no general, indeterminate, vague expression ought to be suffered. Shall we pass over this article as it is now? They will be able to perpetuate themselves as well as if it had expressly said so.

**Mr. STEELE.**

Mr. Chairman, the gentleman has said that the five representatives which this state shall be entitled to send to the general government, will go from the sea-shore. What reason has he to say they will go from the sea-shore? The time, place, and manner, of holding elections are to be prescribed by the legislatures. Our legislature is to regulate the first election, at any event. They will regulate it as they think proper. They may, and most probably will, lay the state off into districts. Who are to vote for them? Every man who has a right to vote for a representative to our legislature will ever have a right to vote for a representative to the general government. Does it not expressly provide that the electors in each state shall have the qualifications requisite for the most numerous branch of the state legislature? Can they, without a most manifest violation of the Constitution, alter the qualifications of the electors? The power over the manner of elections does not include that of saying who shall vote: — the Constitution expressly says that the qualifications which entitle a man to vote for a state representative. It is, then, clearly and indubitably fixed and determined *who* shall be the electors; and the power over the manner only enables them to determine *how* these electors shall elect — whether by ballot, or by vote, or by any other way. Is it not a maxim of universal jurisprudence, of reason and common sense, that an instrument or deed of writing shall be so construed as to give validity to all parts of it, if it can be done without involving any absurdity? By construing it in the plain, obvious way I have mentioned, all parts will be valid. By the way, gentlemen suggest the most palpable contradiction, and absurdity will follow. To say that they shall go from the seashore, and be able to perpetuate themselves, is a most extravagant idea. Will the members of Congress deviate from their duty without any prospect of advantage to themselves? What interest can they have to make

the place of elections inconvenient? The judicial power of that government is so well constructed as to be a check. There was no check in the old Confederation. Their power was, in principle and theory, transcendent. If the Congress make laws inconsistent with the Constitution, independent judges will not uphold them, nor will the people obey them. A universal resistance will ensue. In some countries, the {72} arbitrary disposition of rulers may enable them to overturn the liberties of the people; but in a country like this, where every man is his own master, and where almost every man is a freeholder, and has the right of election, the violations of a constitution will not be passively permitted. Can it be supposed that in such a country the rights of suffrage will be tamely surrendered? Is it to be supposed that 30,000 free persons will send the most abandoned wretch in the district to legislate for them in the general legislature? I should rather think they would choose men of the most respectable characters.

**SATURDAY, *July 26, 1788.***

**Mr. KENNION**

in the chair.

**The 5th section of the 1st article read.**

**Mr. STEELE**

observed, that he had heard objections to the 3d clause of this section, with respect to the periodical publication of the Journals, the entering the yeas and nays on them, and the suppression of such parts as required secrecy — that he had no objection himself, for that he thought the necessity of publishing their transactions was an excellent check, and that every principle of prudence and good policy pointed out the necessity of not publishing such transactions as related to military arrangements and war — that this provision was exactly similar to that which was in the old Confederation.

**Mr, GRAHAM**

wished to hear an explanation of the words "from time to time," whether it was a short or a long time, or how often they should be obliged to publish their proceedings.

**Mr, DAVIE**

answered, that they would be probably published after the rising of Congress, every year — that if they sat two or three times, or oftener, in the year, they might be published every time they rose — that there could be no doubt of their publishing them as often as it would be convenient and proper, and that they would conceal nothing but what it would be unsafe to publish. He further observed, that some states had proposed an amendment, that they should be published annually; but he thought it very safe and proper as it stood — that it was the sense of the Convention that they should be published at the end of every session. The gentleman from Salisbury had said, that in this particular {73} it resembled the old Confederation. Other gentlemen have said there is no similarity at all. He therefore wished the difference to be stated.

**Mr. IREDELL**

remarked, that the provision in the clause under consideration was similar in meaning and substance to that in the Confederation — that in time of war it was absolutely necessary to conceal the operations of government; otherwise no attack on an enemy could be premeditated with success, for the enemy could discover our plans soon enough to defeat them — that it was no less imprudent to divulge our negotiations with foreign powers, and the most salutary schemes might be prevented by imprudently promulgating all the transactions of the government indiscriminately.

**Mr. J. GALLOWAY**

wished to obviate what gentlemen had said with regard to the similarity of the old Confederation to the new system, with respect to the publication of their proceedings. He remarked, that, at the desire of one member from any state, the yeas and nays were to be put on the Journals, and published by the Confederation; whereas, by this system, the concurrence of one fifth was necessary.

To this it was answered, that the alteration was made because experience had showed, when any two members could require the yeas and nays, they were taken on many trifling occasions; and there was no doubt one fifth would require them on every occasion of importance.

**The 6th section read without any observations.**

**1st clause of the 7th section likewise read without any observations.**

**2d clause read.**

**Mr. IREDELL.**

Mr. Chairman, this is a novelty in the Constitution, and is a regulation of considerable importance. Permit me to state the reasons for which I imagine this regulation was made. They are such as, in my opinion, fully justify it.

One great alteration proposed by the Constitution — and which is a capital improvement on the Articles of Confederation — is, that the executive, legislative, and judicial powers should be separate and distinct. The best writers, and all the most enlightened part of mankind, agree that it is essential to the preservation of liberty, that such distinction {74} and separation of powers should be made. But this distinction would have very little efficacy if each power had no means to defend itself against the encroachment of the others.

The British constitution, the theory of which is much admired, but which, however, is in fact liable to many objections, has divided the government into three branches. The king, who is hereditary, forms one branch, the Lords and Commons the two others; and no bill passes into a law without the king's consent. This is a great constitutional support of his authority. By the proposed Constitution, the President is of a very different nature from a monarch. He is to be

chosen by electors appointed by the people; to be taken from among the people; to hold his office only for the short period of four years; and to be personally responsible for any abuse of the great trust reposed in him.

In a republican government, it would be extremely dangerous to place it in the power of one man to put an absolute negative on a bill proposed by two houses, one of which represented the people, and the other the states of America. It therefore became all object of consideration, how the executive could defend itself without being a competent part of the legislature. This difficulty was happily remedied by the clause now under our consideration. The executive is not entirely at the mercy of the legislature; nor is it put in the power of the executive entirely to defeat the acts of those two important branches. As it is provided in this clause, if a bare majority of both houses should pass a bill which the President thought injurious to his country, it is in his power — to do what? Not to say, in an arbitrary, haughty manner, that he does not approve of it — but, if he thinks it a bad bill, respectfully to offer his reasons to both houses; by whom, in that case, it is to be reconsidered, and not to become a law unless two thirds of both houses shall concur; which they still may, notwithstanding the President's objection. It cannot be presumed that he would venture to oppose a bill, under such circumstances, without very strong reasons. Unless he was sure of a powerful support in the legislature, his opposition would be of no effect; and as his reasons are to be put on record, his fame is committed both to the present times and to posterity.

The exercise of this power, in a time of violent factions, {75} might be possibly hazardous to himself; but he can have no ill motive to exert himself in the face of a violent opposition. Regard to his duty alone could induce him to oppose, when it was probable two thirds would at all events overrule him. This power may be usefully exercised, even when no ill intention prevails in the legislature. It might frequently happen that, where a bare majority had carried a pernicious bill, if there was an authority to suspend it, upon a cool statement of reasons, many of that majority, on a reconsideration, might be convinced, and vote differently. I therefore think the method proposed is a happy medium between the possession of an absolute negative, and the executive having no control whatever on acts of legislation; and at the same time that it serves to protect the executive from ill designs in the legislature, it may also answer the purposes of preventing many laws passing which would be immediately injurious to the people at large. It is a strong guard against abuses in all, that the President's reasons are to be entered at large on the Journals, and, if the bill passes notwithstanding, that the yeas and nays are also to be entered. The public, therefore, can judge fairly between them.

**The 1st clause of the 8th section read.**

**Mr. SPENCER.**

Mr. Chairman, I conceive this power to be too extensive, as it embraces all possible powers of taxation, and gives up to Congress every possible article of taxation that can ever happen. By means of this, there will be no way for the states of receiving or collecting taxes at all, but what may interfere with the collections of Congress. Every power is given over our money to those over whom we have no immediate control. I would give them powers to support the government, but would not agree to annihilate the state governments in an article which is most essential to their existence. I would give them power of laying imposts; and I would give them power to lay

and collect excises. I confess that this is a kind of tax so odious to a free people, that I should with great reluctance agree to its exercise; but it is obvious that, unless such excises were admitted, the public burden will be all borne by those parts of the community who do not manufacture for themselves. So manifest an inequality would justify a recurrence to this species of taxes.

{76} How are direct taxes to be laid? By a poll tax, assessments on land or other property? Inconvenience and oppression will arise from any of them. I would not be understood that I would not wish to have an efficient government for the United States. I am sensible that laws operating on individuals cannot be carried on against states; because, if they do not comply with the general laws of the Union, there is no way to compel a compliance but force. There must be an army to compel them. Some states may have some excuse for non-compliance. Others will feign excuses. Several states may perhaps be in the same predicament. If force be used to compel them, they will probably call for foreign aid: and the very means of defence will operate to the dissolution of the system, and to the destruction of the states. It would not, therefore, deny that Congress ought to have the power of taking out of the pockets of the individuals at large, if the states fail to pay those taxes in a convenient time. If requisitions were to be made on the several states, proportionate to their abilities, the several state legislatures, knowing the circumstances of their constituents, and that they would ultimately be compelled to pay, would lay the tax in a convenient manner, and would be able to pay their quotas at the end of the year. They are better acquainted with the mode in which taxes can be raised, than the general government can possibly be.

It may happen, for instance, that if ready money cannot be immediately received from the pockets of individuals for their taxes, their estates, consisting of lands, negroes, stock, and furniture, must be set up and sold at vendue. We can easily see, from the great scarcity of money at this day, that great distresses must happen. There is no hard money in the country, It must come from other parts of the world. Such property would sell for one tenth part of its value. Such a mode as this would, in a few years, deprive the people of their estates. But, on the contrary, if articles proper for exportation were either specifically taken for their taxes immediately by the state legislature, or if the collection should be deferred till they had disposed of such articles, no oppression or inconvenience would happen. There is no person so poor but who can raise something to dispose off or a great part of the United States, those articles which are proper for exportation would answer the purpose. I {77} would have a tax laid on estates where such articles could not be had, and such a tax to be by instalments for two or more years.

I would admit, if the quotas were not punctually paid at the end of the time, that Congress might collect taxes, because this power is absolutely necessary for the support of the general government. But I would not give it in the first instance; for nothing would be more oppressive, as in a short time people would be compelled to part with their property. In the other case, they would part with none but in such a manner as to encourage their industry. On the other hand, if requisitions, in cases of emergency, were proposed to the state assemblies, it would be a measure of convenience to the people, and would be a means of keeping up the importance of the state legislatures, and would conciliate their affections; and their knowledge of the ultimate right of Congress to collect taxes would stimulate their exertions to raise money. But if the power of taxation be given in the first instance to Congress, the state legislatures will be liable to be

counteracted by the general government in all their operations. These are my reasons for objecting to this article.

**Gov. JOHNSTON.**

Mr. Chairman, this clause is objected to; and it is proposed to alter it in such a manner, that the general government shall not have power to lay taxes in the first instance, but shall apply to the states, and, in case of refusal, that direct taxation shall take place; that is to say, that the general government should pass an act to levy money on the United States, and if the states did not, within a limited time, pay their respective proportions, the officers of the United States should proceed to levy money on the inhabitants of the different states. The question has been agitated by the conventions in different states, and some very respectable states have proposed that there should be an amendment, in the manner which the worthy member last up has proposed. But, sir, although I pay very great respect to the opinions and decisions of the gentlemen who composed those conventions, and although they were wise in many instances, I cannot concur with them in this particular. It appears to me that it will be attended with many inconveniences. It seems to me probable that the money arising from duties and excises will be, in general, sufficient {78} to answer all the ordinary purposes of government; but in cases of emergency, it will be necessary to lay direct taxes. In cases of emergency, it will be necessary that these taxes should be a responsible and established fund to support the credit of the United States; for it cannot be supposed that, from the ordinary sources of revenue, money can be brought into our treasury in such a manner as to answer pressing dangers; nor can it be supposed that our credit will enable us to procure any loans, if our government is limited in the means of procuring money. But, if the government have it in their power to lay those taxes, it will give them credit to borrow money on that security, and for that reason it will not be necessary to lay so heavy a tax; for, if the tax is sufficiently productive to pay the interest, money may always be had in consequence of that security. If the state legislatures must be applied to, they must lay a tax for the full sum wanting. This will be much more oppressive than a tax laid by Congress; for I presume that no state legislature will have as much credit individually as the United States conjointly; therefore, viewing it in this light, a tax laid by Congress will be much easier than a tax laid by the states. Another inconvenience which will attend this proposed amendment is, that these emergencies may happen a considerable time before the meeting of some state legislatures, and previous to their meeting, the schemes of the government may be defeated by this delay. A considerable time will elapse before the state can lay the tax, and a considerable time before it be collected; and perhaps it cannot be collected at all. One reason which the worthy member has offered in favor of the amendment was, that the general legislature cannot lay a tax without interfering with the taxation of the state legislature. It may happen that the taxes of both may be laid on the same article; but I hope and believe that the taxes to be laid on by the general legislature will be so very light that it will be no inconvenience to the people to pay them; and if you attend to the probable amount of the impost, you must conclude that the small addition to the taxes will not make them so high as they are at this time. Another reason offered by the worthy member in support of the amendment is, that the state legislature may direct taxes to be paid in specific articles. We had full experience of this in the late war. {79} I call on the house to say, whether it was not the most oppressive and least productive tax ever known in the state. Many articles were lost, and many could not be disposed of so as to be of any service to the people. Most articles are perishable, and therefore cannot answer. Others are difficult to transport, expensive to keep, and

very difficult to dispose of. A tax payable in tobacco would answer very well in some parts of the country, and perhaps would be more productive than any other; yet we feel that great losses have been sustained by the public on this article. A tax payable in any kind of grain would answer very little purpose, grain being perishable. A tax payable in pitch and tar would not answer. A mode of this kind would not be at all eligible in this state: the great loss on the specific articles, and inconvenience in disposing of them, would render them productive of very little.

He says that this would be a means of keeping up the importance of the state legislatures. I am afraid it would have a different effect. If requisitions should not be complied with at the time fixed, the officers of Congress would then immediately proceed to make their collections. We know that several causes would inevitably produce a failure. The states would not, or could not, comply. In that case, the state legislature would be disgraced. After having done every thing for the support of their credit and importance without success, would they not be degraded in the eyes of the United States? Would it not cause heart-burnings between particular states and the United States? The inhabitants would oppose the tax-gatherers. They would say, "We are taxed by our own state legislature for the proportionate quota of our state; we will not pay you also." This would produce insurrections and confusion in the country. These are the reasons which induce me to support this clause. It is perhaps particularly favorable to this state. We are not an importing country: very little is here raised by imposts. Other states, who have adopted the Constitution, import for us. Massachusetts, South Carolina, Maryland, and Virginia, are great importing states. From them we procure foreign goods, and by that means they are generally benefited; for it is agreed upon by all writers, that the consumer pays the impost.

Do we not, then, pay a tax in support of their revenue in {80} proportion to our consumption of foreign articles? Do we not know that this, in our present situation, is without any benefit to us? Do we not pay a second duty when these goods are imported into this state? We now pay double duties. It is not to be supposed that the merchant will pay the duty without wishing to get interest and profit on the money he lays out. It is not to be presumed that he will not add to the price a sum sufficient to indemnify himself for the inconvenience of parting with the money he pays as a duty. We therefore now pay a much higher price for European manufactures than the people do in the great importing states. Is it not laying heavy burdens on the people of this country, not only to compel them to pay duties for the support of the importing states, but to pay a second duty on the importation into this state by our own merchants? By adoption, we shall participate in the amount of the imposts. Upon the whole, I hope this article will meet with the approbation of this committee, when they consider the necessity of supporting the general government, and the many inconveniences, and probable if not certain inefficacy, of requisitions.

**Mr. SPENCER.**

Mr. Chairman, I cannot, notwithstanding what the gentleman has advanced, agree to this clause unconditionally. The most certain criterion of happiness that any people can have, is to be taxed by their own immediate representatives, — by those representatives who intermix with them, and know their circumstances, — not by those who cannot know their situation. Our federal representatives cannot sufficiently know our situation and circumstances. The worthy gentleman said that it would be necessary for the general government to have the power of laying taxes, in order to have credit to borrow money. But I cannot think, however plausible it may appear, that

his argument is conclusive. If such emergency happens as will render it necessary for them to borrow money, it will be necessary for them to borrow before they proceed to lay the tax. I conceive the government will have credit sufficient to borrow money in the one case as well as the other. If requisitions be punctually complied with, no doubt they can borrow; and if not punctually complied with, Congress can ultimately lay the tax.

I wish to have the most easy way for the people to pay {81} their taxes. The state legislature will know every method and expedient by which the people can pay, and they will recur to the most convenient. This will be agreeable to the people, and will not create insurrections and dissensions in the country. The taxes might be laid on the most productive articles: I wish not, for my part, to lay them on perishable articles. There are a number of other articles besides those which the worthy gentleman enumerated. There are, besides tobacco, hemp, indigo, and cotton. In the Northern States, where they have manufactures, a contrary system from ours would be necessary. There the principal attention is paid to the giving their children trades. They have few articles for exportation. By raising the tax in this manner, it will introduce such a spirit of industry as cannot fail of producing happy consequences to posterity. He objected to the mode of paying taxes in specific articles. May it not be supposed that we shall gain something by experience, and avoid those schemes and methods which shall be found inconvenient and disadvantageous? If expenses should be incurred in keeping and disposing of such articles, could not those expenses be reimbursed by a judicious sale? Cannot the legislature be circumspect as to the choice and qualities of the objects to be selected for raising the taxes due to the Continental treasury? The worthy gentleman has mentioned that, if the people should not comply to raise the taxes in this way, then, if they were subject to the law of Congress, it would throw them into confusion. I would ask every one here, if there be not more reason to induce us to believe that they would be thrown into confusion, in case the power of Congress was exercised by Congress in the first instance, than in the other case. After having so long a time to raise the taxes, it appears to me there, could be no kind of doubt of a punctual compliance. The right of Congress to lay taxes ultimately, in case of non-compliance with requisitions, would operate as a penalty, and would stimulate the states to discharge their quotas faithfully. Between these two modes there is an immense difference. The one will produce the happiness, ease, and prosperity of the people; the other will destroy them, and produce insurrections.

**Mr. SPAIGHT.**

Mr. Chairman, it was thought absolutely necessary for the support of the general government {82} to give it power to raise taxes. Government cannot exist without certain and adequate funds. Requisitions cannot be depended upon. For my part, I think it indifferent whether I pay the tax to the officers of the continent or to those of the state. I would prefer paying to the Continental officers, because it will be less expensive.

The gentleman last up has objected to the propriety of the tax being laid by Congress, because they could not know the circumstances of the people. The state legislature will have no source or opportunity of information which the members of the general government may not have. They can avail themselves of the experience of the state legislature. The gentleman acknowledges the inefficacy of requisitions, and yet recommends them. He has allowed that laws cannot operate upon political bodies without the agency of force. His expedient of applying to the states in the

first instance will be productive of delay, and will certainly terminate in a disappointment to Congress. But the gentleman has said that we had no hard money, and that the taxes might be paid in specific articles. It is well known that if taxes are not raised in medium, the state loses by it. If the government wishes to raise one thousand pounds, they must calculate on a disappointment by specific articles, and will therefore impose taxes more in proportion to the expected disappointment. An individual can sell his commodities much better than the public at large. A tax payable in any produce would be less productive, and more oppressive to the people, as it would enhance the public burdens by its inefficiency. As to abuses by the Continental officers, I apprehend the state officers will more probably commit abuses than they. Their conduct will be more narrowly watched, and misconduct more severely punished. They will be therefore more cautious.

**Mr. SPENCER,**

in answer to Mr. Spaight, observed, that, in case of war, he was not opposed to this article, because, if the states refused to comply with requisitions, there was no way to compel them but military coercion, which would induce refractory states to call for foreign aid, which might terminate in the dismemberment of the empire. But he said that he would not give the power of direct taxation to Congress in the first instance, as he thought the states would lay the taxes in a less oppressive manner.

**Mr. WHITMILL HILL.**

Mr. Chairman, the subject now before us is of the highest importance. The object of all government is the protection, security, and happiness of the people. To produce this end, government must be possessed of the necessary means.

Every government must be empowered to raise a sufficient revenue; but I believe it will be allowed, on all hands, that Congress has been hitherto altogether destitute of that power so essential to every government. I believe, also, that it is generally wished that Congress should be possessed of power to raise such sums as are requisite for the support of the Union, though gentlemen may differ with regard to the mode of raising them.

Our past experience shows us that it is in vain to expect any possible efficacy from requisitions. Gentlemen recommend these, as if their inutility had not been experienced. But do we not all know what effects they have produced? Is it not to them that we must impute the loss of our credit and respectability? It is necessary, therefore, that government have recourse to some other mode of raising a revenue. Had, indeed, every state complied with requisitions, the old Confederation would not have been complained of; but as the several states have already discovered such repugnancy to comply with federal engagements, it must appear absolutely necessary to free the general government from such a state of dependence.

The debility of the old system, and the necessity of substituting another in its room, are the causes of calling this Convention.

I conceive, sir, that the power given by that clause is absolutely necessary to the existence of the government. Gentlemen say that we are in such a situation that we cannot pay taxes. This, sir, is not a fair representation, in my opinion. The honest people of this country acknowledge themselves sufficiently able and willing to pay them. Were it a private contract, they would find means to pay them. The honest part of the community complain of the acts of the legislature. They complain that the legislature makes laws, not to suit their constituents, but themselves. The legislature, sir, never means to pay a just debt, as their constituents wish to do. Witness the laws made in this country. I will, however, be bold enough to say, that it is the {84} wish of the honest people to pay those taxes which are necessary for the support of the government. We have for long time waited, in hope that our legislature would point out the manner of supporting the general government, and relieving us from our present ineligible situation. Every body was convinced of the necessity of this; but how is it to be done? The legislature have pointed out a mode — their old, favorite mode — they have made paper money; purchased tobacco at an extravagant price, and Sold it at a considerable loss; they have received about a dollar in the pound. Have we any ground to hope that we shall be in a better situation?

Shall we be bettered by the alternative proposed by gentlemen — by levying taxes in specific articles? How will you dispose of them? Where is the merchant to buy them? Your business will be put into the hands of a commissioner, who, having no business of his own, will grasp at it eagerly; and *he*, no doubt, will *manage* it. But if the payment of the tax be left to the people, — if individuals are told that they must pay Such a certain proportion of their income to support the general government, — then each will consider it as a debt; he will exert his ingenuity and industry to raise it; he will use no agent, but depend on himself. By these means the money will certainly be collected. I will pledge myself for its certainty. As the legislature has never heretofore called upon the people, let the general government apply to individuals: it cannot *depend* upon states. If the people have articles, they can receive money for them. Money is said to be scarce; but, sir, it is the want of industry which is the source of our, indigence and difficulties. If people would be but active, and exert every power, they might certainly pay, and be in easy circumstances; and the people are disposed to do so; — I mean the good part of the community, which, I trust, is the greater part of it.

Were the money to be paid into our treasury first, instead of recommitting it to the Continental treasury, we should apply it to discharge our own pressing demands; by which means, a very small proportion of it would be paid to Congress. And if the tax were to be laid and collected by the several states, what would be the consequence? Congress must depend upon twelve funds for its support. The general government must depend on the contingency of succeeding {85} succeeding in twelve different applications to twelve different bodies. What a slender and precarious dependence would this be! The states, when called upon to pay these demands of Congress, would fail; they would pay every other demand before those of Congress. They have hitherto done it. Is not this a true statement of facts? How is it with the Continental treasury? The true answer to this question must hurt every friend to his country.

I came in late; but I believe that a gentleman (Governor Johnston) said, that if the states should refuse to pay requisitions, and the Continental officers were sent to collect, the states would be degraded, and the people discontented, I believe this Would be the case. The states, by acting dishonestly, would appear in the most odious light; and the people would be irritated at such an

application, after a rejection by their own legislature. But if the taxes were to be raised of individuals, I believe they could, without any difficulty, be paid in due time.

But, sir, the United States wish to be established and known among other nations. This will be a matter of great utility to them. We might then form advantageous connections. When it is once known among foreign nations that our general government and our finances are upon a respectable footing, should emergencies happen, we can borrow money of them without any disadvantage, The lender would be sure of being reimbursed in time. This matter is of the highest consequence to the United States, Loans must be recurred to sometimes. In case of war they would be necessary. All nations borrow money on pressing occasions.

The gentleman who was last up mentioned many specific articles which could be paid by the people in discharge of their taxes. He has, I think, been fully answered. He must see the futility of such a mode. When our wants would be greatest, these articles would be least productive; I mean in time of war. But we still have means; such means as honest and assiduous men will find. He says that Congress cannot lay the tax to suit us. He has forgotten that Congress are acquainted with us — go from us — are situated like ourselves. I will be bold to say, it will be most their own interest to behave with moderation. Their own interest will prompt them to lay {86} taxes moderately; and nothing but the last necessity will urge them to recur to that expedient.

This is a most essential clause. Without money, government will answer no purpose. Gentlemen compare this to a foreign tax. It is by no means the case. It is laid by ourselves. Our own representatives lay it, and will, no doubt, use the most easy means of raising it, possible. Why not trust our own representatives? We might, no doubt, have confidence in them on this occasion, as well as every other. If the Continental treasury is to depend on the states, as usual, it will be always poor. But gentlemen are jealous, and unwilling to trust government, though they are their own representatives. Their maxim is, Trust them with no power. This holds against all government. Anarchy will ensue if government be not trusted. I think that I know the Sentiments of the honest, industrious part of the community, as well as any gentleman in this house. They wish to discharge these debts, and are able. If they can raise the interest of the public debt, it is sufficient. They will not be called upon for more than the interest, till such time as the country be rich and populous. The principal can then be paid with great facility.

We can borrow money with ease, and on advantageous terms, when it shall be known that Congress will have that power which all governments ought to have. Congress will not pay their debts in paper money. I am willing to trust this article to Congress, because I have no reason to think that our government will be better than it has been. Perhaps I have spoken too liberally of the legislature before: but I do not expect that they will ever, without a radical change of men and measures, wish to put the general government on a better footing. It is not the poor man who opposes the payment of those just debts to which we owe our independence and political existence, but the rich miser. Not the poor, but the rich, shudder at the idea of taxes. I have no dread that Congress will distress us; nor have I any fear that the tax will be embezzled by officers. Industry and economy will be promoted, and money will be easier got than ever it has been yet. The taxes will be paid by the people when called upon. I trust that all honest, industrious people will think, with me, that Congress ought to be possessed of the power of applying immediately to the {87} people for its support, without the interposition of the state

legislatures. I have no confidence in the legislature: the people do not suppose them to be honest men.

**Mr. STEELE**

was decidedly in favor of the clause. A government without revenue he compared to a poor, forlorn; dependent individual, and said that the one would be as helpless and contemptible as the other. He wished the government of the Union to be on a respectable footing. Congress, he said, showed no disposition to tax us — that it was well known that a poll tax of eighteen pence per poll, and six pence per hundred acres of land, was appropriated and offered by the legislature to Congress — that Congress was solicited to send the officers to collect those taxes, but they refused — that if this power was not given to Congress, the people must be oppressed, especially in time of war — that, during the last war, provisions, horses, &c., had been taken from the people by force, to supply the wants of government — that a respectable government would not be under the necessity of recurring to such unwarrantable means — that such a method was unequal and oppressive to the last degree. The citizens, whose property was pressed from them, paid all the taxes; the rest escaped. The press-masters went often to the poorest, and not to the richest citizens, and took their horses, &c. This disabled them from making a crop the next year. It would better, he said, to lay the public burdens equally upon the people. Without this power, the other powers of Congress would be nugatory. He added, that it would, in his opinion, give strength and respectability to the United States in time of war, would promote industry and frugality, and would enable the government to protect and extend commerce, and consequently increase the riches and population of the country.

**Mr. JOSEPH M'DOWALL.**

Mr. Chairman, this is a power that I will never agree to give up from the hands of the people of this country. We know that the amount of the imposts will be trifling, and that the expenses of this government will be very great; consequently the taxes will be very high. The tax-gatherers will be sent, and our property will be wrested out of our hands. The Senate is most dangerously constructed. Our only security is the House of Representatives. They may be continued at Congress {88} eight or ten years. At such a distance from their homes, and for so long a time, they will have no feeling for, nor any knowledge of, the situation of the people. If elected from the seaports, they will not know the Western part of the country, and vice versa. Two coöperative powers cannot exist together. One must submit. The inferior must give up to the superior. While I am up, I will say something to what has been said by the gentleman to ridicule the General Assembly. He represents the legislature in a very opprobrious light. It is very astonishing that the people should choose men of such characters to represent them. If the people be virtuous, why should they put confidence in men of a contrary disposition? As to paper money, it was the result of necessity. We were involved in a great war. What money had been in the country was sent to other parts of the world. What would have been the consequence if paper money had not been made? We must have been undone. Our political existence must have been destroyed. The extreme scarcity of specie, with other good causes, particularly the solicitation of the officers to receive it at its nominal value, for their pay, produced subsequent emissions. He tells us that all the people wish this power to be given — that the mode of payment need only be pointed out, and that they will willingly pay. How are they to raise the money? Have they it in their chests?

Suppose, for instance, there be a tax of two shillings per hundred laid on land; where is the money to pay it? We have it not. I am acquainted with the people. I know their situation. They have no money. Requisitions may yet be complied with. Industry and frugality may enable the people to pay moderate taxes, if laid by those who have a knowledge of their situation, and a feeling for them. If the tax-gatherers come upon us, they will, like the locusts of old; destroy us. They will have pretty high salaries, and exert themselves to oppress us. When we consider these things, we should be cautious. They will be weighed, I trust, by the House. Nothing said by the gentlemen on the other side has obviated my objections.

**Gov. JOHNSTON.**

Mr. Chairman, the gentleman who was last up, still insists on the great utility which would result from that mode which has hitherto been found ineffectual. It is amazing that past experience will not instruct him. When a merchant follows a similar mode, — when he {89} purchases dear and sells cheap, — he is called a swindler, and must soon become a bankrupt. This state deserves that most disgraceful epithet. We are swindlers; we gave three pounds per hundred weight for tobacco, and sold it three dollars per hundred weight, after having paid very considerable expenses for transporting and keeping it. The United States are bankrupts. They are considered such in every part of the world. They borrow money, and promise to pay: they have it not in their power, and they are obliged to ask of the people, whom they owe, to lend them money to pay the very interest. This is disgraceful and humiliating. By these means we are paying compound interest. No private fortune, however great, — no estate, however affluent, — can stand this most destructive mode. This has proceeded from the inefficacy of requisitions. Shall we continue the same practice? Shall we not rather struggle to get over our misfortunes? I hope we shall.

Another member, on the same side, says that it is improper to take the power of taxation out of the hands of the people. I deny that it is taken out of their hands by this system. Their immediate representatives lay these taxes. Taxes are necessary for every government. Can there be any danger when these taxes are laid by the representatives of the people? If there be, where can political safety be found? But it is said that we have a small proportion of that representation. Our proportion is equal to the proportion of money we shall have to pay. It is therefore a full proportion; and unless we suppose that all the members of Congress shall combine to ruin their constituents, we have no reason to fear. It is said (I know not from what principle) that our representatives will be taken from the seacoast, and will not know in what manner to lay the tax to suit the citizens of the western part of the country. I know not whence that idea arose. The gentlemen from the westward are not precluded from voting for representatives. They have it, therefore, in their power to send them from the westward, or the middle part of the state. They are more numerous, and can send them, or the greater part of them. I do not doubt but they will send the most proper, and men in whom they can put confidence, and will give them, from time to time, instructions to enlighten their minds.

{90} Something has been said with regard to their paper money. I think very little can be done in favor of it; much may be said, very justly, in favor of it.

Every man of property — every man of considerable transactions, whether a merchant, planter, mechanic, or of any other condition — must have felt the baneful influence of that currency. It

gave us relief for a moment. It assisted us in the prosecution of a bloody war. It is destructive, however, in general, in the end. It was struck, in the last instance, for the purpose of paying the officers and soldiers. The motive was laudable.

I then thought, and still do, that those gentlemen might have had more advantage by not receiving that kind of payment. It would have been better for them, and for the country, had it not been emitted. We have involved ourselves in a debt of £200,000. We have not, with this sum, honestly and fairly paid £50,000. Was this right? But say they, there was no circulating medium. This want was necessary to be supplied. It is a doubt with me whether the circulating medium be increased by an emission of paper currency. Before the emission of the paper money, there was a great deal of hard money among us. For thirty years past, I had not known so much specie in circulation as we had at the emission of paper money, in 1783. That medium was increasing daily. People from abroad bring specie; for, thank God, our country produces articles which are every where in demand. There is more specie in the country than is generally imagined; but the proprietors keep it locked up. No man will part with his specie. It lies in his chest. It is asked, Why not lend it out? The answer is obvious that, should he once let it get out of his power, he never can recover the whole of it. If he bring suit, he will obtain a verdict for one half of it. This is the reason of our poverty. The scarcity of money must be, in some degree, owing to this; and the specie which is now in this country might as well be in any other part of the world. If our trade was once on a respectable footing, we should find means of paying that enormous debt.

Another observation was made, which has not yet been answered, viz., that the demands of the United States will be smaller than those of the states, for this reason — the United States will only make a demand of the interest of the public debts; the states must demand both principal and interest; {91} for I presume no state can, on an emergency, produce, without the aid of individuals, a sum sufficient for that purpose; but the United States can borrow, on the credit of the funds arising from their power of laying taxes, such sums as will be equal to the emergency.

There will be always credit given, where there is good security. No man, who is not a miser, will hesitate to trust where there is a respectable security; but credulity itself would not trust where there was no kind of security, but an absolute certainty of losing. Mankind wish to make their money productive; they will therefore lend it where there is a security and certainty of recovering it, and no longer keep it hoarded in strong boxes.

This power is essential to the very existence of the government. Requisitions are fruitless and idle. Every expedient proposed as an alternative, or to qualify this power, is replete with inconvenience. It appears to me, therefore, upon the whole, that this article stands much better, as it is, than in any other manner.

**Mr. IREDELL.**

Mr Chairman, I do not presume to rise to discuss this clause, after the very able, and, in my opinion, unanswerable arguments which have been urged in favor of it; but merely to correct an error which fell from a respectable member (Mr. M'Dowall) on the other side.

It was, that Congress, by interfering with the mode of elections, might continue themselves in office. I thought that this was sufficiently explained yesterday. There is nothing in the Constitution to empower Congress to continue themselves longer than the time specified. It says, expressly, that the House of Representatives shall consist of members chosen for two years, and that the Senate shall be composed of senators chosen for six years. At the expiration of these terms, the right of election reverts to the people and the states; nor is there any thing in the Constitution to warrant a contrary supposition. The clause alluded to has no reference to the duration of members in Congress, but merely as to the time and manner of:their election.

Now that I am up, I beg leave to take notice of a suggestion, that Congress could as easily borrow money when they had the ultimate power of laying taxes, as if they possessed it in the first instance. I entirely differ from that {92} opinion. Had Congress the immediate power, there would be no doubt the money would be raised. In the other mode, doubts might be entertained concerning it. For can any man suppose that if, for any reasons, the state legislatures did not think proper to pay their quotas, and Congress should be compelled to lay taxes, it would not raise alarms in the state? Is it not reasonable the people would be more apt to side with their state legislature, who indulged them, than with Congress, who imposed taxes upon them? They would say, "Had we been able to pay, our state legislature would have raised the money. They know and feel for our distresses; but Congress have no regard for our situation, and have imposed taxes on us we are unable to bear." This is, sir, what would probably happen. Language like this would be the high road to popularity. In all countries, particularly in free ones, there are many ready to catch at such opportunities of making themselves of consequence with the people. General discontent would probably ensue, and a serious quarrel take place between the general and the state governments. Foreigners, who would view our situation narrowly before they lent their money, would certainly be less willing to risk it on such contingencies as these, than if they knew there was a direct fund for their payment, from which no ill consequences could be apprehended. The difference between those who are able to borrow, and those who are not, is extremely great. Upon a critical emergency, it may be impossible to raise the full sum wanted immediately upon the people. In this case, if the public credit is good, they may borrow a certain sum, and raise for the present only enough to pay the interest, deferring the payment of the principal till the public is more able to bear it. In the other cases where no money can be borrowed, there is no resource, if the whole sum cannot be raised immediately. The difference, perhaps, may be stated as twenty to one. A hundred thousand pounds, therefore, may be wanted in the one case; five thousand pounds may be sufficient, for the present, in the other. Sure this is a difference of the utmost moment. I should not have risen at all, were it not for the strong impression which might have been made by the error committed by the worthy gentleman on the other side. I hope I shall be excused for the time I have taken up with the additional matter, though it was only stating what had been urged with great propriety before.

**Mr. GOUDY.**

Mr. Chairman, this is a dispute whether Congress shall have great, enormous powers. I am not able to follow these learned gentlemen through all the labyrinths of their oratory. Some represent us as rich, and not honest; and others again represent us as honest, and not rich. We have no gold or silver, no substantial money, to pay taxes with. This clause, with the clause of elections, will totally destroy our liberties. The subject of our consideration therefore is, whether it be proper to

give any man, or set of men, an unlimited power over our purse, without any kind of control. The purse-strings are given up by this clause. The sword is also given up by this system. Is there no danger in giving up both? There is no danger, we are told. It may be so; but I am jealousy and suspicious of the liberties of mankind. And if it be a character which no man wishes but myself, I am willing to take it. Suspicions, in small communities, are a pest to mankind; but in a matter of this magnitude, which concerns the interest of millions yet unborn, suspicion is a very noble virtue. Let us see, therefore, how far we give power; for when it is once, given, we cannot take it away. It is said that those who formed this Constitution were great and good men. We do not dispute it. We also admit that great and learned people have adopted it. But I have a judgment of my own; and, though not so well informed always as others, yet I will exert it when manifest danger presents itself. When the power of the purse and the sword is given up, we dare not think for ourselves. In case of war, the last man and the last penny would be extorted from us. That the Constitution has a tendency to destroy the state governments, must be clear to every man of common understanding. Gentlemen, by their learned arguments, endeavor to conceal the danger from us. I have no notion of this method of evading arguments, and of clouding them over with rhetoric, and, I must say, sophistry too. But I hope no man will be led astray with them.

#### **Gov. JOHNSTON**

observed, that if any sophistical arguments had been made use of, they ought to be pointed out; and nobody could doubt that it was in the power of a learned divine (alluding to Mr. Caldwell) to show their sophistry.

Gov. Johnston, being informed of his mistake in taking Mr. Goudy for Mr. Caldwell, apologized for it.

#### **Mr. PORTER.**

Mr. Chairman, I must say that I think the gentleman East up was wrong; for the other gentleman was, in my opinion, right. This is a money clause. I would fain know: whence this power originates. I have heard it said that the legislature were villains, and that this power was to be exercised by the representatives of the people. When a building is raised, it should be on solid ground. Every gentleman must agree that we should not build a superstructure on a foundation of villains. Gentlemen say that the mass of the people are honest. I hope gentlemen will consider that we should build the structure on the people, and not on the representatives of the people. Agreeably to the gentleman's argument, (Mr Hill,) our representatives will be mere villains. I expect that very learned arguments, and powerful oratory, will be displayed on this occasion. I expect that the great cannon from Halifax (meaning Mr Davie) will discharge fire-balls among us; but large batteries are often taken by small arms.

#### **Mr. BLOODWORTH**

wished that gentlemen would desist from making personal reflections. He was of opinion that it was wrong to do so, and incompatible with their duty to their constituents; that every man had a right to display his abilities, and he hoped they would no longer reflect upon one another.

**From the 2d to the 8th clause read without any observation.**

**9th clause read**

Several members wished to hear an explanation of this clause. Mr. MACLAINE looked upon this as a very valuable part of the Constitution, because it consulted the ease and convenience of the people at large; for that, if the Supreme Court were at one fixed place, and no other tribunals established, nothing could possibly be more injurious; that it was therefore necessary that Congress should have power to constitute tribunals in different states, for the trial of common causes, and to have appeals to the Supreme Court in matters of more magnitude — that that was his idea, but, if not satisfactory, he trusted other gentlemen would explain it — that it would be more explained when they came to the judiciary.

**The 10th and 11th clauses read without any observation.**

**12th clause read.**

**Mr. IREDELL.**

Mr. Chairman, this clause is of so much importance, that we ought to consider it with the most serious attention. It is a power vested in Congress, which, in my opinion, is absolutely indispensable; yet there have been, perhaps, more objections made to it than any other power vested in Congress. For my part, I will observe generally that, so far from being displeased with that jealousy and extreme caution with which gentlemen consider every power proposed to be given to this government, they give me the utmost satisfaction.

I believe the passion for liberty is stronger in America than in any other country in the world. Here every man is strongly impressed with its importance, and every breast glows for the preservation of it. Every jealousy, not incompatible with the indispensable principles of government, is to be commended; but these principles must at all events be observed. The powers of government ought to be competent to the public safety. This, indeed, is the primary object of all governments. It is the duty of gentlemen who form a constitution to take care that no power should be wanting which the safety of the community requires. The exigencies of the country must be provided for, not only in respect to common and usual cases, but for occasions which do not frequently occur. If such a provision is not made, critical occasions may arise, when there must be either a usurpation of power, or the public safety eminently endangered; for, besides the evils attending a frequent change of a constitution, the case may not admit of so slow a remedy. In considering the powers that ought to be vested in any government, possible abuses ought not to be pointed out, without at the same time considering their use. No power, of any kind or degree, can be given but what may be abused; we have, therefore, only to consider whether any particular power is absolutely necessary. If it be, the power must be given, and we must run the risk of the abuse, considering our risk of this evil as one of the conditions of the imperfect state of human nature, where there is no good without the mixture of some evil. At the same time, it is undoubtedly our duty to guard against abuses as much as possible. In America, we enjoy peculiar blessings; the people are distinguished by the possession of freedom in a very high degree, unmixed with those oppressions the freest countries {96} in Europe suffer. But we

ought to consider that in this country, as well as in others, it is equally necessary to restrain and suppress internal commotions, and to guard against foreign hostility. There is, I believe, no government in the world without a power to raise armies. In some countries in Europe, a great force is necessary to be kept up, to guard armies maintained by many against those numerous sovereigns there, where an army belonging to one government alone sometimes amounts to two hundred thousand or four hundred thousand men. Happily, we are situated at a great distance from them, and the inconsiderable power to the north of us is not likely soon to be very formidable. But though our situation places us at, a remote danger, it cannot be pretended we are in no danger at all. I believe there is: no man who has written on this subject, but has admitted that this power of raising armies is necessary in time of war; but they do not choose to admit of it in a time of peace. It is to be hoped that, in time of peace, there will not be occasion, at any time, but for a very small number of forces; possibly, a few garrisons may be necessary to guard the frontiers, and an insurrection like that lately in Massachusetts might require some troops. But a time of war is the time when the power would probably be exerted to any extent. Let us, however, consider the consequences of a limitation of this power to a time of war only. One moment's consideration will show the impolicy of it, in the most glaring manner. We certainly ought to guard against the machinations of other countries. We know not what designs may be entertained against us; but surely, when known, we ought to endeavor to counteract their effects. Such designs may be entertained in a time of profound peace, as well as after a declaration of war. Now, suppose, for instance, our government had received certain intelligence that the British government had formed a scheme to attack New York, next April, with ten thousand men; would it not be proper immediately to prepare against it? — and by so doing the scheme might be defeated. But if Congress had no such power, because it was a time of peace, the place must fall the instant it was attacked; and it might take years to recover what might at first have been seasonably defended. This restriction, therefore, cannot take place with safety to the community, and the power {97} must of course be left to the direction of the general government. I hope there will be little necessity for the exercise of this power; and I trust that the universal resentment and resistance of the people will meet every attempt to abuse this or any other power. That high spirit for which they are distinguished, I hope, will ever exist; and it probably will as long as we have a republican form of government. Every man feels a consciousness of a personal equality and independence. Let him look at any part of the continent, — he can see no superiors. This personal independence is the surest safeguard of the public freedom. But is it probable that our own representatives, chosen for a limited time, can be capable of destroying themselves, their families and fortunes, even if they have no regard to their public duty? When such considerations are involved, surely it is very unlikely that they will attempt to raise an army against the liberties of their country. Were we to establish an hereditary nobility, or a set of men who were to have exclusive privileges, then, indeed, our jealousy might be well grounded. But, fortunately, we have no such. The restriction contended for, of no standing army in time of peace, forms a part of our own state Constitution. What has been the consequence? In December, 1786, the Assembly flagrantly violated it, by raising two hundred and one men, for two years, for the defence of Davidson county. I do not deny that the intention might have been good, and that the Assembly really thought the situation of that part of the country required such a defence. But this makes the argument still stronger against the ira policy of such a restriction, since our own experience points out the danger resulting from it: for I take it for granted, that we could not at that time be said to be in a state of war. Dreadful might the condition of this country be without this power. We must trust our friends or trust our enemies.

There is one restriction on this power, which I believe is the only one that ought to be put upon it.

Though Congress are to have the power of raising and supporting armies, yet they cannot appropriate money for that purpose for a longer time than two years. Now, we will suppose that the majority of the two houses should be capable of making a bad use of this power, and should appropriate more money to raise an army than is necessary. {98} The appropriation, we have seen, cannot be constitutional for more than two years. Within that time it might command obedience. But at the end of the second year from the first choice, the whole House of Representatives must be re-chosen, and also one third of the Senate. The peoples being inflamed with the abuse of power of the old members, would turn them out with indignation. Upon their return home, they would meet the universal execrations of their fellow-citizens. Instead of the grateful plaudits of their country, so dear to every feeling mind, they would be treated with the utmost resentment and contempt; their names would be held in everlasting infamy; and their measures would be instantly reprobated and changed by the new members. In two years, a system of tyranny certainly could not succeed in the face of the whole people; and the appropriation could not be with any safety for less than that period. If it depended on an annual vote, the consequence might be, that, at a critical period, when military operations were necessary, the troops would not know whether they were entitled to pay or not, and could not safely act till they knew that the annual vote had passed. To refuse this power to the government, would be to invite insults and attacks from other nations. Let us not, for God's sake, be guilty of such indiscretion as to trust our enemies' mercy, but give, as is our duty, a sufficient power to government to protect their country, — guarding, at the same time, against abuses as well as we can. We well know what this country suffered by the ravages of the British army during the war. How could we have been saved but by an army? Without that resource we should soon have felt the miserable consequences; and this day, instead of having the honor — the greatest any people ever enjoyed — to choose a government which our reason recommends, we should have been groaning under the most intolerable tyranny that was ever felt. We ought not to think these dangers are entirely over. The British government is not friendly to us. They dread the rising glory of America. They tremble for the West Indies, and their colonies to the north of us. They have counteracted us on every occasion since the peace. Instead of a liberal and reciprocal commerce, they have attempted to confine us to a most narrow and ignominious one. Their pride is still irritated with the disappointment of their endeavors {99} to enslave us. They know that, on the record of history, their conduct towards us must appear in the most disgraceful light. Let it also appear, on the record of history, that America was equally wise and fortunate in peace as well as in war. Let it be said that, with a temper and unanimity unexampled, they corrected the vices of an imperfect government, and framed a new one on the basis of justice and liberty; that, though all did not concur in approving the particular structure of this government, yet that the minority peaceably and respectfully submitted to the decision of the greater number. This is a spectacle so great, that, if it should succeed, this must be considered the greatest country under heaven; for there is no instance of any such deliberate change of government in any other nation that ever existed. But how would it gratify the pride of our enemy to say, "We could not conquer you, but you have ruined yourselves. You have foolishly quarrelled about trifles. You are unfit for any government whatever. You have separated from us, when you were unable to govern yourselves, and you now deservedly feel all the horrors of anarchy." I beg pardon for saying so much. I did not intend it when I began. But the consideration of one of the most important parts

of the plan excited all my feelings on the subject. I speak without any affectation in expressing my apprehension of foreign dangers: the belief of them is strongly impressed on my mind. I hope, therefore, the gentlemen of the committee will excuse the warmth with which I have spoken. I shall now take leave of the subject. I flatter myself that gentlemen will see that this power is absolutely necessary, and must be vested somewhere; that it can be vested nowhere so well as in the general government; and that it is guarded by the only restriction which the nature of the thing will admit of.

**Mr. HARDIMAN**

desired to know, if the people were attacked or harassed in any part of the state, — if on the frontiers, for instance, — whether they must not apply to the state legislature for assistance.

Mr. IREDELL replied, that he admitted that application might be immediately made to the state legislature, and that, by the plan under consideration, the strength of the Union was to be exerted to repel invasions of foreign enemies and suppress domestic insurrections; and that the possibility of {100} an instantaneous and unexpected attack, in time of profound peace illustrated the danger of restricting the power of raising and supporting armies.

The rest of the 8th section read without any observation.

1st clause of the 9th section read.

**Mr. J. M'DOWALL**

wished to hear the reasons of this restriction.

**Mr. SPAIGHT**

answered, that there was a contest between the Northern and Southern States; that the Southern States, whose principal support depended on the labor of slaves, would not consent to the desire of the Northern States to exclude the importation of slaves absolutely; that South Carolina and Georgia insisted on this clause, as they were now in want of hands to cultivate their lands; that in the course of twenty years they would be fully supplied; that the trade would be abolished then, and that, in the mean time, some tax or duty might be laid on.

**Mr. M'DOWALL**

replied, that the explanation was just such as he expected, and by no means satisfactory to him, and that he looked upon it as a very objectionable part of the system.

**Mr. IREDELL.**

Mr. Chairman, I rise to express sentiments similar to those of the gentleman from Craven. For my part, were it practicable to put an end to the importation of slaves immediately, it would give me the greatest pleasure; for it certainly is a trade utterly inconsistent with the rights of

humanity, and under which great cruelties have been exercised. When the entire abolition of slavery takes place, it will be an event which must be pleasing to every generous mind, and every friend of human nature; but we often wish for things which are not attainable. It was the wish of a great majority of the Convention to put an end to the trade immediately; but the states of South Carolina and Georgia would not agree to it. Consider, then, what would be the difference between our present situation in this respect, if we do not agree to the Constitution, and what it will be if we do agree to it. If we do not agree to it, do we remedy the evil? No, sir, we do not. For if the Constitution be not adopted, it will be in the power of every state to continue it forever. They may or may not abolish it, at their discretion. But if we adopt the Constitution, the trade must cease after twenty years, if {101} Congress declare so, whether particular states please so or not; surely, then, we can gain by it. This was the utmost that could be obtained. I heartily wish more could have been done. But as it is, this government is nobly distinguished above others by that very provision. Where is there another country in which such a restriction prevails? We, therefore, sir, set an example of humanity, by providing for the abolition of this inhuman traffic, though at a distant period. I hope, therefore, that this part of the Constitution will not be condemned because it has not stipulated for what was impracticable to obtain.

**Mr. SPAIGHT**

further explained the clause. That the limitation of this trade to the term of twenty years was a compromise between the Eastern States and the Southern States. South Carolina and Georgia wished to extend the term. The Eastern States insisted on the entire abolition of the trade. That the state of North Carolina had not thought proper to pass any law prohibiting the importation of slaves, and therefore its delegation in the Convention did not think themselves authorized to contend for an immediate prohibition of it.

**Mr. IREDELL**

added to what he had said before, that the states of Georgia and South Carolina had lost a great many slaves during the war, and that they wished to supply the loss.

**Mr. GALLOWAY.**

Mr. Chairman, the explanation given to this clause does not satisfy my mind. I wish to see this abominable trade put an end to. But in case it be thought proper to continue this abominable traffic for twenty years, yet I do not wish to see the tax on the importation extended to all persons whatsoever. Our situation is different from the people to the north. We want citizens; they do not. Instead of laying a tax, we ought to give a bounty to encourage foreigners to come among us. With respect to the abolition of slavery, it requires the utmost consideration. The property of the Southern States consists principally of slaves. If they mean to do away slavery altogether, this property will be destroyed. I apprehend it means to bring forward manumission. If we must manumit our slaves, what country shall we send them to? It is impossible for us to be happy, if, after manumission, they are to stay among us.

**Mr. IREDELL.**

Mr. Chairman, the worthy gentleman, I believe, has misunderstood this clause, which runs in the following words: "The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person." Now, sir, observe that the Eastern States, who long ago have abolished slaves, did not approve of the expression *slaves*; they therefore used another, that answered the same purpose. The committee will observe the distinction between the two words *migration* and *importation*. The first part of the clause will extend to persons who come into this country as free people, or are brought as slaves. But the last part extends to slaves only. The word *migration* refers to free persons; but the word *importation* refers to slaves, because free people cannot be said to be imported. The tax, therefore, is only to be laid on slaves who are imported, and not on free persons who migrate. I further beg leave to say that the gentleman is mistaken in another thing. He seems to say that this extends to the abolition of slavery. Is there any thing in this Constitution which says that Congress shall have it in their power to abolish the slavery of those slaves who are now in the country? Is it not the plain meaning of it, that after twenty years they may prevent the future importation of slaves? It does not extend to those now in the country. There is another circumstance to be observed. There is no authority vested in Congress to restrain the states, in the interval of twenty years, from doing what they please. If they wish to prohibit such importation, they may do so. Our next Assembly may put an entire end to the importation of slaves.

**The rest of the 9th section read without any observation.**

**Article 2d, section 1st.**

**Mr. DAVIE.**

Mr. Chairman, I must express my astonishment at the precipitancy with which we go through this business. Is it not highly improper to pass over in silence any part of this Constitution which has been loudly objected to? We go into a committee to have a freer discussion. I am sorry to see gentlemen hurrying us through, and suppressing their objections, in order to bring them forward at an unseasonable hour. We are assembled here to deliberate { 103 } for our own common welfare, and to decide upon a question of infinite importance to our country. What is the cause of this silence and gloomy jealousy in gentlemen of the opposition? This department has been universally objected to by them. The most virulent invectives, the most opprobrious epithets, and the most indecent scurrility, have been used and applied against this part of the Constitution. It has been represented as incompatible with any degree of freedom. Why, therefore, do not gentlemen offer their objections now, that we may examine their force, if they have any? The clause meets my entire approbation. I only rise to show the principle on which it was formed. The principle is, the separation of the executive from the legislative — a principle which pervades all free governments. A dispute arose in the Convention concerning the reëligibility of the President. It was the opinion of the deputation from this state, that he should be elected for five or seven years, and be afterwards ineligible. It was urged, in support of this opinion, that the return of public officers into the common mass of the people, where they would feel the tone they had given to the administration of the laws, was the best security the public had for their good behavior; that it would operate as a limitation to his ambition, at the same time that it

rendered him more independent; that when once in possession of that office, he would move heaven and earth to secure his reëlection, and perhaps become the cringing dependant of influential men; that our opinion was supported by some experience of the effects of this principle in several of the states. A large and very respectable majority were of the contrary opinion. It was said that such an exclusion would be improper for many reasons; that if an enlightened, upright man had discharged the duties of the office ably and faithfully, it would be depriving the people of the benefit of his ability and experience, though they highly approved of him; that it would render the President less ardent in his endeavors to acquire the esteem and approbation of his country, if he knew that he would be absolutely excluded after a given period; and that it would be depriving a man of singular merit even of the rights of citizenship. It was also said, that the day might come, when the confidence of America would be put in one man, and that it might be dangerous to exclude such a man from the { 104 } service of his country. It was urged, likewise, that no undue influence could take place in his election; that, as he was to be elected on the same day throughout the United States, no man could say to himself, *I am to be the man*. Under these considerations, a large, respectable majority voted for it as it now stands. With respect to the unity of the executive, the superior energy and secrecy wherewith one person can act, was one of the principles on which the Convention went. But a more predominant principle was, the more obvious responsibility of one person. It was observed that, if there were a plurality of persons, and a crime should be committed, when their conduct came to be examined, it would be impossible to fix the fact on any one of them, but that the public were never at a loss when there was but one man. For these reasons, a great majority concurred in the unity, and reëligibility also, of the executive. I thought proper to show the spirit of the deputation from this state. However, I heartily concur in it as it now stands, and the mode of his election precludes every possibility of corruption or improper influence of any kind.

#### **Mr. JOSEPH TAYLOR**

thought it improper to object on every trivial case; that this clause had been argued on in some degree before, and that it would be a useless waste of time to dwell any longer upon it; that if they had the power of amending the Constitution, every part need not be discussed, as some were not objectionable; and that, for his own part, he would object when any essential defect came before the house.

#### **2d, 3d, and 4th clauses read.**

#### **Mr. J. TAYLOR**

objected to the power of Congress to determine the time of choosing the electors, and to determine the time of electing the President, and urged that it was improper to have the election on the same day throughout the United States; that Congress, not satisfied with their power over the time, place, and manner of elections of representatives, and over the time and manner of elections of senators, and their power of raising an army, wished likewise to control the election of the electors of the President; that by their army, and the election being on the same day in all the states, they might compel the electors to vote as they please.

#### **Mr. SPAIGHT**

answered, that the time of choosing the {105} electors was to be determined by Congress, for the sake of regularity and uniformity; that, if the states were to determine it, one might appoint it at one day, and another at another, &c.; and that the election being on the same day in all the states, would prevent a combination between the electors.

**Mr. IREDELL.**

Mr. Chairman, it gives me great astonishment to hear this objection, because I thought this to be a most excellent clause. Nothing is more necessary than to prevent every danger of influence. Had the time of election been different in different states, the electors chosen in one state might have gone from state to state, and conferred with the other electors, and the election might have been thus carried on under undue influence. But by this provision, the electors must meet in the different states on the same day, and cannot confer together. They may not even know who are the electors in the other states. There can be, therefore, no kind of combination. It is probable that the man who is the object of the choice of thirteen different states, the electors in each voting unconnectedly with the rest, must be a person who possesses, in a high degree, the confidence and respect of his country.

**Gov. JOHNSTON**

expressed doubts with respect to the persons by whom the electors were to be appointed. Some, he said, were of opinion that the people at large were to choose them, and others thought the state legislatures were to appoint them.

**Mr. IREDELL**

was of opinion that it could not be done with propriety by the state legislatures, because, as they were to direct the manner of appointing, a law would look very awkward, which should say, "They gave the power of such appointments to themselves."

**Mr. MACLAINE**

thought the state legislatures might direct the electors to be chosen in what manner they thought proper, and they might direct it to be done by the people at large.

**Mr. DAVIE**

was of opinion, that it was left to the wisdom of the legislatures to direct their election in whatever manner they thought proper.

**Mr. TAYLOR**

still thought the power improper with respect to the time of choosing the electors. This power appeared to him to belong properly to the state legislatures, {106} nor could he see any purpose it could answer but that of an augmentation of the congressional powers, which, he said, were too great already; that by this power they might prolong the elections to seven years, and that,

though this would be in direct opposition to another part of the Constitution, sophistry would enable them to reconcile them.

**Mr. SPAIGHT**

replied, that he was surprised that the gentleman objected to the power of Congress to determine the time of choosing the electors, and not to that of fixing the day of the election of the President; that the power in the one case could not possibly answer the purpose of uniformity without having it in the other; that the power, in both cases, could be exercised properly only by one general superintending power; that, if Congress had not this power, there would be no uniformity at all, and that a great deal of time would be taken up in order to agree upon the time.

**MONDAY, *July 28, 1788.***

**The 2d section of the 2d article read.**

**Mr. IREDELL.**

Mr. Chairman, this part of the Constitution has been much objected to. The office of superintending the execution of the laws of the Union is an office of the utmost importance. It is of the greatest consequence to the happiness of the people of America, that the person to whom this great trust is delegated should be worthy of it. It would require a man of abilities and experience; it would also require a man who possessed, in a high degree, the confidence of his country. This being the case, it would be a great defect, in forming a constitution for the United States, if it was so constructed that, by any accident, an improper person could have a chance to obtain that office. The committee will recollect that the President is to be elected by electors appointed by each state, according to the number of senators and representatives to which the state may be entitled in the Congress; that they are to meet on the same day throughout the states, and vote by ballot for two persons, one of whom shall not be an inhabitant of the same state with themselves. These votes are afterwards to be transmitted, under seal, to the seat of the general government. The person who has the greatest number of votes, if it be a majority of the whole, will be the President. If more than one have a majority, and equal votes, the House of Representatives {107} are to choose one of them. If none have a majority of votes, then the House of Representatives are to choose which of the persons they think proper, out of the five highest on the list. The person having the next greatest number of votes is to be the Vice-President, unless two or more should have equal votes, in which case the Senate is to choose one of them for Vice-President. If I recollect right, these are the principal characteristics. Thus, sir, two men will be in office at the same time; the President, who possesses, in the highest degree, the confidence of his country, and the Vice-President, who is thought to be the next person in the Union most fit to perform this trust. Here, sir, every contingency is provided for. No faction or combination can bring about the election. It is probable that the choice will always fall upon a man of experienced abilities and fidelity. In all human probability, no better mode of election could have been devised.

**The rest of the 1st section read without any observations.**

**2d section read.**

**Mr. IREDELL.**

## **GUN**

Mr. Chairman, I was in hopes that some other gentleman would have spoken to this clause. It conveys very important powers, and ought not to be passed by. I beg leave, in as few words as possible, to speak my sentiments upon it. I believe most of the governors of the different states have powers similar to those of the President. In almost every country, the executive has the command of the military forces. From the nature of the thing, the command of armies ought to be delegated to one person only. The secrecy, despatch, and decision, which are necessary in military operations, can only be expected from one person. The President, therefore, is to command the military forces of the United States, and this power I think a proper one; at the same time it will be found to be sufficiently guarded. A very material difference may be observed between this power, and the authority of the king of Great Britain under similar circumstances. The king of Great Britain is not only the commander-in-chief of the land and naval forces, but has power, in time of war, to raise fleets and armies. He has also authority to declare war. The President has not the power of declaring war by his own authority, nor that of raising fleets and armies. These powers are vested in other hands. The power of declaring war is expressly {108} given to Congress, that is, to the two branches of the legislature — the Senate, composed of representatives of the state legislatures, the House of Representatives, deputed by the people at large. They have also expressly delegated to them the powers of raising and supporting armies, and of providing and maintaining a navy.

With regard to the militia, it must be observed, that though he has the command of them when called into the actual service of the United States, yet he has not the power of calling them out. The power of calling them out is vested in Congress, for the purpose of executing the laws of the Union. When the militia are called out for any purpose, some person must command them; and who so proper as that person who has the best evidence of his possessing the general confidence of the people? I trust, therefore, that the power of commanding the militia, when called forth into the actual service of the United States, will not be objected to.

The next part, which says "that he may require the opinion in writing of the principal officers," is, in some degree, substituted for a council. He is only to consult them if he thinks proper. Their opinion is to be given him in writing. By this means he will be aided by their intelligence; and the necessity of their opinions being in writing, will render them more cautious in giving them, and make them responsible should they give advice manifestly improper. This does not diminish the responsibility of the President himself.

They might otherwise have colluded, and opinions have been given too much under his influence.

It has been the opinion of many gentlemen, that the President should have a council. This opinion, probably, has been derived from the example in England. It would be very proper for every gentleman to consider attentively whether that example ought to be imitated by us.

Although it be a respectable example, yet, in my opinion, very satisfactory reasons can be assigned for a departure from it in this Constitution.

It was very difficult, immediately on our separation from Great Britain, to disengage ourselves entirely from ideas of government we had been used to. We had been accustomed to a council under the old government, and took it for granted we ought to have one under the new. But examples {109} ought not to be implicitly followed; and the reasons which prevail in Great Britain for a council do not apply equally to us. In that country, the executive authority is vested in a magistrate who holds it by birthright. He has great powers and prerogatives, and it is a constitutional maxim, *that he can do no wrong*. We have experienced that he can do wrong, yet no man can say so in his own country. There are no courts to try him for any high crimes; nor is there any constitutional method of depriving him of his throne. If he loses it, it must be by a general resistance of his people, contrary to *forms* of law, as at the revolution which took place about a hundred years ago. It is, therefore, of the utmost moment in that country, that whoever is the instrument of any act of government should be personally responsible for it, since the king is not; and, for the same reason, that no act of government should be exercised but by the instrumentality of some person who can be accountable for it. Every thing, therefore, that the king does, must be by some *advice*, and the adviser of course answerable. Under our Constitution we are much happier.

No man has an authority to injure another with impunity. No man is better than his fellow-citizens, nor can pretend to any superiority over the meanest man in the country. If the President does a single act by which the people are prejudiced, he is punishable himself, and no other man merely to screen him. If he commits any misdemeanor in office, he is impeachable, removable from office, and incapacitated to hold any office of honor, trust, or profit. If he commits any crime, he is punishable by the laws of his country, and in capital cases may be deprived of his life. This being the case, there is not the same reason here for having a council which exists in England. It is, however, much to be desired, that a man who has such extensive and important business to perform should have the means of some assistance to enable him to discharge his arduous employment. The advice of the principal executive officers, which he can at all times command, will, in my opinion, answer this valuable purpose. He can at no time want advice, if he desires it. as the principal officers will always be on the spot. Those officers, from their abilities and experience, will probably be able to give as good, if not better, advice than any counsellors would do; and the solemnity of the advice in writing, {110} which must be preserved, would be a great check upon them.

Besides these considerations, it was difficult for the Convention to prepare a council that would be unexceptionable. That jealousy which naturally exists between the different states enhanced this difficulty. If a few counsellors were to be chosen from the Northern, Southern, or Middle States, or from a few states only, undue preference might be given to those particular states from which they should come. If, to avoid this difficulty, one counsellor should be sent from each state, this would require great expense, which is a consideration, at this time, of much moment, especially as it is probable that, by the method proposed, the President may be equally well advised without any expense at all.

We ought also to consider that, had he a council by whose advice he was bound to act, his responsibility, in all such cases, must be destroyed. You surely would not oblige him to follow their advice, and punish him for obeying it. If called upon on any occasion of dislike, it would be natural for him to say, "You know my council are men of integrity and ability: I could not act against their opinions, though I confess my own was contrary to theirs." This, sir, would be pernicious. In such a situation, he might easily combine with his council, and it might be impossible to fix a fact upon him. It would be difficult often to know whether the President or counsellors were most to blame. A thousand plausible excuses might be made, which would escape detection. But the method proposed in the Constitution creates no such embarrassment. It is plain and open. And the President will personally have the credit of good, or the censure of bad measures; since, though he may ask advice, he is to use his own judgment in following or rejecting it. For all these reasons, I am clearly of opinion that the clause is better as it stands than if the President were to have a council. I think every good that can be derived from the institution of a council may be expected from the advice of these officers, without its being liable to the disadvantages to which, it appears to me, the institution of a council would be.

## IMPEACH

Another power that he has is to grant **pardons, except in cases of impeachment**. I believe it is the sense of a great part of America, that this power should be exercised by their { 111 } governors. It is in several states on the same footing that it is here. It is the genius of a republican government that the laws should be rigidly executed, without the influence of favor or ill-will — that, when a man commits a crime, however powerful he or his friends may be, yet he should be punished for it; and, on the other hand, though he should be universally hated by his country, his real guilt alone, as to the particular charge, is to operate against him. This strict and scrupulous observance of justice is proper in all governments; but it is particularly indispensable in a republican one, because, in such a government, the law is superior to every man, and no man is superior to another. But, though this general principle be unquestionable, surely there is no gentleman in the committee who is not aware that there ought to be exceptions to it; because there may be many instances where, though a man offends against the letter of the law, yet peculiar circumstances in his case may entitle him to mercy. It is impossible for any general law to foresee and provide for all possible cases that may arise; and therefore an inflexible adherence to it, in every instance, might frequently be the cause of very great injustice. For this reason, such a power ought to exist somewhere; and where could it be more properly vested, than in a man who had received such strong proofs of his possessing the highest confidence of the people? This power, however, only refers to offences against the United States, and not against particular states. Another reason for the President possessing this authority, is this: it is often necessary to convict a man by means of his accomplices. We have sufficient experience of that in this country. A criminal would often go unpunished, were not this method to be pursued against him. In my opinion, till an accomplice's own danger is removed, his evidence ought to be regarded with great diffidence. If, in civil causes of property, a witness must be entirely disinterested, how much more proper is it he should be so in cases of life and death! This power is naturally vested in the President, because it is his duty to watch over the public safety; and as that may frequently require the evidence of accomplices to bring great offenders to justice, he ought to be intrusted with the most effectual means of procuring it.

I beg leave further to observe, that, for another reason, I {112} think there is a propriety in leaving this power to the general discretion of the executive magistrate, rather than to fetter it in any manner which has been proposed. It may happen that many men, upon plausible pretences, may be seduced into very dangerous measures against their country. They may aim, by an insurrection, to redress imaginary grievances, at the same time believing, upon false suggestions, that their exertions are necessary to save their country from destruction. Upon cool reflection, however, they possibly are convinced of their error, and clearly see through the treachery and villany of their leaders. In this situation, if the President possessed the power of pardoning, they probably would throw themselves on the equity of the government, and the whole body be peaceably broken up. Thus, at a critical moment, the President might, perhaps, prevent a civil war. But if there was no authority to pardon, in that delicate exigency, what would be the consequence? The principle of self-preservation would prevent their parting. Would it not be natural for them to say, "We shall be punished if we disband. Were we sure of mercy, we would peaceably part. But we know not that there is any chance of this. We may as well meet one kind of death as another. We may as well die in the field as at the gallows? I therefore submit to the committee if this power be not highly necessary for such a purpose.

We have seen a happy instance of the good effect of such an exercise of mercy in the state of Massachusetts, where, very lately, there was so formidable an insurrection. I believe a great majority of the insurgents were drawn into it by false artifices. They at length saw their error, and were willing to disband. Government, by a wise exercise of lenity, after having shown its power, generally granted a pardon; and the whole party were dispersed. There is now as much peace in that country as in any state in the Union.

A particular instance which occurs to me shows the utility of this power very strongly. Suppose we were involved in war. It would be then necessary to know the designs of the enemy. This kind of knowledge cannot always be procured but by means of spies — a set of wretches whom all nations despise, but whom all employ; and, as they would assuredly be used against us, a principle of self-defence would urge and justify the use of them on our part. {113} Suppose, therefore, the President could prevail upon a man of some importance to go over to the enemy, in order to give him secret information of his measures. He goes off privately to the enemy. He feigns resentment against his country for some ill usage, either real or pretended, and is received, possibly, into favor and confidence. The people would not know the purpose for which he was employed. In the mean time, he secretly informs the President of the enemy's designs, and by this means, perhaps, those designs are counteracted, and the country saved from destruction. After his business is executed, he returns into his own country, where the people, not knowing he had rendered them any service, are naturally exasperated against him for his supposed treason. I would ask any gentleman whether the President ought not to have the power of pardoning this man. Suppose the concurrence of the Senate, or any other body, was necessary; would this obnoxious person be properly safe? We know in every country there is a strong prejudice against the executive authority. If a prejudice of this kind, on such an occasion, prevailed against the President, the President might be suspected of being influenced by corrupt motives, and the application in favor of this man be rejected. Such a thing might very possibly happen when the prejudices of party were strong; and therefore no man, so clearly entitled as in the case I have supposed, ought to have his life exposed to so hazardous a contingency.

## NOTE

The power of **impeachment** is given by this Constitution, to bring great offenders to punishment. It is calculated to bring them to punishment for crime which it is not easy to describe, but which every one must be convinced is a high crime and misdemeanor against the government. This power is lodged in those who represent the great body of the people, because the occasion **for its exercise will arise from acts of great injury to the community**, and the objects of it may be such as cannot be easily reached by an ordinary tribunal. The trial belongs to the Senate, lest an inferior tribunal should be too much awed by so powerful an accuser. After trial thus solemnly conducted, it is not probable that it would happen once in a thousand times, that a man actually convicted would be entitled to mercy; and if the President had the power of pardoning in such a case, this great check upon high officers of state would lose much of its influence. { 114 } It seems, therefore, proper that the general power of pardoning should be abridged in this particular instance. The punishment annexed to this conviction on **impeachment** can only be removal from office, and disqualification to hold any place of honor, trust, or profit. But the person convicted is further liable to a trial at **common law**, and may receive such common-law punishment as belongs to a description of such offences, if it be punishable by that law. I hope, for the reasons I have stated, that the whole of this clause will be approved by the committee. The regulations altogether, in my opinion, are as wisely contrived as they could be. It is impossible for imperfect beings to form a perfect system. If the present one may be productive of possible inconveniences, we are not to reject it for that reason, but inquire whether any other system could be devised which would be attended with fewer inconveniences, in proportion to the advantages resulting. But we ought to be exceedingly attentive in examining, and still more cautious in deciding, lest we should condemn what may be worthy of applause, or approve of what may be exceptionable. I hope that, in the explanation of this clause, I have not improperly taken up the time of the committee.

### Mr. MILLER

Acknowledged that the explanation of this clause by the member from Edenton had obviated some objections which he had to it; but still he could not entirely approve of it. He could not see the necessity of vesting this power in the President. He thought that his influence would be too great in the country, and particularly over the military, by being the commander-in-chief of the army, navy, and militia. He thought he could too easily abuse such extensive powers, and was of opinion that Congress ought to have power to direct the motions of the army. He considered it as a defect in the Constitution, that it was not expressly provided that Congress should have the direction of the motions of the army.

### Mr. SPAIGHT

answered, that it was true that the Command of the army and navy was given to the President; but that Congress, who had the power of raising armies, could certainly prevent any abuse of that authority in the President — that they alone had the means of supporting armies, and that the President was impeachable if he in any manner abused his trust. He was surprised that any { 115 } objection should be made to giving the command of the army to one man; that it was well known that the direction of an army could not be properly exercised by a numerous body of men; that

Congress had, in the last war, given the exclusive command of the army to the commander-in-chief, and that if they had not done so, perhaps the independence of America would not have been established.

**Mr. PORTER.**

Mr. Chairman, there is a power vested in the Senate and President to make treaties, which shall be the supreme law of the land. Which among us can call them to account? I always thought that there could be no proper exercise of power without the suffrage of the people; yet the House of Representatives has no power to intermeddle with treaties. The President and seven senators, as nearly as I can remember, can make a treaty which will be of great advantage to the Northern States, and equal injury to the Southern States. They might give up the rivers and territory of the Southern States. Yet, in the preamble of the Constitution, they say *all the people* have done it. I should be glad to know what power there is of calling the President and Senate to account.

**Mr. SPAIGHT**

answered that, under the Confederation, two thirds of the states might make treaties; that, if the senators from all the states attended when a treaty was about to be made, two thirds of the states would have a voice in its formation. He added, that he would be glad to ask the gentleman what mode there was of calling the present Congress to account.

**Mr. PORTER**

repeated his objection. He hoped that gentlemen would not impose on the house; that the President could make treaties with two thirds of the senate; that the President, in that case, voted rather in a legislative than in an executive capacity, which he thought impolitic.

**Gov. JOHNSTON.**

Mr. Chairman, in my opinion, if there be any difference between this Constitution and the Confederation, with respect to treaties, the Constitution is more safe than the Confederation. We know that two members from each state have a right, by the Confederation, to give the vote of that state, and two thirds of the states have a right also to make treaties. By this Constitution, two thirds of the senators cannot make treaties without the concurrence of the President. Here is, then, an additional {116} guard. The calculation that seven or eight senators, with the President, can make treaties, is totally erroneous. Fourteen is a quorum; two thirds of which are ten. It is upon the improbable supposition that they will not attend, that the objection is founded that ten men, with the President, can make treaties. Can it be reasonably supposed that they will not attend when the most important business is agitated — when the interests of their respective states are most immediately affected?

**Mr. MACLAINE**

observed, that the gentleman was out of order with his objection — that they had not yet come to the clause which enables the Senate and President to make treaties.

**The 2d clause of the 2d section read.**

**Mr. SPENCER.**

## **IMPEACH**

Mr. Chairman, I rise to declare my disapprobation of this, likewise. It is an essential article in our Constitution, that the legislative, the executive, and the supreme judicial powers, of government, ought to be forever separate and distinct from each other. The Senate, in the proposed government of the United States, are possessed of the legislative authority in conjunction with the House of Representatives. They are likewise possessed of the sole power of trying all **impeachments**, which, not being restrained to the officers of the United States, may be intended to include all the officers of the several states in the Union. And by this clause they possess the chief of the executive power; they are, in effect, to form treaties, which are to be the law of the land; and they have obviously, in effect, the appointment of all the officers of the United States. The President may nominate, but they have a negative upon his nomination, till he has exhausted the number of those he wishes to be appointed. He will be obliged, finally, to acquiesce in the appointment of those whom the Senate shall nominate, or else no appointment will take place. Hence it is easy to perceive that the President, in order to do any business, or to answer any purpose in this department of his office, and to keep himself out of perpetual hot water, will be under a necessity to form a connection with that powerful body, and be contented to put himself at the head of the leading members who compose it. I do not expect, at this day, that the outline and organization of this proposed government will be materially {117} altered. But I cannot but be of opinion that the government would have been infinitely better and more secure, if the President had been provided with a standing council, composed of one member from each of the states, the duration of whose office might have been the same as that of the President's office, or for any other period that might have been thought more proper; for it can hardly be supposed, if two senators can be sent from each state, who are fit to give counsel to the President, that one such cannot be found in each state qualified for that purpose. Upon this plan, one half the expense of the Senate, as a standing council to the President in the recess of Congress, would evidently be saved; each state would have equal weight in this council, as it has now in the Senate. And what renders this plan the more eligible is, that two very important consequences would result from it, which cannot result from the present plan. The first is, that the whole executive department, being separate and distinct from that of the legislative and judicial, would be amenable to the justice of the land: the President and his council, or either or any of them, might be impeached, tried, and condemned, for any misdemeanor in office. Whereas, on the present plan proposed, the Senate, who are to advise the President, and who, in effect, are possessed of the chief executive powers, let their conduct be what it will, are not amenable to the public justice of their country: if they may be impeached, there is no tribunal invested with jurisdiction to try them. It is true that the proposed Constitution provides that, when the President is tried, the chief justice shall preside. But I take this to be very little more than a farce. What can the Senate try him for? For doing that which they have advised him to do, and which, without their advice, he would not have done. Except what he may do in a military capacity — when, I presume, he will be entitled to be tried by a court martial of general officers — he can do nothing in the executive department without the advice of the Senate, unless it be to grant pardons, and adjourn the two Houses of Congress to some day to which they cannot agree to adjourn

themselves — probably to some term that may be convenient to the leading members of the Senate.

I cannot conceive, therefore, that the President can ever be tried by the Senate with any effect, or to any purpose, { 118 } for any misdemeanor in his office, unless it should extend to high treason, or unless they should wish to fix the odium of any measure on him, in order to exculpate themselves; the latter of which I cannot suppose will ever happen.

Another important consequence of the plan I wish had taken place is that, the office of the President being thereby-unconnected with that of the legislative, as well as the judicial, he would have that independence which is necessary to form the intended check upon the acts passed by the legislature before they obtain the sanction of laws. But, on the present plan, from the necessary connection of the President's office with that of the Senate, I have little ground to hope that his firmness will long prevail against the over-bearing power and influence of the Senate, so far as to answer the purpose of any considerable check upon the acts they may think proper to pass in conjunction with the House of Representatives; for he will soon find that, unless he inclines to compound with them, they can easily hinder and control him in the principal articles of his office. But, if nothing else could be said in favor of the plan of a standing council to the President, independent of the Senate, the dividing the power of the latter would be sufficient to recommend it; it being of the utmost importance towards the security of the government, and the liberties of the citizens under it. For I think it must be obvious to every unprejudiced mind, that the combining in the Senate the power of legislation, with a controlling share in the appointment of all the officers of the United States, (except those chosen by the people,) and the power of trying all **impeachments** that may be found against such officers, invests the Senate at once with such an enormity of power, and with such an overbearing and uncontrollable influence, as is incompatible with every idea of safety to the liberties of a free country, and is calculated to swallow up all other powers, and to render that body a despotic aristocracy.

#### **Mr. PORTER**

recommended the most serious consideration when they were about to give away power; that they were not only about to give away power to legislate or make laws of a supreme nature, and to make treaties, which might sacrifice the most valuable interests of the community, but to give a power to the general government to drag the inhabitants to any part of the world as long as they pleased; { 119 } that they ought not to put it in the power of any man, or any set of men, to do so; and that the representation was defective, being not a substantial, immediate representation. He observed that, as treaties were the supreme law of the land, the House of Representatives ought to have a vote in making them, as well as in passing them.

#### **Mr. J. M'DOWALL.**

Mr. Chairman: permit me, sir, to make a few observations, to show how improper it is to place so much power in so few men, without any responsibility whatever. Let us consider what number of them is necessary to transact the most important business. Two thirds of the members present, with the President, can make a treaty. Fourteen of them are a quorum, two thirds of which are ten. These ten may make treaties and alliances. They may involve us in any difficulties, and

dispose of us in any manner, they please. Nay, eight is a majority of a quorum, and can do every thing but make treaties. How unsafe are we, when we have no power of bringing those to an account! It is absurd to try them before their own body. Our lives and property are in the hands of eight or nine men. Will these gentlemen intrust their rights in this manner?

**Mr. DAVIE.**

Mr. Chairman, although treaties are mere conventional acts between the contracting parties, yet, by the law of nations, they are the supreme law of the land to their respective citizens or subjects. All civilized nations have concurred in considering them as paramount to an ordinary act of legislation. This concurrence is founded on the reciprocal convenience and solid advantages arising from it. A due observance of treaties makes nations more friendly to each other, and is the only means of rendering less frequent those mutual hostilities which tend to depopulate and ruin contending nations. It extends and facilitates that commercial intercourse, which, founded on the universal protection of private property, has, in a measure, made the world one nation.

The power of making treaties has, in all countries and governments, been placed in the executive departments. This has not only been grounded on the necessity and reason arising from that degree of secrecy, design, and despatch, which is always necessary in negotiations between nations, but to prevent their being impeded, or carried into effect, by the violence, animosity, and heat of parties, which too { 120 } often infect numerous bodies. Both of these reasons preponderated in the foundation of this part of the system. It is true, sir, that the late treaty between the United States and Great Britain has not, in some of the states, been held as the supreme law of the land. Even in this state, an act of Assembly passed to declare its validity. But no doubt that treaty was the supreme law of the land without the sanction of the Assembly; because, by the Confederation, Congress had power to make treaties. It was one of those original rights of sovereignty which were vested in them; and it was not the deficiency of constitutional authority in Congress to make treaties that produced the necessity of a law to declare their validity; but it was owing to the entire imbecility of the Confederation.

On the principle of the propriety of vesting this power in the executive department, it would seem that the whole power of making treaties ought to be left to the President, who, being elected by the people of the United States at large, will have their general interest at heart. But that jealousy of executive power which has shown itself so strongly in all the American governments, would not admit this improvement. Interest, sir, has a most powerful influence over the human mind, and is the basis on which all the transactions of mankind are built. It was mentioned before that the extreme jealousy of the little states, and between the commercial states and the non-importing states, produced the necessity of giving an equality of suffrage to the Senate. The same causes made it indispensable to give to the senators, as representatives of states, the power of making, or rather ratifying, treaties. Although it militates against every idea of just proportion that the little state of Rhode Island should have the same suffrage with Virginia, or the great commonwealth of Massachusetts, yet the small states would not consent to confederate without an equal voice in the formation of treaties. Without the equality, they apprehended that their interest would be neglected or sacrificed in negotiations. This difficulty could not be got over. It arose from the unalterable nature of things. Every man was convinced of

the inflexibility of the little states in this point. It therefore became necessary to give them an absolute equality in making treaties.

## IMPEACH

The learned gentleman on my right, (Mr. Spencer,) after { 121 } saying that this was an enormous power, and that blending the different branches of government was dangerous, said, that such accumulated powers were inadmissible, and contrary to all the maxims of writers. It is true, the great Montesquieu, and several other writers, have laid it down as a maxim not to be departed from, that the legislative, executive, and judicial powers should be separate and distinct. But the idea that these gentlemen had in view has been misconceived or misrepresented. An absolute and complete separation is not meant by them. It is impossible to form a government upon these principles. Those states who had made an absolute separation of these three powers their leading principle, have been obliged to depart from it. It is a principle, in fact, which is not to be found in any of the state governments. In the government of New York, the executive and judiciary have a negative similar to that of the President of the United States. This is a junction of all the three powers, and has been attended with the most happy effects. In this state, and most of the others, the executive and judicial powers are dependent on the legislature. Has not the legislature of this state the power of appointing the judges? Is it not in their power also to fix their compensation? What independence can there be in persons who are obliged to be obsequious and cringing for their office and salary? Are not our judges dependent on the legislature for every morsel they eat? It is not difficult to discern what effect this may have on human nature. The meaning of this maxim I take to be this — that the whole legislative, executive, and judicial powers should not be exclusively blended in any one particular instance. The Senate try **impeachments**. This is their only judicial cognizance. As to the ordinary objects of a judiciary — such as the decision of controversies, the trial of criminals, &c. — the judiciary is perfectly separate and distinct from the legislative and executive branches. The House of Lords, in England, have great judicial powers; yet this is not considered as a blemish in their constitution. Why? Because they have not the whole legislative power. Montesquieu, at the same time that he laid down this maxim, was writing in praise of the British government. At the very time he recommended this distinction of powers, he passed the highest eulogium on a constitution wherein they were all partially blended. So { 122 } that the meaning of the maxim, as laid down by him and other writers, must be, that these three branches must not be entirely blended in one body. And this system before you comes up to the maxim more completely than the favorite government of Montesquieu. The gentleman from Anson has said that the Senate destroys the independence of the President, because they must confirm the nomination of officers. The necessity of their interfering in the appointment of officers resulted from the same reason which produced the equality of suffrage. In other countries, the executive or chief magistrate, alone, nominates and appoints officers. The small states would not agree that the House of Representatives should have a voice in the appointment to offices; and the extreme jealousy of all the states would not give it to the President alone. In my opinion, it is more proper as it is than it would be in either of those cases. The interest of each state will be equally attended to in appointments, and the choice will be more judicious by the junction of the Senate to the President. Except in the appointments of officers, and making of treaties, he is not joined with them in any instance. He is perfectly independent of them in his election. It is impossible for human ingenuity to devise any mode of election better calculated to exclude undue influence. He is chosen by the electors appointed by

the people. He is elected on the same day in every state, so that there can be no possible combination between the electors. The affections of the people can be the only influence to procure his election. If he makes a judicious nomination, is it to be presumed that the Senate will not concur in it? Is it to be supposed the legislatures will choose the most depraved men in the states to represent them in Congress? Should he nominate unworthy characters, can it be reasonably concluded that they will confirm it? He then says that the senators will have influence to get themselves reëlected; nay, that they will be perpetually elected.

I have very little apprehension on this ground. I take it for granted that the man who is once a senator will very probably be out for the next six years. Legislative influence changes. Other persons rise, who have particular connections to advance them to office. If the senators stay six years out of the state governments, their influence will be {123} greatly diminished. It will be impossible for the most influential character to get himself reëlected after being out of the country so long. There will be an entire change in six years. Such futile objections, I fear, proceed from an aversion to any general system. The same learned gentleman says that it would be better, were a council, consisting of one from every state, substituted to the Senate. Another gentleman has objected to the smallness of this number. This shows the impossibility of satisfying all men's minds. I beg this committee to place these two objections together, and see their glaring inconsistency. If there were thirteen counsellors, in the manner he proposes, it would destroy the responsibility of the President. He must have acted also with a majority of them. A majority of them is seven, which would be a quorum. A majority of these would be four, and every act to which the concurrence of the Senate and the President is necessary could be decided by these four. Nay, less than a majority — even one — would suffice to enable them to do the most important acts. This, sir, would be the effect of this council. The dearest interests of the community would be trusted to two men. Had this been the case, the loudest clamors would have been raised, with justice, against the Constitution, and these gentlemen would have loaded their own proposition with the most virulent abuse.

On a due consideration of this clause, it appears that this power could not have been lodged as safely any where else as where it is. The honorable gentleman (Mr. M'Dowall) has spoken of a consolidation in this government. That is a very strange inconsistency, when he points out, at the same time, the necessity of lodging the power of making treaties with the representatives, where the idea of a consolidation can alone exist; and when he objects to placing it in the Senate, where the federal principle is completely preserved. As the Senate represents the sovereignty of the states, whatever might affect the states in their political capacity ought to be left to them. This is the certain means of preventing a consolidation. How extremely absurd is it to call that disposition of power a consolidation of the states, which must to all eternity prevent it! I have only to add the principle upon which the General Convention went — that the power of making treaties could nowhere be so safely {124} lodged as in the President and Senate; and the extreme jealousy subsisting between some of the states would not admit of it elsewhere. If any man will examine the operation of that jealousy, in his own breast, as a citizen of North Carolina, he will soon feel the inflexibility that results from it, and perhaps be induced to acknowledge the propriety of this arrangement.

**Mr, M'DOWALL**

declared, that he was of the same opinion as before, and that he believed the observations which the gentleman had made, on the apparent inconsistency of his remarks, would have very little weight with the committee; that giving such extensive powers to so few men in the Senate was extremely dangerous; and that he was not the more reconciled to it from its being brought about by the inflexibility of the small, pitiful states to the north. He supposed that eight members in the Senate from those states, with the President, might do the most important acts.

**Mr. SPAIGHT.**

Mr. Chairman, the gentleman objects to the smallness of the number, and to their want of responsibility. He argues as if the senators were never to attend, and as if the northern senators were to attend more regularly than those from the south. Nothing can be more unreasonable than to suppose that they will be absent on the most important occasions. What responsibility is there in the present Congress that is not in the Senate? What responsibility is therein our state legislature? The senators are as responsible as the members of our legislature. It is to be observed, that though the senators are not impeachable, yet the President is. He may be impeached and punished for giving his consent to a treaty, whereby the interest of the community is manifestly sacrificed.

**Mr. SPENCER.**

Mr. Chairman, the worthy gentleman from Halifax has endeavored to obviate my objections against the want of responsibility in the President and senators, and against the extent of their power. He has not removed my objections. It is totally out of their power to show any degree of responsibility. The executive is tried by his advisers. The reasons I urged are so cogent and strong with me, that I cannot approve of this clause. I can see nothing of any weight against them. [Here Mr. Spencer spoke so low that he could not distinctly be heard.] I would not give the President and senators power to make treaties, because it {125} destroys their responsibility. If a bad treaty be made, and he impeached for it, the Senate will not pronounce sentence against him, because they advised him to make it. If they had legislative power only, it would be unexceptionable; but when they have the appointment of officers, and such extensive executive powers, it gives them such weight as is inadmissible. Notwithstanding what gentlemen have said in defence of the clause, the influence of the Senate still remains equally formidable to me. The President can do nothing unless they concur with him. In order to obtain their concurrence, he will compromise with them. Had there been such a council as I mentioned, to advise him, the Senate would not have had such dangerous influence, and the responsibility of the President would have been secured. This seems obviously clear to be the case.

**Mr. PORTER.**

Mr. Chairman, I only rise to make one observation on what the gentleman has said. He told us, that if the Senate were not amenable, the President was. I beg leave to ask the gentleman if it be not inconsistent that they should punish the President, whom they advised themselves to do what he is impeached for. My objection still remains. I cannot find it in the least obviated.

**Mr. BLOODWORTH**

desired to be informed whether treaties were not to be submitted to the Parliament in Great Britain before they were valid.

**Mr. IREDELL.**

## **IMPEACH**

Mr. Chairman, the objections to this clause deserve great consideration. I believe it will be easy to obviate the objections against it, and that it will be found to have been necessary, for the reasons stated by the gentleman from Halifax, to vest this power in some body composed of representatives of states, where their voices should be equal; for in this case the sovereignty of the states is particularly concerned, and the great caution of giving the states an equality of suffrage in making treaties, was for the express purpose of taking care of that sovereignty, and attending to their interests, as political bodies, in foreign negotiations. It is objected to as improper, because, if the President or Senate should abuse their trust, there is not sufficient responsibility, since he can only be tried by the Senate, by whose advice he acted; and the Senate cannot be tried at all. I beg leave to observe that, when any man is impeached, it must be for an error of the heart, and not {126} of the head. God forbid that a man, in any country in the world, should be liable to be punished for want of judgment. This is not the case here. As to errors of the heart, there is sufficient responsibility. Should these be committed, there is a ready way to bring him to punishment. This is a responsibility which answers every purpose that could be desired by a people jealous of their liberty. I presume that, if the President, with the advice of the Senate, should make a treaty with a foreign power, and that treaty should be deemed unwise, or against the interest of the country, yet if nothing could be objected against it but the difference of opinion between them and their constituents, they could not justly be obnoxious to punishment. If they were punishable for exercising their own judgment, and not that of their constituents, no man who regarded his reputation would accept the office either of a senator or President. Whatever mistake a man may make, he ought not to be punished for it, nor his posterity rendered infamous. But if a man be a villain, and wilfully abuse his trust, he is to be held up as a public offender, and ignominiously punished. A public officer ought not to act from a principle of fear. Were he punishable for want of judgment, he would be continually in dread; but when he knows that nothing but real guilt can disgrace him, he may do his duty firmly, if he be an honest man; and if he be not, a just fear of disgrace may, perhaps, as to the public, have nearly the effect of an intrinsic principle of virtue. According to these principles, I suppose the only instances, in which the President would be liable to **impeachment**, would be where he had received a bribe, or had acted from some corrupt motive or other. If the President had received a bribe, without the privity or knowledge of the Senate, from a foreign power, and, under the influence of that bribe, had address enough with the Senate, by artifices and misrepresentations, to seduce their consent to a pernicious treaty, — if it appeared afterwards that this was the case, would not that Senate be as competent to try him as any other persons whatsoever? Would they not exclaim against his villany? Would they not feel a particular resentment against him, for being made the instrument of his treacherous purposes? In this situation, if any objection could be made against the Senate as a proper tribunal, it might more properly be made by the President himself, lest their resentment should operate too strongly, {127} rather than by the public, on the ground of a supposed partiality. The President must certainly be punishable for giving false information to the Senate. He is to regulate all intercourse with foreign powers, and it is his duty to impart to

thee Senate every material intelligence he receives. If it should appear that he has not given them full information, but has concealed important intelligence which he ought to have communicated, and by that means induced them to enter into measures injurious to their country, and which they would not have consented to had the true state of things been disclosed to them, — in this case, I ask whether, upon an **impeachment** for a misdemeanor upon such an account, the Senate would probably favor him. With respect to the impeachability of the Senate, that is a matter of doubt.

There have been no instances of **impeachment** for legislative misdemeanors; and we shall find, upon examination, that the inconveniences resulting from such **impeachments** would more than preponderate the advantages. There is no greater honor in the world than being the representative of a free people. There is no trust on which the happiness of the people has a greater dependence. Yet who ever heard of impeaching a member of the legislature for any legislative misconduct? It would be a great check on the public business, if a member of the Assembly was liable to punishment for his conduct as such. Unfortunately, it is the case, not only in other countries, but even in this, that division and differences in opinion will continually arise. On many questions there will be two or more parties. These often judge with little charity of each other, and attribute every opposition to their own system to an ill motive, We know this very well from experience; belt, in my opinion, this constant suspicion is frequently unjust. I believe, in general, both parties really think themselves right, and that the majority of each commonly act with equal innocence of intention. But, with the usual want of charity in these cases, how dangerous would it be to make a member of the legislature liable to **impeachment**! A mere difference of opinion might be interpreted, by the malignity of party, into a deliberate, wicked action.

It therefore appears to me at least very doubtful whether it would be proper to render the Senate impeachable at all; especially as, in the branches of executive government where {128} their concurrence is required, the President is the primary agents and plainly responsible, and they, in fact, are but a council to validate proper, or restrain improper, conduct in him; but if a senator is **impeachable**, it could only be for corruption, or some other wicked motive, in which case, surely those senators who had acted from upright motives would be competent to try him. Suppose there had been such a council as was proposed, consisting of thirteen, one from each state, to assist the President in making treaties, &c.; more general alarm would have been excited, and stronger opposition made to this Constitution, than even at present. The power of the President would have appeared more formidable, and the states would have lost one half of their security; since, instead of two representatives, which each has now for those purposes, they would have had but one. A gentleman from New Hanover has asked whether it is not the practice, in Great Britain, to submit treaties to Parliament, before they are esteemed as valid. The king has the sole authority, by the laws of that country, to make treaties. After treaties are made, they are frequently discussed in the two houses, where, of late years, the most important measures of government have been narrowly examined. It is usual to move for an address of approbation; and such has been the complaisance of Parliament for a long time, that this seldom hath been withheld. Sometimes they pass an act in conformity to the treaty made; but this, I believe, is not for the mere purpose of confirmation, but to make alterations in a particular system, which the change of circumstances requires. The constitutional power of making treaties is vested in the crown; and the power with whom a treaty is made considers it as binding, without any act of Parliament, unless an alteration by such is provided for in the treaty itself, which I believe is sometimes the case. When the treaty of peace was made in 1763, it contained

stipulations for the surrender of some islands to the French. The islands were given up, I believe, without any act of Parliament. The power of making treaties is very important, and must be vested somewhere, in order to counteract the dangerous designs of other countries, and to be able to terminate a war when it is begun. Were it known that our government was weak, two or more European powers might combine against us. Would it not be politic to have some power {129} in this country, to obviate this danger by a treaty? If this power was injudiciously limited, the nations where the power was possessed without restriction would have greatly the advantage of us in negotiation; and every one must know, according to modern policy, of what moment an advantage in negotiation is. The honorable member from Anson said that the accumulation of all the different branches of power in the Senate would be dangerous. The experience of other countries shows that this fear is without foundation. What is the Senate of Great Britain opposed to the House of Commons, although it be composed of an hereditary nobility, of vast fortunes, and entirely independent of the people Their weight is far inferior to that of the Commons. Here is a strong instance of the accumulation of powers of the different branches of government without producing any inconvenience. That Senate, sir, is a separate branch of the legislature, is the great constitutional council of the crown, and decides on lives and fortunes in **impeachments**, besides being the ultimate tribunal for trying controversies respecting private rights. Would it not appear that all these things should render them more formidable than the other house? Yet the Commons have generally been able to carry every thing before them. The circumstance of their representing the great body of the people, alone gives them great weight. This weight has great authority added to it, by their possessing the right (a right given to the people's representatives in Congress) of exclusively originating money bills. The authority over money will do every thing. A government cannot be supported without money. Our representatives may at any time compel the Senate to agree to a reasonable measure, by withholding supplies till the measure is consented to. There was a great debate, in the Convention. whether the Senate should have an equal power of originating money bills. It was strongly insisted, by some, that they should; but at length a majority thought it unadvisable, and the clause was passed as it now stands. I have reason to believe that our representatives had a great share in establishing this excellent regulation, and in my opinion they deserve the public thanks for it. It has been objected that this power must necessarily injure the people, inasmuch as a bare majority of the Senate might alone be assembled, and eight would be sufficient for a decision. This is on a supposition {130} that many of the senators would neglect attending. It is to be hoped that the gentlemen who will be honored with seats in Congress will faithfully execute their trust, as well in attending as in every other part of their duty. An objection of this sort will go against all government whatever. Possible abuse, and neglect of attendance, are objections which may be urged against any government which the wisdom of man is able to construct. When it is known of how much importance attendance is, no senator would dare to incur the universal resentment of his fellow-citizens by grossly absenting himself from his duty. Do gentlemen mean that it ought to have been provided, by the Constitution, that the whole body should attend before particular business was done? Then it would be in the power of a few men, by neglecting to attend, to obstruct the public business, and possibly bring on the destruction of their country. If this power be improperly vested, it is incumbent on gentlemen to tell us in what body it could be more safely and properly lodged.

I believe, on a serious consideration, it will be found that it was necessary, for the reasons mentioned by the gentleman from Halifax, to vest the power in the Senate, or in some other body

representing equally the sovereignty of the states, and that the power, as given in the Constitution, is not likely to be attended with the evils which some gentlemen apprehend. The only real security of liberty, in any country, is the jealousy and circumspection of the people themselves. Let them be watchful over their rulers. Should they find a combination against their liberties, and all other methods appear insufficient to preserve them, they have, thank God, an ultimate remedy. That power which created the government can destroy it. Should the government, on trial, be found to want amendments, those amendments can be made in a regular method, in a mode prescribed by the Constitution itself. Massachusetts, South Carolina, New Hampshire, and Virginia, have all proposed amendments; but they all concurred in the necessity of an immediate adoption. A constitutional mode of altering the Constitution itself is, perhaps, what has never been known among mankind before. We have this security, in addition to the natural watchfulness of the people, which I hope will never be found wanting. The objections I have answered deserved all possible attention; and for my part, I shall always {131} respect that jealousy which arises from the love of public liberty.

**Mr. SPENCER.**

Mr. Chairman, I think that no argument can be used to show that this power is proper. If the whole legislative body — if the House of Representatives do not interfere in making treaties, I think they ought at least to have the sanction of the whole Senate. The worthy gentleman last up has mentioned two cases wherein he supposes that **impeachments** will be fairly tried by the senators. He supposes a case where the President had been guilty of corruption, and by that means had brought over and got the sanction of two thirds of the senators; and that, if it should be afterwards found that he brought them over by artifices, they would be a proper body to try him. As they will be ready to throw the odium off their own shoulders on him, they may pronounce sentence against him. He mentions another case, where, if a majority was obtained by bribing some of the senators, those who were innocent might try those who were guilty. I think that these cases will happen but rarely in comparison to other cases, where the senators may advise the President to deviate from his duty, and where a majority of them may be guilty. And should they be tried by their own body when thus guilty, does not every body see the impropriety of it? It is universally disgraceful, odious, and contemptible, to have a trial where the judges are accessory to the misdemeanor of the accused. Whether the accusation against him be true or not, if afraid for themselves, they will endeavor to throw the odium upon him. There is an extreme difference between the case of trying this officer and that of trying their own members. They are so different, that I consider they will always acquit their own members; and if they condemn the President, it will be to exonerate themselves. It appears to me that the powers are too extensive, and not sufficiently guarded. I do not wish that an aristocracy should be instituted. An aristocracy may arise out of this government, though the members be not hereditary. I would therefore wish that every guard should be placed, in order to prevent it. I wish gentlemen would reflect that the powers of the Senate are so great in their legislative and judicial capacities, that, when added to their executive powers, particularly their interference in the appointment of all officers in the continent, they {132} will render their power so enormous as to enable them to destroy our rights and privileges. This, sir, ought to be strictly guarded against.

**Mr. IREDELL.**

Mr. Chairman, the honorable gentleman must be mistaken. He suggests that an aristocracy will arise out of this government. Is there any thing like an aristocracy in this government? This insinuation is uncandidly calculated to alarm and catch prejudices. In this government there is not the least symptom of an aristocracy, which is, where the government is in a select body of men entirely independent of the people; as, for instance, an hereditary nobility, or a senate for life, filling up vacancies by their own authority. Will any member of this government hold his station by any such tenure? Will not all authority flow, in every instance, directly or indirectly from the people? It is contended, by that gentleman, that the addition of the power of making treaties to their other powers, will make the Senate dangerous; that they would be even dangerous to the representatives of the people. The gentleman has not proved this in theory. Whence will he adduce an example to prove it? What passes in England directly disproves his assertion. In that country, the representatives of the people are chosen under undue influence; frequently by direct bribery and corruption. They are elected for seven years, and many of the members hold offices under the crown — some during pleasure, others for life. They are also not a genuine representation of the people, but, from a change of circumstances, a mere shadow of it. Yet, under these disadvantages, they having the sole power of originating money bills, it has been found that the power of the king and lords is much less considerable than theirs. The high prerogatives of the king, and the great power and wealth of the lords, have been more than once mentioned in the course of the debates. If, under such circumstances, such representatives, — mere shadows of representatives, — by having the power of the purse, and the sacred name of the people, to rely upon, are an overmatch for the king and lords, who have such great hereditary qualifications, we may safely conclude that our own representatives, who will be a genuine representation of the people, and having equally the right of originating money bills, will, at least, be a match for the Senate, possessing qualifications so inferior to those of the House of Lords in England.

It seems to be forgotten that the Senate is placed there for a very valuable purpose — as a guard against any attempt of consolidation. The members of the Convention were as much averse to consolidation as any gentleman on this floor; but without this institution, (I mean the Senate, where the suffrages of the states are equal,) the danger would be greater. There ought to be some power given to the Senate to counteract the influence of the people by their biennial representation in the other house, in order to preserve completely the sovereignty of the states. If the people, through the medium of their representatives, possessed a share in making treaties and appointing officers, would there not be a greater balance of power in the House of Representatives than such a government ought to possess? It is true that it would be very improper if the Senate had authority to prevent the House of Representatives from protecting the people. It would be equally so if the House of Representatives were able to prevent the Senate from protecting the sovereignty of the states. It is probable that either house would have sufficient authority to prevent much mischief. As to the suggestion of a tendency to aristocracy, it is totally groundless. I disdain every principle of aristocracy. There is not a shadow of an aristocratical principle in this government. The President is only chosen for four years — liable to be impeached and dependent on the people at large for his reelection. Can this mode of appointment be said to have an aristocratical principle in it? The Senate is chosen by the legislatures. Let us consider the example of other states, with respect to the construction of their Senate. In this point, most of them differ; though they almost all concur in this, that the term of election for senators is longer than that for representatives. The reason of this is, to introduce

stability into the laws, and to prevent that mutability which would result from annual elections of both branches. In New York, they are chosen for three years; in Virginia, they are chosen for four years; and in Maryland, they are chosen for five years. In this Constitution, although they are chosen for six years, one third go out every second year, (a method pursued in some of the state constitutions,) which at the same time secures stability to the laws, and a due dependence on the state legislatures. Will any man say that there are any aristocratical principles in a body who {134} have no power independent of the people, and whereof one third of the members are chosen, every second year, by a wise and select body of electors? I hope, therefore, that it will not be considered that there are any aristocratical principles in this government, and that it will be given up as a point not to be contended for. The gentleman contends that a council ought to be instituted in this case. One objection ought to be compared with another. It has been objected against the Constitution that it will be productive of great expense. Had there been a council, it would have been objected that it was calculated for creating new offices, and increasing the means of undue influence. Though he approves of a council, others would not. As to offices, the Senate has no other influence but a restraint on improper appointments. The President proposes such a man for such an office. The Senate has to consider upon it. If they think him improper, the President must nominate another, whose appointment ultimately again depends upon the Senate. Suppose a man nominated by the President; with what face would any senator object to him without a good reason? There must be some decorum in every public body. He would not say, "I do not choose this man, because a friend of mine wants the office." Were he to object to the nomination of the President, without assigning any reason, his conduct would be reprobated, and still might not answer his purpose. Were an office to be vacant, for which a hundred men on the continent were equally well qualified, there would be a hundred chances to one whether his friend would be nominated to it. This, in effect, is but a restriction on the President. The power of the Senate would be more likely to be abused were it vested in a council of thirteen, of which there would be one from each state. One man could be more easily influenced than two. We have therefore a double security. I am firmly of opinion that, if you take all the powers of the President and Senate together, the vast influence of the representatives of the people will preponderate against them in every case where the public good is really concerned.

**Mr. BLOODWORTH.**

Mr. Chairman, I confess I am sorry to take up any time. I beg leave to make a few observations; for it would be an Herculean task, and disagreeable to this committee, to mention every thing. It has {135} indeed been objected, and urged, that the responsibility of the Senate was not sufficient to secure the states. When we consider the length of the term for which they are elected, and the extent of their powers, we must be persuaded that there is no real security. A gentleman has said that the Assembly of North Carolina are rogues. It is, then, probable that they may be corrupted. In this case, we have not a sufficient check on those gentlemen who are gone six years. A parallel is drawn between them and the members of our Assembly; but if you reflect a moment, you will find that the comparison is not good. There is a responsibility in the members of the Assembly: at the end of a year they are liable to be turned out. This is not the case with the senators. I beg gentlemen to consider the extreme difference between the two cases. Much is said about treaties. I do not dread this so much as what will arise from the jarring interests of the Eastern, Southern, and the Middle States. They are different in soil, climate, customs, produce, and every thing. Regulations will be made evidently to the disadvantage of

some part of the community, and most probably to ours. I will not take up more of the time of the committee.

**3d clause of the 2d section of the 2d article read.**

**Mr. MACLAINE.**

It has been objected to this part, that the power of appointing officers was something like a monarchical power. Congress are not to be sitting at all times; they will only sit from time to time, as the public business may render it necessary. Therefore the executive ought to make temporary appointments, as well as receive ambassadors and other public ministers. This power can be vested nowhere but in the executive, because he is perpetually acting for the public; for, though the Senate is to advise him in the appointment of officers, &c., yet, during the recess, the President must do this business, or else it will be neglected; and such neglect may occasion public inconveniences. But there is an objection made to another part, that has not yet been read. His power of adjourning both houses, when they disagree, has been by some people construed to extend to any length of time. If gentlemen look at another part of the Constitution, they will find that there is a positive injunction, that the Congress must meet at *least once* in every year; so that he cannot, were he so inclined, {136} prevent their meeting within a year. One of the best provisions contained in it is, that he shall commission all officers of the United States, and shall take care that the laws be faithfully executed. If he takes care to see the laws faithfully executed, it will be more than is done in any government on the continent; for I will venture to say that our government, and those of the other states, are, with respect to the execution of the laws, in many respects mere ciphers.

**Rest of the article read without any observations.**

**Article 3d, 1st and 2d sections, read.**

**Mr. SPENCER.**

Mr. Chairman, I have objections to this article. I object to the exclusive jurisdiction of the federal court in all cases of law and equity arising under the Constitution and the laws of the United States, and to the appellate jurisdiction of controversies between the citizens of different states, and a few other instances. To these I object, because I believe they will be oppressive in their operation. I would wish that the federal court should not interfere, or have any thing to do with controversies to the decision of which the state judiciaries might be fully competent, nor with such controversies as must carry the people a great way from home. With respect to the jurisdiction of cases arising under the Constitution, when we reflect on the very extensive objects of the plan of government, the manner in which they may arise, and the multiplicity of laws that may be made with respect to them, the objection against it will appear to be well founded. If we consider nothing but the articles of taxation, duties, and excises, and the laws that might be made with respect to these, the cases will be almost infinite. If we consider that it is in contemplation that a stamp duty shall take place throughout the continent; that all contracts shall be on stamp paper; that no contracts shall be of validity but what would be thus stamped, — these cases will be so many that the Consequences would be dreadful. It would be necessary to appoint judges to

the federal Supreme Court, and other inferior departments, and such a number of inferior courts in every district and county, with a correspondent number of officers, that it would cost an immense expense without any apparent necessity, which must operate to the distress of the inhabitants. There will be, without any manner of doubt, clashings and animosities {137} between the jurisdiction of the federal courts and of the state courts, so that they will keep the country in hot water. It has been said that the impropriety of this was mentioned by some in the Convention. I cannot see the reasons of giving the federal courts jurisdiction in these cases; but I am sure it will occasion great expense unnecessarily. The state judiciaries will have very little to do. It will be almost useless to keep them up. As all officers are to take an oath to support the general government, it will carry every thing before it. This will produce that consolidation through the United States which is apprehended. I am sure that I do not see that it is possible to avoid it. I can see no power that can keep up the little remains of the power of the states. Our rights are not guarded. There is no declaration of rights, to secure to every member of the society those unalienable rights which ought not to be given up to any government. Such a bill of rights would be a check upon men in power. Instead of such a bill of rights, this Constitution has a clause which may warrant encroachments on the power of the respective state legislatures. I know it is said that what is not given up to the United States will be retained by the individual states. I know it ought to be so, and should be so understood; but, sir, it is not *declared* to be so. In the Confederation it is expressly declared that all rights and powers, of any kind whatever, of the several states, which are not given up to the United States, are expressly and absolutely retained, to be enjoyed by the states. There ought to be a bill of rights, in order that those in power may not step over the boundary between the powers of government and the rights of the people, which they may do when there is nothing to prevent them. They may do so without a bill of rights; notice will not be readily taken of the encroachments of rulers, and they may go a great length before the people are alarmed. Oppression may therefore take place by degrees; but if there were express terms and bounds laid down, when these were passed by, the people would take notice of them, and oppressions would not be carried on to such a length. I look upon it, therefore, that there ought to be something to confine the power of this government within its proper boundaries. I know that several writers have said that a bill of rights is not necessary in this country; that some states had the {138} not, and that others had. To these I answer, that those states that have them not as bills of rights, strictly so called, have them in the frame of their constitution, which is nearly the same.

There has been a comparison made of our situation with Great Britain. We have no crown, or prerogative of a king, like the British constitution. I take it, that the subject has been misunderstood. In Great Britain, when the king attempts to usurp the rights of the people, the declaration and bill of rights are a guard against him. A bill of rights would be necessary here to guard against our rulers. I wish to have a bill of rights, to secure those unalienable rights, which are called by some respectable writers the residuum of human rights, which are never to be given up. At the same time that it would give security to individuals, it would add to the general strength. It might not be so necessary to have a bill of rights in the government of the United States, if such means had not been made use of as endanger a consolidation of all the states; but at any event, it would be proper to have one, because, though it might not be of any other service, it would at least satisfy the minds of the people. It would keep the states from being swallowed up by a consolidated government. For the reasons I before gave, I think that the jurisdiction of the federal court, with respect to all cases in law and equity, and the laws of

Congress, and the appeals in all cases between citizens of different states, &c., is inadmissible. I do not see the necessity that it should be vested with the cognizance of all these matters. I am desirous, and have no objection to their having one Supreme Federal Court for general matters; but if the federal courts have cognizance of those subjects which I mentioned, very great oppressions may arise. Nothing can be more oppressive than the cognizance with respect to controversies between citizens of different states. In all cases of appeal, those persons who are able to pay had better pay down in the first instance, though it be unjust, than be at such a dreadful expense by going such a distance to the Supreme Federal Court. Some of the most respectable states have proposed, by way of amendments, to strike out a great part of these two clauses. If they be admitted as they are, it will render the country entirely unhappy. On the contrary, I see no inconvenience from reducing the {139} power as has been proposed. I am of opinion that it is inconsistent with the happiness of the people to admit these two clauses. The state courts are sufficient to decide the common controversies of the people, without distressing them by carrying them to such far-distant tribunals. If I did not consider these two clauses to be dangerous, I should not object to them. I mean not to object to any thing that is not absolutely necessary. I wish to be candid, and not be prejudiced or warped.

**Mr. SPAIGHT.**

## **NOTE**

Mr. Chairman, the gentleman insinuates that differences existed in the Federal Convention respecting the clauses which he objects to. Whoever told him so was wrong; for I declare that, in that Convention, the unanimous desire of all was to keep separate and distinct the objects of the jurisdiction of the federal from that of the state judiciary. They wished to separate them as judiciously as possible, and to consult the ease and convenience of the people. The gentleman objects to the cognizance of all cases in law and equity arising under the Constitution and the laws of the United States. This objection is very astonishing. When any government is established, it ought to have power to enforce its laws, or else it might as well have no power. What but that is the use of a judiciary? The gentleman, from his profession, must know that no government can exist without a judiciary to enforce its laws, by distinguishing the disobedient from the rest of the people, and imposing sanctions for securing the execution of the laws. As to the inconvenience of distant attendance, Congress has power of establishing inferior tribunals in each state, so as to accommodate every citizen. As Congress have it in their power, will they not do it? Are we to elect men who will wantonly and unnecessarily betray us?

**Mr. MACLAINE.**

## **NOTE**

Mr. Chairman, I hoped that some gentleman more capable than myself would have obviated the objections to this part. The objections offered by the gentleman appear to me totally without foundation. He told us that these clauses tended to a consolidation of the states. I cannot see how the states are to be consolidated by establishing these two clauses. He enumerated a number of easements which would be involved within the cognizance of the federal courts; customs, excises, duties, stamp duties — a stamp on every article, on every contract — in order to bring {140} all

persons into the federal court; and said that there would be necessarily courts in every district and county, which would be attended with enormous and needless expense, for that the state courts could do every thing. He went on further, and said that there would be a necessity of having sheriffs and other officers in these inferior departments. A wonderful picture indeed, drawn up in a wonderful manner! I will venture to say that the gentleman's suggestions are not warranted by any reasonable construction of the Constitution. The laws can, in general, be executed by the officers of the states. State courts and state officers will, for the most part, probably answer the purpose of Congress as well as any other. But the gentleman says that the state courts will be swallowed up by the federal courts. This is only a general assertion, unsupported by any probable reasons or arguments. The objects of each are separate and distinct. I suppose that whatever courts there may be, they will be established according to the convenience of the people. This we must suppose from the mode of electing and appointing the members of the government. State officers will as much as possible be employed, for one very considerable reason — I mean, to lessen the expense. But he imagines that the oath to be taken by officers will tend to the subversion of our state governments and of our liberty. Can any government exist without fidelity in its officers? Ought not the officers of every government to give some security for the faithful discharge of their trust? The officers are only to be sworn to support the Constitution, and therefore will only be bound by their oath so far as it shall be strictly pursued. No officer will be bound by his oath to support any act that would violate the principles of the Constitution.

The gentleman has wandered out of his way to tell us — what has so often been said out of doors — that there is no declaration of rights; that consequently all our rights are taken away. It would be very extraordinary to have a bill of rights, because the powers of Congress are expressly defined; and the very definition of them is as valid and efficacious a check as a bill of rights could be, without the dangerous implication of a bill of rights. The powers of Congress are limited and enumerated. We say we have given them those powers, but we do not say we have given them more. We retain all those rights which we have not given away to the general government. The gentleman is a professional man. If a gentleman had made his last will and testament, and devised or bequeathed to a particular person the sixth part of his property, or any particular specific legacy, could it be said that that person should have the whole estate? If they can assume powers not enumerated, there was no occasion for enumerating any powers. The gentleman is learned. Without recurring to his learning, he may only appeal to his common sense; it will inform him that, if we had all power before, and give away but a part, we still retain the rest. It is as plain a thing as possibly can be, that Congress can have no power but what we expressly give them. There is an express clause which, however disingenuously it has been perverted from its true meaning, clearly demonstrates that they are confined to those powers which are given them. This clause enables them to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or any department or officers thereof." This clause specifies that they shall make laws to carry into execution *all the powers vested* by this Constitution; consequently, they can make no laws to execute any other power. This clause gives no new power, but declares that those already given are to be executed by proper laws. I hope this will satisfy gentlemen.

**Gov. JOHNSTON.**

## NOTE

Mr. Chairman, the learned member from Anson says that the federal courts have exclusive **jurisdiction** of all cases in law and equity arising under the Constitution and laws of the United States. The opinion which I have always entertained is, that they will, in these cases, as well as in several others, have **concurrent jurisdiction** with the state courts, and **not exclusive jurisdiction**. I see nothing in this Constitution which hinders a man from bringing suit wherever he thinks he can have justice done him. The **jurisdiction** of these courts is established for some purposes with which the state courts have nothing to do, and the Constitution takes no power from the state courts which they now have. They will have the same business which they have now, and if so, they will have enough to employ their time. We know that the gentlemen who preside in our superior courts have more business than they can determine. Their complicated jurisdiction, and the great extent of country, occasions them a vast deal of business. The addition of the business of the United States would be no manner of advantage to them. It is obvious to every one that there ought to be one Supreme Court for national purposes. But the gentleman says that a bill of rights was necessary. It appears to me, sir, that it would have been the highest absurdity to undertake to define what rights the people of the United States were entitled to; for that would be as much as to say they were entitled to nothing else. A bill of rights may be necessary in a monarchical government, whose powers are undefined. Were we in the situation of a monarchical country? No, sir. **Every right could not be enumerated**, and the omitted rights would be sacrificed, if security arose from an enumeration. **The Congress cannot assume any other powers than those expressly given them, without a palpable violation of the Constitution.** Such objections as this, I hope, will have no effect on the minds of any members in this house. When gentlemen object, generally, that it tends to consolidate the states and destroy their state judiciaries, they ought to be explicit, and explain their meaning. They make use of contradictory arguments. The Senate represents the states, and can alone prevent this dreaded consolidation; yet the powers of the Senate are objected to. The rights of the people, in my opinion, cannot be affected by the federal courts. I do not know how inferior courts will be regulated. Some suppose the state courts will have this business. Others have imagined that the continent would be divided into a number of districts, where courts would be held so as to suit the convenience of the people. Whether this or some other mode will be appointed by Congress, I know not; but this I am sure of, that **the state judiciaries are not divested of their present judicial cognizance**, and that we have every security that our ease and convenience will be consulted. Unless Congress had this power, their laws could not be carried into execution.

**Mr. BLOODWORTH.**

## NOTE

Mr. Chairman, the worthy gentleman up last has given me information on the subject which I had never heard before. Hearing so many opinions, I did not know which was right. The honorable gentleman has said that the state courts and the courts of the United States would have **concurrent jurisdiction**. I beg the committee to reflect what would be the consequence of such measures. It has ever been considered that the trial by jury was one of the greatest rights of the people. I ask whether, if such causes go into the federal court, the trial by jury is not cut off, and whether there is any security that we shall have justice done us. I ask if there be any security that

we shall have juries in civil causes. In criminal cases there are to be juries, but there is no provision made for having civil causes tried by jury. This **concurrent jurisdiction** is inconsistent with the security of that great right. If it be not, I would wish to hear how it is secured. I have listened with attention to what the learned gentlemen have said, and have endeavored to see whether their arguments had any weight; but I found none in them. Many words have been spoken, and long time taken up; but with me they have gone in at one ear, and out at the other. It would give me much pleasure to hear that the trial by jury was secured.

**Mr. J. M'DOWALL.**

## **NOTE**

Mr. Chairman, the objections to this part of the Constitution have not been answered to my satisfaction yet. We know that **the trial by a jury of the vicinage** is one of the greatest securities for property. If causes are to be decided at such a great distance, the poor will be oppressed; in land affairs, particularly, the wealthy suitor will prevail. A poor man, who has a just claim on a piece of land, has not substance to stand it. Can it be supposed that any man, of common circumstances, can stand the expense and trouble of going from Georgia to Philadelphia, there to have a suit tried? And can it be justly determined without the benefit of a **trial by jury**? These are things which have justly alarmed the people. What made the people revolt from Great Britain? The trial by jury, that great safeguard of liberty, was taken away, and a stamp duty was laid upon them. This alarmed them, and led them to fear that greater oppressions would take place. We then resisted. It involved us in a war, and caused us to relinquish a government which made us happy in every thing else. The war was very bloody, but we got our independence. We are now giving away our dear-bought rights. We ought to consider what we are about to do before we determine.

**Mr. SPAIGHT.**

## **NOTE**

Mr. Chairman, the **trial by jury was not forgotten in the Convention**; the subject took up a considerable time to investigate it. It was impossible to make any one uniform regulation for all the states, or that would include all cases where it would be necessary. It was impossible, by one expression, to embrace the whole. There are a number of equity and maritime cases, in some of the states, in which jury trials are not used. Had the Convention said that all causes should be tried by a jury, equity and maritime cases would have been included. It was therefore left to the legislature to say in what cases it should be used; and as the **trial by jury is in full force in the state courts**, we have the fullest security.

**Mr. IREDELL.**

## **NOTE**

Mr. Chairman, I have waited a considerable time, in hopes that some other gentleman would fully discuss this point. I conceive it to be my duty to speak on every subject whereon I think I can throw any light; and it appears to me that some things ought to be said which no gentleman has yet mentioned. The gentleman from New Hanover said that our arguments went in at one ear, and out at the other. This sort of language, on so solemn and important an occasion, gives me pain. [*Mr. Bloodworth here declared that he did not mean to convey any disrespectful idea by such an expression; that he did not mean an absolute neglect of their arguments, but that they were not sufficient to convince him; that he should be sorry to give pain to any gentleman; that he had listened. and still would listen, with attention, to what would be said. Mr. Iredell then continued.*] I am by no means surprised at the anxiety which is expressed by gentlemen on this subject. Of all the trials that ever were instituted in the world, this, in my opinion, is the best, and that which I hope will continue the longest. If the gentlemen who composed the Convention had designedly omitted it, no man would be more ready to condemn their conduct than myself. But I have been told that the omission of it arose from the difficulty of establishing one uniform, unexceptionable mode: this mode of trial being different, in many particulars, in the several states. Gentlemen will be pleased to consider that there is a material difference between an article fixed in the Constitution, and a regulation by law. **An article in the Constitution, however inconvenient it may prove by experience, can only be altered by altering the Constitution itself, which manifestly is a thing that ought not to be done often.** When regulated by law, it can easily be occasionally altered so as best to suit the conveniences of the people. Had there been an article in the Constitution taking away that trial, it would justly have excited the public indignation. It is not taken away by the Constitution. Though that does not provide expressly for a trial by jury in civil cases, it does not say that there shall not be such a trial. The reasons of the omission have been mentioned by a member of the late General Convention, (Mr. Spaight.) There are different practices in regard to this trial in different states. In some cases, they have no juries in admiralty and equity cases; in others, they have juries in these cases, as well as in suits at **common law**. I beg leave to say that, if any gentleman of ability and knowledge of the subject will only endeavor to fix upon any one rule that would be pleasing to all the states under the impression of their present different habits, he will be convinced that it is impracticable. If the practice of any particular state had been adopted, others, probably, whose practice had been different, would have been discontented. This is a consequence that naturally would have ensued, had the provision been made in the Constitution itself. But when the regulation is to be by law, — as that law, when found injudicious, can be easily repealed, a majority may be expected to agree upon some method, since some method or other must be first tried, and there is a greater chance of the favorite method of one state being in time preferred. It is not to be presumed that the Congress would dare to deprive the people of this valuable privilege. Their own interest will operate as an additional guard, as none of them could tell how soon they might have occasion for such a trial themselves. The greatest danger from ambition is in criminal cases. But here they have no option. The trial must be by jury, in the state wherein the offence is committed; and the writ of *habeas corpus* will in the mean time secure the citizen against arbitrary imprisonment, which has been the principal source of tyranny in all ages.

As to the clause respecting cases arising under the Constitution and the laws of the Union, which the honorable member objected to, it must be observed, that laws are useless unless they are executed. At present, Congress have powers which they cannot execute. After making laws which affect the dearest interest of the people, in the constitutional mode, they have no way of

enforcing them. The situation of those gentlemen who have lately served in Congress must have been very disagreeable. Congress have power to enter into negotiations with foreign nations, but cannot compel the observance of treaties that they make. They have been much distressed by their inability to pay the pressing demands of the public creditors. They have been reduced so low as to borrow principal to pay interest. Such are the unfortunate consequences of this unhappy situation! These are the effects of the pernicious mode of requisitions! Has any state fully paid its quota? I believe not, sir. Yet I am far from thinking that this has been owing altogether to an unwillingness to pay the debts. It may have been in some instances the case, but I believe not in all. Our state legislature has no way of raising any considerable sums but by laying direct taxes. Other states have imports of consequence. These may afford them a considerable relief; but our state, perhaps, could not have raised its full quota by direct taxes, without imposing burdens too heavy for the people to bear. Suppose, in this situation, Congress had proceeded to enforce their requisitions, by sending an army to collect them; what would have been the consequence? *Civil war*, in which the innocent must have suffered with the guilty. Those who were willing to pay would have been equally distressed with those who were unwilling. Requisitions thus having failed of their purpose, it is proposed, by this Constitution, that, instead of collecting taxes by the sword, application shall be made by the government to the individual citizens. If any individual disobeys, the courts of justice can give immediate relief. This is the only natural and effectual method of enforcing laws. As to the danger of concurrent jurisdictions, has any inconvenience resulted from the concurrent jurisdictions, in sundry cases, of the superior and county courts of this state? The inconvenience of attending at a great distance, which has been so much objected to, is one which would be so general, that there is no doubt but that a majority would always feel themselves and their constituents personally interested in preventing it. I have no doubt, therefore, that proper care will be taken to lessen this evil as much as possible; and, in particular, that an appeal to the Supreme Court will not be allowed but in cases of great importance, where the object may be adequate to the expense. The Supreme Court may possibly be directed to sit alternately in different parts of the Union.

The propriety of having a Supreme Court in every government must be obvious to every man of reflection. There can be no other way of securing the administration of justice uniformly in the several states. There might be, otherwise, as many different adjudications on the same subject as there are states. It is to be hoped that, if this government be established, connections still more intimate than the present will subsist between the different states. The same measure of justice, therefore, as to the objects of their common concern, ought to prevail in all. A man in North Carolina, for instance, if he owed £100 here, and was compellable to pay it in good money, ought to have the means of recovering the same sum, if due to him in Rhode Island, and not merely the nominal sum, at about an eighth or tenth part of its intrinsic value. To obviate such a grievance as this, the Constitution has provided a tribunal to administer equal justice to all.

A gentleman has said that the stamp act, and the taking away of the trial by jury, were the principal causes of resistance to Great Britain, and seemed to infer that opposition would therefore be justified on this part of the system. The stamp act was much earlier than the immediate cause of our independence. But what was the great ground of opposition to the stamp act? Surely it was because the act was not passed by our own representatives, but by those of Great Britain. Under this Constitution, taxes are to be imposed by our own representatives in the General Congress. The fewness of their numbers will be compensated by the weight and

importance of their characters. Our representatives will be in proportion to those of the other states. This case is certainly not like that of taxation by a foreign legislature. In respect to the trial by jury, its being taken away, in certain cases, was, to be sure, one of the causes assigned in the Declaration of Independence. But that was done by a foreign legislature, which might continue it so forever; and therefore jealousy was justly excited. But this Constitution has not taken it away, and it is left to the discretion of our own legislature to act, in this respect, as {148} their wisdom shall direct. In Great Britain, the people speak of the trial by jury with admiration. No monarch, or minister, however arbitrary in his principles, would dare to attack that noble palladium of liberty. The enthusiasm of the people in its favor would, in such a case, produce general resistance. That trial remains unimpaired there, although they have a considerable standing army, and their Parliament has authority to abolish it, if they please. But wo to those who should attempt it! If it be secure in that country, under these circumstances, can we believe that Congress either would or could take it away in this? Were they to attempt it, their authority would be instantly resisted. They would draw down on themselves the resentment and detestation of the people. They and their families, so long as any remained in being, would be held in eternal infamy, and the attempt prove as unsuccessful as it was wicked.

## NOTE

With regard to a bill of rights, this is a notion originating in England, where no written constitution is to be found, and the authority of their government is derived from the most remote antiquity. Magna Charta itself is no constitution, but a solemn instrument ascertaining certain rights of individuals, by the legislature for the time being; and every article of which the legislature may at any time alter. This, and a bill of rights also, the invention of later times, were occasioned by great usurpations of the crown, contrary, as was conceived, to the principles of their government, about which there was a variety of opinions. But neither that instrument, nor any other instrument, ever attempted to abridge the authority of Parliament, which is supposed to be without any limitation whatever. Had their constitution been fixed and certain, a bill of rights would have been useless, for the constitution would have shown plainly the extent of that authority which they were disputing about. Of what use, therefore, can a bill of rights be in this Constitution, where the people expressly declare how much power they do give, and consequently retain all they do not? It is a declaration of particular powers by the people to their representatives, for particular purposes. It may be considered as a great power of attorney, under which no power can be exercised but what is expressly given. Did any man ever hear, before, that at the end of a power of attorney it was said that the attorney should not exercise more power than was there given him? Suppose, for instance, a man had lands in the counties of Anson and Caswell, and he should give another a power of attorney to sell his lands in Anson, would the other have any authority to sell the lands in Caswell? — or could he, without absurdity, say, "Tis true you have not expressly authorized me to sell the lands in Caswell; but as you had lands there, and did not say I should not, I thought I might as well sell those lands as the other." A bill of rights, as I conceive, would not only be incongruous, but dangerous. No man, let his ingenuity be what it will, could enumerate all the individual rights not relinquished by this Constitution. Suppose, therefore, an enumeration of a great many, but an omission of some, and that, long after all traces of our present disputes were at an end, any of the omitted rights should be invaded, and the invasion be complained of; what would be the plausible answer of the government to such a complaint? Would they not naturally say, "We live at a great distance from

the time when this Constitution was established. We can judge of it much better by the ideas of it entertained at the time, than by any ideas of our own. The bill of rights, passed at that time, showed that the people did not think every power retained which was not given, else this bill of rights was not only useless, but absurd. But we are not at liberty to charge an absurdity upon our ancestors, who have given such strong proofs of their good sense, as well as their attachment to liberty. So long as the rights enumerated in the bill of rights remain unviolated, you have no reason to complain. This is not one of them." Thus a bill of rights might operate as a snare rather than a protection. If we had formed a general legislature, with undefined powers, a bill of rights would not only have been proper, but necessary; and it would have then operated as an exception to the legislative authority in such particulars. It has this effect in respect to some of the American constitutions, where the powers of legislation are general. But where they are powers of a particular nature, and expressly defined, as in the case of the Constitution before us, I think, for the reasons I have given, a bill of rights is not only unnecessary, but would be absurd and dangerous.

**Mr. J. M'DOWALL.**

Mr. Chairman, the learned gentleman made use of several arguments to induce us to believe that the trial by jury, in civil cases, was not in danger, and observed that, in criminal cases, it is provided that the trial is to be in the state where the crime was committed. Suppose a crime is committed at the Mississippi; the man may be tried at Edenton. They ought to be tried by the people of the vicinage; for when the trial is at such an immense distance, the principal privilege attending the trial by jury is taken away; therefore the trial ought to be limited to a district or certain part of the state. It has been said, by the gentleman from Edenton, that our representatives will have virtue and wisdom to regulate all these things. But it would give me much satisfaction, in a matter of this importance, to see it absolutely secured. The depravity of mankind militates against such a degree of confidence. I wish to see every thing fixed.

**Gov. JOHNSTON.**

Mr. Chairman, the observations of the gentleman last up confirm what the other gentleman said. I mean that, as there are dissimilar modes with respect to the trial by jury in different states, there could be no general rule fixed to accommodate all. He says that this clause is defective, because the trial is not to be by a jury of the vicinage. Let us look at the state of Virginia, where, as long as I have known it, the laws have been executed so as to satisfy the inhabitants, and, I believe, as well as in any part of the Union. In that country, juries are summoned every day from the bystanders. We may expect less partiality when the trial is by strangers; and were I to be tried for my property or life, I would rather be tried by disinterested men, who were not biased, than by men who were perhaps intimate friends of my opponent. Our mode is different from theirs; but whether theirs be better than ours or not, is not the question. It would be improper for our delegates to impose our mode upon them, or for theirs to impose their mode upon us. The trial will probably be, in each state, as it has been hitherto used in such state, or otherwise regulated as conveniently as possible for the people. The delegates who are to meet in Congress will, I hope, be men of virtue and wisdom. If not, it will be our own fault. They will have it in their power to make necessary regulations to accommodate the inhabitants of each state. In the Constitution, the general principles only are laid down. It will be the object of the future

legislation to Congress to {151} make such laws as will be most convenient for the people. With regard to a bill of rights, so much spoken of, what the gentleman from Edenton has said, I hope, will obviate the objections against the want of it. In a monarchy, all power may be supposed to be vested in the monarch, except what may be reserved by a bill of rights. In England, in every instance where the rights of the people are not declared, the prerogative of the king is supposed to extend. But in this country, we say that what rights we do not give away remain with us.

**Mr. BLOODWORTH.**

Mr. Chairman, the footing on which the trial by jury is, in the Constitution, does not satisfy me. Perhaps I am mistaken; but if I understand the thing right, the trial by jury is taken away. If the Supreme Federal Court has jurisdiction both as to law and fact, it appears to me to be taken away. The honorable gentleman who was in the Convention told us that the clause, as it now stands, resulted from the difficulty of fixing the mode of trial. I think it was easy to have put it on a secure footing. But, if the genius of the people of the United States is so dissimilar that our liberties cannot be secured, we can never hang long together. Interest is the band of social union; and when this is taken away, the Union itself must dissolve.

**Mr. MACLAINE.**

Mr. Chairman, I do not take the interest of the states to be so dissimilar; I take them to be all nearly alike, and inseparably connected. It is impossible to lay down any constitutional rule for the government of all the different states in each particular. But it will be easy for the legislature to make laws to accommodate the people in every part of the Union, as circumstances may arise. Jury trial is not taken away in such cases where it may be found necessary. Although the Supreme Court has cognizance of the appeal, it does not follow but that the trial by jury may be had in the court below, and the testimony transmitted to the Supreme Court, who will then finally determine, on a review of all the circumstances. This is well known to be the practice in some of the states. In our own state, indeed, when a cause is instituted in the county court, and afterwards there is an appeal upon it, a new trial is had in the superior court, as if no trial had been had before. In other countries, however, when a trial is had in an inferior court, and an appeal is taken, no testimony can be given in {152} the court above, but the court determines upon the circumstances appearing upon the record. If I am right, the plain inference is, that there may be a trial in the inferior courts, and that the record, including the testimony, may be sent to the Supreme Court. But if there is a necessity for a jury in the Supreme Court, it will be a very easy matter to empanel a jury at the bar of the Supreme Court, which may save great expense, and be very convenient to the people. It is impossible to make every regulation at once. Congress, who are our own representatives, will undoubtedly make such regulations as will suit the convenience and secure the liberty of the people.

**Mr. IREDELL**

declared it as his opinion that there might be juries in the Superior Court as well as in the inferior courts, and that it was in the power of Congress to regulate it so.

**TUESDAY, *July 29, 1788.***

**Mr. KENNION**

in the chair.

**Mr. SPENCER.**

Mr. Chairman, I hope to be excused for making some observations on what was said yesterday, by gentlemen, in favor of these two clauses. The motion which was made that the committee should rise, precluded me from speaking then. The gentlemen have showed much moderation and candor in conducting this business; but I still think that my observations are well founded, and that some amendments are necessary. The gentleman said, all matters not given up by this form of government were retained by the respective states. I know that it ought to be so; it is the general doctrine, but it is necessary that it should be expressly declared in the Constitution, and not left to mere construction and opinion. I am authorized to say it was heretofore thought necessary. The Confederation says, expressly, that all that was not given up by the United States was retained by the respective states. If such a clause had been inserted in this Constitution, it would have superseded the necessity of a bill of rights. But that not being the case, it was necessary that a bill of rights, or something of that kind, should be a part of the Constitution. It was observed that, as the Constitution is to be a delegation of power from the several states to the United States, a bill of rights was unnecessary. But it will be noticed that this is a different case.

The states do not act in their political capacities, but the government is proposed for individuals. The very caption of the Constitution shows that this is the case. The expression, "We, the people of the United States," shows that this government is intended for individuals; there ought, therefore, to be a bill of rights. I am ready to acknowledge that the Congress ought to have the power of executing its laws. Heretofore, because all the laws of the Confederation were binding on the states in their political capacities, courts had nothing to do with them; but now the thing is entirely different. The laws of Congress will be binding on individuals, and those things which concern individuals will be brought properly before the courts. In the next place, all the officers are to take an oath to carry into execution this general government, and are bound to support every act of the government, of whatever nature it may be. This is a fourth reason for securing the rights of individuals. It was also observed that the federal judiciary and the courts of the states, under the federal authority, would have concurrent jurisdiction with respect to any subject that might arise under the Constitution. I am ready to say that I most heartily wish that, whenever this government takes place, the two jurisdictions and the two governments — that is, the general and the several state governments — may go hand in hand, and that there may be no interference, but that every thing may be rightly conducted. But I will never concede that it is proper to divide the business between the two different courts. I have no doubt that there is wisdom enough in this state to decide the business, without the necessity of federal assistance to do our business. The worthy gentleman from Edenton dwelt a considerable time on the observations on a bill of rights, contending that they were proper only in monarchies, which were founded on different principles from those of our government; and, therefore, though they might be necessary for others, yet they were not necessary for us. I still think that a bill of rights is necessary. This necessity arises from the nature of human societies. When individuals enter into society, they give up some rights to secure the rest. There are certain human rights that ought not to be given up, and which ought in some manner to be secured. With respect to these great

essential rights, no latitude ought to be left. They are the { 154 } most inestimable gifts of the great Creator, and therefore ought not to be destroyed, but ought to be secured. They ought to be secured to individuals in consideration of the other rights which they give up to support society.

The trial by jury has been also spoken of Every person who is acquainted with the nature of liberty need not be informed of the importance of this trial. Juries are called the bulwarks of our rights and liberty; and no country can ever be enslaved as long as those cases which affect their lives and property are to be decided, in a great measure, by the consent of twelve honest, disinterested men, taken from the respectable body of yeomanry. It is highly improper that any clause which regards the security of the trial by jury should be any way doubtful. In the clause that has been read, it is ascertained that criminal cases are to be tried by jury in the states where they are committed. It has been objected to that clause, that it is not sufficiently explicit. I think that it is not. It was observed that one may be taken to a great distance. One reason of the resistance to the British government was, because they required that we should be carried to the country of Great Britain, to be tried by juries of that country. But we insisted on being tried by juries of the vicinage, in our own country. I think it therefore proper that something explicit should be said with respect to the vicinage.

With regard to that part, that the Supreme Court shall have appellate jurisdiction both as to law and fact, it has been observed that, though the federal court might decide without a jury, yet the court below, which tried it, might have a jury. I ask the gentleman what benefit would be received in the suit by having a jury trial in the court below, when the verdict is set aside in the Supreme Court. It was intended by this clause that the trial by jury should be suppressed in the superior and inferior courts. It has been said, in defence of the omission concerning the trial by jury in civil cases, that one general regulation could not be made; that in several cases the constitution of several states did not require a trial by jury, — for instance, in cases of equity and admiralty, — whereas in others it did, and that, therefore, it was proper to leave this subject at large. I am sure that, for the security of liberty, they ought to have been at the pains of drawing some line. I think that the respectable { 155 } body who formed the Constitution should have gone so far as to put matters on such a footing as that there should no danger. They might have provided that all those cases which are now triable by a jury should be tried in each state by a jury, according to the mode usually practised in such state. This would have been easily done, if they had been at the trouble of writing five or six lines. Had it been done, we should have been entitled to say that our rights and liberties were not endangered. If we adopt this clause as it is, I think, notwithstanding what gentlemen have said, that there will be danger. There ought to be some amendments to it, to put this matter on a sure footing. There does not appear to me to be any kind of necessity that the federal court should have jurisdiction in the body of the country. I am ready to give up that, in the cases expressly enumerated, an appellate jurisdiction (except in one or two instances) might be given. I wish them also to have jurisdiction in maritime affairs, and to try offences committed on the high seas. But in the body of a state, the jurisdiction of the courts in that state might extend to carrying into execution the laws of Congress. It must be unnecessary for the federal courts to do it, and would create trouble and expense which might be avoided. In all cases where appeals are proper, I will agree that it is necessary there should be one Supreme Court. Were those things properly regulated, so that the Supreme Court might not be oppressive, I should have no objection to it.

Mr. DAVIE.

## NOTE

Mr. Chairman, yesterday and to-day I have given particular attention to the observations of the gentleman last up. I believe, however, that, before we take into consideration these important clauses, it will be necessary to consider in what manner laws can be executed. For my own part, I know but two ways in which the laws can be executed by any government. If there be any other, it is unknown to me. The first mode is coercion by military force, and the second is coercion through the judiciary. With respect to coercion by force, I shall suppose that it is so extremely repugnant to the principles of justice and the feelings of a free people, that no man will support it. It must, in the end, terminate in the destruction of the liberty of the people. I take it, therefore, that there is no rational way of enforcing the laws but by the instrumentality of the {156} judiciary. From these premises we are left only to consider how far the jurisdiction of the judiciary ought to extend. It appears to me that the judiciary ought to be competent to the decision of any question arising out of the Constitution itself. On a review of the principles of all free governments, it seems to me also necessary that the judicial power should be coëxtensive with the legislative.

It is necessary in all governments, but particularly in a federal government, that its judiciary should be competent to the decision of all questions arising out of the constitution. If I understand the gentleman right, his objection was not to the defined jurisdiction, but to the general jurisdiction, which is expressed thus: "The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;" and also the appellate jurisdiction in some instances. Every member who has read the Constitution with attention must observe that there are certain fundamental principles in it, both of a positive and negative nature, which, being intended for the general advantage of the community, ought not to be violated by any future legislation of the particular states. Every member will agree that the positive regulations ought to be carried into execution, and that the negative restrictions ought not to be disregarded or violated. Without a judiciary, the injunctions of the Constitution may be disobeyed, and the positive regulations neglected or contravened. There are certain prohibitory provisions in this Constitution, the wisdom and propriety of which must strike every reflecting mind, and certainly meet with the warmest approbation of every citizen of this state. It provides, "that no state shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; that no preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another; and that no state shall emit bills of credit, make any thing but gold and silver coin a tender in payment of debts, pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts." These restrictions ought to supersede the laws of particular states. With respect to the prohibitory provision — that no duty or impost shall be laid by any particular state — which is so highly in favor of us and the other non-importing states, the importing states might make laws laying duties notwithstanding, and the Constitution might be violated with impunity, if there were no power in the general government to correct and counteract such laws. This great object can only be safely and completely obtained by the instrumentality of the federal judiciary. Would not Virginia, who has raised many thousand pounds out of our citizens by her imposts, still avail

herself of the same advantage if there were no constitutional power to counteract her regulations? If cases arising under the Constitution were left to her own courts, might she not still continue the same practices? But we are now to look for justice to the controlling power of the judiciary of the United States. If the Virginians were to continue to oppress us by laying duties, we can be relieved by a recurrence to the general judiciary. This restriction in the Constitution is a fundamental principle, which is not to be violated, but which would have been a dead letter, were there no judiciary constituted to enforce obedience to it. Paper money and private contracts were in the same condition. Without a general controlling judiciary, laws might be made in particular states to enable its citizens to defraud the citizens of other states, Is it probable, if a citizen of South Carolina owed a sum of money to a citizen of this state, that the latter would be certain of recovering the full value in their courts? That state might in future, as they have already done, make pine-barren acts to discharge their debts. They might say that our citizens should be paid in sterile, inarable lands, at an extravagant price. They might pass the most iniquitous instalment laws, procrastinating the payment of debts due from their citizens, for years — nay, for ages. Is it probable that we should get justice from their own judiciary, who might consider themselves obliged to obey the laws of their own state? Where, then, are we to look for justice? To the judiciary of the United States. Gentlemen must have observed the contracted and narrow-minded regulations of the individual states, and their predominant disposition to advance the interests of their own citizens to the prejudice of others. Will not these evils be continued if there be no restraint? The people of the United States have one common interest; they are all members of the same community, and ought to have justice administered to them equally in every part of the continent, in the same manner, with the same despatch, and on the same principles. It is therefore absolutely necessary that the judiciary of the Union should have jurisdiction in all cases arising in law and equity under the Constitution. Surely there should be somewhere a constitutional authority for carrying into execution constitutional provisions: otherwise, as I have already said, they would be a dead letter.

With respect to their having jurisdiction of all cases arising under the laws of the United States, although I have a very high respect for the gentleman, I heard his objection to it with surprise. I thought, if there were any political axiom under the sun, it must be, that the judicial power ought to be coëxtensive with the legislative. The federal government ought to possess the means of carrying the laws into execution. This position will not be disputed. A government would be a *felo de se* to put the execution of its laws under the control of any other body. If laws are not to be carried into execution by the interposition of the judiciary, how is it to be done?

I have already observed that the mind of every honest man, who has any feeling for the happiness of his country, must have the highest repugnance to the idea of military coercion. The only means, then, of enforcing obedience to the legislative authority must be through the medium of the officers of peace. Did the gentleman carry his objection to the extension of the judicial power to treaties? It is another principle, which I imagine will not be controverted, that the general judiciary ought to be competent to the decision of all questions which involve the general welfare or peace of the Union. It was necessary that treaties should operate as laws upon individuals. They ought to be binding upon us the moment they are made. They involve in their nature not only our own rights, but those of foreigners. If the rights of foreigners were left to be decided ultimately by thirteen distinct judiciaries, there would necessarily be unjust and contradictory decisions. If our courts of justice did not decide in favor of foreign citizens and

subjects when they ought, it might involve the whole Union in a war: there ought, therefore, to be a paramount tribunal, which should have ample power to carry them into effect. To the {159} decision of all causes which might involve the peace of the Union may be referred, also, that of controversies between the citizens or subjects of foreign states and the citizens of the United States. It has been laid down by all writers that the denial of justice is one of the just causes of war. If these controversies were left to the decision of particular states, it would be in their power, at any time, to involve the continent in a war, usually the greatest of all national calamities. It is certainly clear that where the peace of the Union is affected, the general judiciary ought to decide. It has generally been given up, that all cases of admiralty and maritime jurisdiction should also be determined by them. It has been equally ceded, by the strongest opposers to this government, that the federal courts should have cognizance of controversies between two or more states, between a state and the citizens of another state, and between the citizens of the same state claiming lands under the grant of different states. Its jurisdiction in these cases is necessary to secure impartiality in decisions, and preserve tranquillity among the states. It is impossible that there should be impartiality when a party affected is to be judge.

The security of impartiality is the principal reason for giving up the ultimate decision of controversies between citizens of different states. It is essential to the interest of agriculture and commerce that the hands of the states should be bound from making paper money, instalment laws, or *pine-barren acts*. By such iniquitous laws the merchant or farmer may be defrauded of a considerable part of his just claims. But in the federal court, real money will be recovered with that speed which is necessary to accommodate the circumstances of individuals. The tedious delays of judicial proceedings, at present, in some states, are ruinous to creditors. In Virginia, many suits are twenty or thirty years spun out by legal ingenuity, and the defective construction of their judiciary. A citizen of Massachusetts or this country might be ruined before he could recover a debt in that state. It is necessary, therefore, in order to obtain justice, that we recur to the judiciary of the United States, where justice must be equally administered, and where a debt may be recovered from the citizen of one state as soon as from the citizen of another.

As to a bill of rights, which has been brought forward in {160} a manner I cannot account for, it is unnecessary to say any thing. The learned gentleman has said that, by a concurrent jurisdiction, the laws of the United States must necessarily clash with the laws of the individual states, in consequence of which the laws of the states will be obstructed, and the state governments absorbed. This cannot be the case. There is not one instance of a power given to the United States, whereby the internal policy or administration of the states is affected. There is no instance that can be pointed out wherein the internal policy of the state can be affected by the judiciary of the United States. He mentioned impost laws. It has been given up, on all hands, that, if there was a necessity of a federal court, it was on this account. Money is difficult to be got into the treasury. The power of the judiciary to enforce the federal laws is necessary to facilitate the collection of the public revenues. It is well known, in this state, with what reluctance and backwardness collectors pay up the public moneys. We have been making laws after laws to remedy this evil, and still find them ineffectual. Is it not, therefore, necessary to enable the general government to compel the delinquent receivers to be punctual? The honorable gentleman admits that the general government ought to legislate upon individuals, instead of states.

Its laws will otherwise be ineffectual, but particularly with respect to treaties. We have seen with what little ceremony the states violated the peace with Great Britain. Congress had no power to enforce its observance. The same cause will produce the same effect. We need not flatter ourselves that similar violations will always meet with equal impunity. I think he must be of opinion, upon reflection, that the jurisdiction of the federal judiciary could not have been constructed otherwise with safety or propriety. It is necessary that the Constitution should be carried into effect, that the laws should be executed, justice equally done to all the community, and treaties observed. These ends can only be accomplished by a general, paramount judiciary. These are my sentiments, and if the honorable gentleman will prove them erroneous, I shall readily adopt his opinions.

**Mr. MACLAINE.**

Mr. Chairman, I beg leave to make a few observations. One of the gentleman's objections to the Constitution now under consideration is, that it is not {161} the act of the states, but of the people; but that it ought to be the act of the states; and he instances the delegation of power by the states to the Confederation, at the commencement of the war, as a proof of this position. I hope, sir, that all power is in the people, and not in the state governments. If he will not deny the authority of the people to delegate power to agents, and to devise such a government as a majority of them thinks will promote their happiness, he will withdraw his objection. The people, sir, are the only proper authority to form a government. They, sir, have formed their state governments, and can alter them at pleasure. Their transcendent power is competent to form this or any other government which they think promotive of their happiness. But the gentleman contends that there ought to be a bill of rights, or something of that kind — something declaring expressly, that all power not expressly given to the Constitution ought to be retained by the states; and he produces the Confederation as an authority for its necessity. When the Confederation was made, we were by no means so well acquainted with the principles of government as we are now. We were then jealous of the power of our rulers, and had an idea of the British government when we entertained that jealousy. There is no people on earth so well acquainted with the nature of government as the people of America generally are. We know now that it is agreed upon by most writers, and men of judgment and reflection, that all power is in the people, and immediately derived from them. The gentleman surely must know that, if there be certain rights which never can, nor ought to, be given up, these rights cannot be said to be given away, merely because we have omitted to say that we have not given them up. Can any security arise from declaring that we have a right to what belongs to us? Where is the necessity of such a declaration? If we have this inherent, this unalienable, this indefeasible title to those rights, if they are not given up, are they not retained? If Congress should make a law beyond the powers and the spirit of the Constitution, should we not say to Congress, "You have no authority to make this law. There are limits beyond which you cannot go. You cannot exceed the powerprescribed by the Constitution. You are amenable to us for {162} your conduct. This act is unconstitutional. We will disregard it, and punish you for the attempt."

But the gentleman seems to be most tenacious of the judicial power of the states. The honorable gentleman must know, that the doctrine of reservation of power not relinquished, clearly demonstrates that the judicial power of the states is not impaired. He asks, with respect to the trial by jury, "When the cause has gone up to the superior court, and the verdict is set aside, what

benefit arises froth having had a jury trial in the inferior court?" I would ask the gentleman, "What is the reason, that, on a special verdict or case agreed, the decision is left to the court?" There are a number of cases where juries cannot decide. When a jury finds the fact specially, or when it is agreed upon by the parties, the decision is referred to the court. If the law be against the party, the court decides against him; if the law be for him, the court judges accordingly. He, as well as every gentleman here, must know that, under the Confederation, Congress set aside juries. There was an appeal given to Congress: did Congress determine by a jury? Every party carried his testimony in writing: to the judges of appeal, and Congress determined upon it.

The distinction between matters of law and of fact has not been sufficiently understood, or has been intentionally misrepresented. On a demurrer in law, in which the facts are agreed upon by the parties, the law arising thereupon is referred to the court. An inferior court may give an erroneous judgment; an appeal may be had from this court to the Supreme Federal Court, and a right decision had. This is an instance wherein it can have cognizance of matter of law solely. In cases where the existence of facts has been first disputed by one of the parties, and afterwards established as in a special verdict, the consideration of these facts, blended with the law, is left to the court. In such cases, inferior courts may decide contrary to justice and law, and appeals may be had to the Supreme Court. This is an instance wherein it may be said they have jurisdiction both as to law and fact. But where facts only are disputed, and where they are once established by a verdict, the opinion of the judges of the Supreme Court cannot, I conceive, set aside these facts; for I do not think they have the power so to do by this Constitution.

The federal court has jurisdiction only in some instances. There are many instances in which no court but the state courts can have any jurisdiction whatsoever, except where parties claim land under the grant of different states, or the subject of dispute arises under the Constitution itself. The state courts have exclusive jurisdiction over every other possible controversy that can arise between the inhabitants of their own states; nor can the federal courts intermeddle with such disputes, either originally or by appeal. There is a number of other instances, where, though jurisdiction is given to the federal court, it is not taken away from the state courts. If a man in South Carolina owes me money, I can bring suit in the courts of that state, as well as in any inferior federal court. I think gentlemen cannot but see the propriety of leaving to the general government the regulation of the inferior federal tribunals. This is a power which our own state legislature has. We may trust Congress as well as them.

### **Mr. SPENCER**

answered, that the gentleman last up had misunderstood him. He did not object to the caption of the Constitution, but he instanced it to show that the United States were not, merely as states, the objects of the Constitution; but that the laws of Congress were to operate upon individuals, and not upon states. He then continued: I do not mean to contend that the laws of the general government should not operate upon individuals. I before observed that this was necessary, as laws could not be put in execution against states without the agency of the sword, which, instead of answering the ends of government, would destroy it. I endeavored to show that, as the government was not to operate against states, but against individuals, the rights of individuals ought to be properly secured. In order to constitute this security, it appears to me there ought to be such a clause in the Constitution as there was in the Confederation, expressly declaring, that

every power, jurisdiction, and right, which are not given up by it, remain in the states. Such a clause would render a bill of rights unnecessary. But as there is no such clause, I contend that there should be a bill of rights, ascertaining and securing the great rights of the states and people. Besides my objection to the revision of facts by the federal court, and the insecurity of jury trial, I consider the concurrent jurisdiction of those courts { 164 } with the state courts as extremely dangerous. It must be obvious to every one that, if they have such a concurrent jurisdiction, they must in time take away the business from the state courts entirely. I do not deny the propriety of having federal courts; but they should be confined to federal business, and ought not to interfere in those cases where the state courts are fully competent to decide. The state courts can do their business without federal assistance. I do not know how far any gentleman may suppose that I may, from my office, be biased in favor of the state jurisdiction. I am no more interested than any other individual. I do not think it will affect the respectable office which I hold. Those courts will not take place immediately, and even when they do, it will be a long time before their concurrent jurisdiction will materially affect the state judiciaries. I therefore consider myself as disinterested. I only wish to have the government so constructed as to promote the happiness, harmony, and liberty, of every individual at home, and render us respectable as a nation abroad. I wish the question to be decided coolly and calmly — with moderation, candor, and deliberation.

**Mr. MACLAINE**

replied, that the gentleman's objections to the want of a bill of rights had been sufficiently answered; that the federal jurisdiction was well guarded, and that the federal courts had not, in his opinion, cognizance, in any one case, where it could be alone vested in the state judiciaries with propriety or safety. The gentleman, he said, had acknowledged that the laws of the Union could not be executed under the existing government; and yet he objected to the federal judiciary's having cognizance of such laws, though it was the only probable means whereby they could be enforced. The treaty of peace with Great Britain was the supreme law of the land; yet it was disregarded, for want of a federal judiciary. The state judiciaries did not enforce an observance of it. The state courts were highly improper to be intrusted with the execution of the federal laws, as they were bound to judge according to the state laws, which might be repugnant to those of the Union.

**Mr. IREDELL.**

Mr. Chairman, I beg leave to make a few observations on some remarks that have been made on this part of the Constitution. The honorable gentleman said that it was very extraordinary that the Convention should { 165 } not have taken the trouble to make an addition of five or six lines, to secure the trial by jury in civil cases. Sir, if by the addition, not only of five or six lines, but of five or six hundred lines, this invaluable object could have been secured, I should have thought the Convention criminal in omitting it; and instead of meriting the thanks of their country, as I think they do now, they might justly have met with its resentment and indignation. I am persuaded the omission arose from the real difficulty of the case. The gentleman says that a mode might have been provided, whereby the trial by jury might have been secured satisfactorily to all the states. I call on him to show that mode. I know of none; nor do I think it possible for any man to devise one to which some states would not have objected. It is said, indeed, that it

might have been provided that it should be as it had been heretofore. Had this been the case, surely it would have been highly incongruous.

The trial by jury is different in different states. It is regulated in one way in the state of North Carolina, and in another way in the state of Virginia. It is established in a different way from either in several other states. Had it, then, been inserted in the Constitution, that the trial by jury should be as it had been heretofore, there would have been an example, for the first time in the world, of a judiciary belonging to the same government being different in different parts of the same country. What would you think of an act of Assembly which should require the trial by jury to be had in one mode in the county of Orange, and in another mode in Granville, and in a manner different from both in Chatham? Such an act of Assembly, so manifestly injudicious, impolitic, and unjust, would be repealed next year.

But what would you say of our Constitution, if it authorized such an absurdity? The mischief, then, could not be removed without altering the Constitution itself. It must be evident, therefore, that the addition contended for would not have answered the purpose. If the method of any particular state had been established, it would have been objected to by others, because, whatever inconveniences it might have been attended with, nothing but a change in the Constitution itself could have removed them; whereas, as it is now, if any mode established by Congress is found inconvenient, it can easily be altered by a single act of legislation. {166} Let any gentleman consider the difficulties in which the Convention was placed. A union was absolutely necessary. Every thing could be agreed upon except the regulation of the trial by jury in civil cases. They were all anxious to establish it on the best footing, but found they could fix upon no permanent rule that was not liable to great objections and difficulties. If they could not agree among themselves, they had still less reason to believe that all the states would have unanimously agreed to any one plan that could be proposed. They, therefore, thought it better to leave all such regulations to the legislature itself, conceiving there could be no real danger, in this case, from a body composed of our own representatives, who could have no temptation to undermine this excellent mode of trial in civil cases, and who would have, indeed, a personal interest, in common with others, in making the administration of justice between man and man secure and easy.

In criminal cases, however, no latitude ought to be allowed. In these the greatest danger from any government subsists; and accordingly it is provided that there shall be a trial by jury, in all such cases, in the state wherein the offence is committed. I thought the objection against the want of a bill of rights had been obviated unanswerably. It appears to me most extraordinary. Shall we give up any thing but what is positively granted by that instrument? It would be the greatest absurdity for any man to pretend that, when a legislature is formed for a particular purpose, it can have any authority but what is so expressly given to it, any more than a man acting under a power of attorney could depart from the authority it conveyed to him, according to an instance which I stated when speaking on the subject before. As for example: — if I had three tracts of land, one in Orange, another in Caswell, and another in Chatham, and I gave a power of attorney to a man to sell the two tracts in Orange and Caswell, and he should attempt to sell my land in Chatham, would any man of common sense suppose he had authority to do so? In like manner, I say, the future Congress can have no right to exercise any power but what is contained in that paper. Negative words, in my opinion, could make the matter no plainer than it was before. The

gentleman says that unalienable rights ought not to be given up. Those rights which are unalienable { 167 } are not alienated. They still remain with the great body of the people. If any right be given up that ought not to be, let it be shown. Say it is a thing which affects your country, and that it ought not to be surrendered: this would be reasonable. But when it is evident that the exercise of any power not given up would be a usurpation, it would be not only useless, but dangerous, to enumerate a number of rights which are not intended to be given up; because it would be implying, in the strongest manner, that every right not included in the exception might be impaired by the government without usurpation; and it would be impossible to enumerate every one. Let any one make what collection or enumeration of rights he pleases, I will immediately mention twenty or thirty more rights not contained in it.

**Mr. BLOODWORTH.**

Mr. Chairman, I have listened with attention to the gentleman's arguments; but whether it be for want of sufficient attention, or from the grossness of my ideas, I cannot be satisfied with his defence of the omission, with respect to the trial by jury. He says that it would be impossible to fall on any satisfactory mode of regulating the trial by jury, because there are various customs relative to it in the different states. Is this a satisfactory cause for the omission? Why did it not provide that the trial by jury should be preserved in civil cases? It has said that the trial should be by jury in criminal cases; and yet this trial is different in its manner in criminal cases in the different states. If it has been possible to secure it in criminal cases, notwithstanding the diversity concerning it, why has it not been possible to secure it in civil cases? I wish this to be cleared up. By its not being provided for, it is expressly provided against. I still see the necessity of a bill of rights. Gentlemen use contradictory arguments on this subject, if I recollect right. Without the most express restrictions, Congress may trample on your rights. Every possible precaution should be taken when we grant powers. Rulers are always disposed to abuse them. I beg leave to call gentlemen's recollection to what happened under our Confederation. By it, nine states are required to make a treaty; yet seven states said that they could, with propriety, repeal part of the instructions given our secretary for foreign affairs, which prohibited him from making a treaty to give up the Mississippi to Spain, by which repeal the rest of his instructions enabled him to make such treaty. Seven states actually did repeal the prohibitory part of these instructions, and they insisted it was legal and proper. This was in fact a violation of the Confederation. If gentlemen thus put what construction they please upon words, how shall we be redressed, if Congress shall say that all that is not expressed is given up, and they assume a power which is expressly inconsistent with the rights of mankind? Where is the power to pretend to deny its legality? This has occurred to me, and I wish it to be explained.

**Mr. SPENCER.**

Mr. Chairman, the gentleman expresses admiration as to what we object with respect to a bill of rights, and insists that what is not given up in the Constitution is retained. He must recollect I said, yesterday, that we could not guard with too much care those essential rights and liberties which ought never to be given up. There is no express negative — no fence against their being trampled upon. They might exceed the proper boundary without being taken notice of. When there is no rule but a vague doctrine, they might make great strides, and get possession of so much power that a general insurrection of the people would be necessary to bring an alteration

about. But if a boundary were set up, when the boundary is passed, the people would take notice of it immediately. These are the observations which I made; and I have no doubt that, when he reflects, he will acknowledge the necessity of it. I acknowledge, however, that the doctrine is right; but if that Constitution is not satisfactory to the people, I would have a bill of rights, or something of that kind, to satisfy them.

**Mr. LOCKE.**

Mr. Chairman, I wish to throw some particular light upon the subject, according to my conceptions, I think the Constitution neither safe nor beneficial, as it grants powers unbounded with restrictions. One gentleman has said that it was necessary to give cognizance of causes to the federal court, because there was partiality in the judges of the states; that the state judges could not be depended upon in causes arising under the Constitution and laws of the Union, I agree that impartiality in judges is indispensable; but I think this alteration will not produce more impartiality than there is now in our courts, whatever evils it may bring forth. Must there not be judges in the federal { 169 } courts, and those judges taken from some of the states? The same partiality, therefore, may be in them. For my part, I think it derogatory to the honor of this state to give this jurisdiction to the federal courts. It must be supposed that the same passions, dispositions, and failings of humanity which attend the state judges, will be equally the lot of the federal judges. To justify giving this cognizance to those courts, it must be supposed that all justice and equity are given up at once in the states. Such reasoning is very strange to me. I fear greatly for this state, and for other states. I find there has a considerable stress been laid upon the injustice of laws made heretofore. Great reflections are thrown on South Carolina for passing *pine-barren* and *instalment* laws, and on this state for making paper money. I wish those gentlemen who made those observations would consider the necessity which compelled us in a great measure to make such money. I never thought the law which authorized it a good law. If the evil could have been avoided, it would have been a very bad law; but necessity, sir, justified it in some degree. I believe I have gained as little by it as any in this house. If we are to judge of the future by what we have seen, we shall find as much or more injustice in Congress than in our legislature. Necessity compelled them to pass the law, in order to save vast numbers of people from ruin. I hope to be excused in observing that it would have been hard for our late Continental army to lay down their arms, with which they had valiantly and successfully fought for their country, without receiving or being promised and assured of some compensation for their past services. What a situation would this country have been in, if they had had the power over the *purse* and *sword*! If they had the powers given up by this Constitution, what a wretched situation would this country have been in! Congress was unable to pay them, but passed many resolutions and laws in their favor, particularly one that each state should make up the depreciation of the pay of the Continental line, who were distressed for the want of an adequate compensation for their services. This state could not pay her proportion in specie. To have laid a tax for that purpose would have been oppressive. What was to be done? The only expedient was to pass a law to make paper money, and make it a tender. The Continental line was satisfied, and { 170 } approved of the measure, it being done at their instance in some degree. Notwithstanding it was supposed to be highly beneficial to the state, it is found to be injurious to it. Saving expense is a very great object, but this incurred much expense. This subject has for many years embroiled the state; but the situation of the country, and the distress of the people are so great, that the public measures must be accommodated to their circumstances with peculiar delicacy and caution, or

another insurrection may be the consequence. As to what the gentleman said of the trial by jury, it surprises me much to hear gentlemen of such great abilities speak such language. It is clearly insecure, nor can ingenuity and subtle arguments prove the contrary. I trust this country is too sensible of the value of liberty, and her citizens have bought it too dearly, to give it up hastily.

**Mr. IREDELL.**

## **NOTE**

Mr. Chairman, I hope some other gentleman will answer what has been said by the gentlemen who have spoken last. I only rise to answer the question of the member from New Hanover — which was, if there was such a difficulty, in establishing the trial by jury in civil cases, that the Convention could not concur in any mode, why the difficulty did not extend to criminal cases? I beg leave to say, that the difficulty, in this case, does not depend so much on the mode of proceedings, as on the difference of the subjects of controversy, and the laws relative to them. In some states, there are no juries in admiralty and equity cases. In other states, there are juries in such cases. In some states, there are no distinct courts of equity, though in most states there are. I believe that, if a uniform rule had been fixed by the Constitution, it would have displeased some states so far that they would have rejected the Constitution altogether. Had it been declared generally, as the gentleman mentioned, it would have included equity and maritime cases, and created a necessity of deciding them in a manner different from that in which they have been decided heretofore in many of the states, which would very probably have met with the disapprobation of those states.

We have been told, and I believe this was the real reason, why they could not concur in any general rule. I have great respect for the characters of those gentlemen who formed the Convention, and I believe they were not capable of overlooking the importance of the trial by jury, much less of designedly plotting against it. But I fully believe that the real difficulty of the thing was the cause of the omission. I trust sufficient reasons have been offered, to show that it is in no danger. As to criminal cases, I must observe that the great instrument of arbitrary power is criminal prosecutions. By the privileges of the *habeas corpus*, no man can be confined without inquiry; and if it should appear that he has been committed contrary to law, he must be discharged. That diversity which is to be found in civil controversies, does not exist in criminal cases. That diversity which contributes to the security of property in civil cases, would have pernicious effects in criminal ones. There is no other safe mode to try these but by a jury. If any man had the means of trying another his own way, or were it left to the control of arbitrary judges, no man would have that security for life and liberty which every freeman ought to have. I presume that in no state on the continent is a man tried on a criminal accusation but by a jury. It was necessary, therefore, that it should be fixed, in the Constitution, that the trial should be by jury in criminal cases; and such difficulties did not occur in this as in the other case. The worthy gentleman says, that by not being provided for in civil cases, it is expressly provided against, and that what is not expressed is given up. Were it so, no man would be more against this Constitution than myself. I should detest and oppose it as much as any man. But, sir, this cannot be the case. I beg leave to say that that construction appears to me absurd and unnatural. As it could not be fixed either on the principles of uniformity or diversity, it must be left to Congress to modify it. If they establish it in any manner by law, and find it inconvenient, they can alter it.

But I am convinced that a majority of the representatives of the people will never attempt to establish a mode oppressive to their constituents, as it will be their own interest to take care of this right. But it is observed that there ought to be a fence provided against future encroachments of power. If there be not such a *fence*, it is a cause of objection. I readily agree that there ought to be such a fence. The instrument ought to contain such a definition of authority as would leave no doubt; and if there be any ambiguity, it ought not to be admitted. He says this construction is not agreeable to the people, though he acknowledges it is a right one. In my opinion, there is no man, of any reason at all, but must be satisfied with so clear and plain a definition. If the Congress should claim any power not given them, it would be as bare a usurpation as making a king in America. If this Constitution be adopted, it must be presumed the instrument will be in the hands of every man in America, to see whether authority be usurped; and any person by inspecting it may see if the power claimed be enumerated. If it be not, he will know it to be a usurpation.

**Mr. MACLAINE.**

Mr. Chairman, a gentleman lately up (Mr. Locke) has informed us of his doubts and fears respecting the federal courts. He is afraid for this state and other states. He supposes that the idea of cognizance of the laws of the Union to federal courts, must have arisen from suspicions of partiality and want of common integrity in our state judges. The worthy gentleman is mistaken in his construction of what I said. I did not personally reflect on the members of our state judiciary; nor did I impute the impropriety of vesting the state judiciaries with exclusive jurisdiction over the laws of the Union, and cases arising under the Constitution, to any want of probity in the judges. But if they be the judges of the local or state laws, and receive emoluments for acting in that capacity, they will be improper persons to judge of the laws of the Union. A federal judge ought to be solely governed by the laws of the United States, and receive his salary from the treasury of the United States. It is impossible for any judges, receiving pay from a single state, to be impartial in cases where the local laws or interests of that state clash with the laws of the Union, or the general interests of America. We have instances here which prove this partiality in such cases. It is also so in other states. The gentleman has thrown out something very uncommon. He likens the power given by this Constitution to giving the late army the purse and the sword. I am much astonished that such an idea should be thrown out by that gentleman, because his respectability is well known. If he considers for a moment, he must see that his observation is bad, and that the comparison is extremely absurd and improper. The purse and the sword must be given to every government. The sword is given to the executive magistrate; but the purse remains, by this Constitution, in the representatives of the people. We know very {173} well that they cannot raise one shilling but by the consent of the representatives of the people. Money bills do not even originate in the Senate; they originate solely in the other house. Every appropriation must be by law. We know, therefore, that no executive magistrate or officer can appropriate a shilling, but as he is authorized by law. With respect to paper money, the gentleman has acted and spoken with great candor. He was against paper money from the first emission. There was no other way to satisfy the late army but by paper money, there being not a shilling of specie in the state. There were other modes adopted by other states, which did not produce such inconveniences. There was, however, a considerable majority of that assembly who adopted the idea, that not one shilling more paper money should be made, because of the evil consequences that must necessarily follow. The experience of this country, for many years, has

proved that such emissions involve us in debts and distresses, destroy our credit, and produce no good consequences; and yet, contrary to all good policy, the evil was repeated.

With respect to our public security and paper money, the apprehensions of gentlemen are groundless. I believe this Constitution cannot affect them at all. In the 10th section of the 1st article, it is provided, among other restrictions, "that no state shall emit bills of credit, make any thing but gold and silver coin a tender in payment of debts, or pass any law impairing the obligation of contracts." Now, sir, this has no retrospective view. It looks to futurity. It is conceived by many people, that the moment this new Constitution is adopted, our present paper money will sink to nothing. For my part, I believe that, instead of sinking, it will appreciate. If we adopt, it will rise in value, so that twenty shillings of it will be equal to two Spanish milled dollars and a half. Paper money is as good as gold and silver where there are proper funds to redeem it, and no danger of its being increased. Before the late war, our paper money fluctuated in value. Thirty-six years ago, when I came into this country, our paper money was at seven shillings to the dollar. A few years before the late war, the merchants of Great Britain remonstrated to the ministry of that country, that they lost much of their debts by paper money losing its value. This {174} caused an order to be made through all the states not to pass any money bills whatever. The effect of this was, that our paper money appreciated. At the commencement of the war, our paper money in circulation was equal to gold or silver. But it is said that, on adoption, all debts contracted heretofore must then be paid in gold or silver coin. I believe that, if any gentleman will attend to the clause above recited, he will find that it has no retrospective, hut a prospective view. It does not look back, but forward. It does not destroy the paper money which is now actually made, but prevents us from making any more. This is much in our favor, because we may pay in the money we contracted for, (or such as is equal in value to it;) and the very restriction against an increase of it will add to its value. It is in the power of the legislature to establish a scale of depreciation, to fix the value of it. There is nothing against this in the Constitution. On the contrary, it favors it. I should be much injured if it was really to be the case that the paper money should sink. After the Constitution was adopted, I should think myself, as a holder of our paper money, possessed of Continental security. I am convinced our money will be good money; and if I was to speculate in any thing, I would in paper money, though I never did speculate. I should be satisfied that I should make a profit, Why say that the state security will be paid in gold and silver after all these things are considered? Every real, actual debt of the state ought to be discharged in real and not nominal value, at any rate.

### **Mr. BASS**

took a general view of the original and appellate jurisdiction of the federal court. He considered the Constitution neither necessary nor proper. He declared that the last part of the 1st paragraph of the 2d section appeared to him totally inexplicable. He feared that dreadful oppression would be committed by carrying people too great a distance to decide trivial causes. He observed that gentlemen of the law and men of learning did not concur in the explanation or meaning of this Constitution. For his part, he said, he could not understand it, although he took great pains to find out its meaning, and although he flattered himself with the possession of common sense and reason. He always thought that there ought to be a compact between the governors and governed. Some called this a {175} compact; others said it was not. From the contrariety of opinions, he thought the thing was either uncommonly difficult, or absolutely unintelligible. He wished to

reflect on no gentleman, and apologized for his ignorance, by observing that he never went to school, and had been born blind; but he wished for information, and supposed that every gentleman would consider his desire as laudable.

**Mr. MACLAINE**

first, and then Mr. IREDELL, endeavored to satisfy the gentleman, by a particular explanation of the whole paragraph. It was observed that, if there should be a controversy between this state and the king of France or Spain, it must be decided in the federal court. Or if there should arise a controversy between the French king, or any other foreign power, or one of their subjects or citizens, and one of our citizens, it must be decided there also. The distinction between the words *citizen* and *subject* was explained — that the former related to individuals of popular governments, the latter to those of monarchies; as, for instance, a dispute between this state, or a citizen of it, and a person in Holland. The words *foreign citizen* would properly refer to such persons. If the dispute was between this state and a person in France or Spain, the words *foreign subject* would apply to this; and all such controversies might be decided in the federal court — that the words *citizens* or *subjects*, in that part of the clause, could only apply to foreign citizens or foreign subjects; and another part of the constitution made this plain, by confining disputes, in general, between citizens of the same state, to the single case of their claiming lands under grants of different states.

**The last clause of the 2d section under consideration.**

**Mr. MACLAINE.**

Mr. Chairman, an objection was made yesterday by a gentleman against this clause, because it confined the trial to the state; and he observed that a person on the Mississippi might be tried in Edenton.

Gentlemen ought to consider that it was impossible for the Convention, when devising a general rule for all the states, to descend to particular districts. The trial by jury is secured generally, by providing that the trial shall be in the state where the crime was committed. It is left to Congress to make such regulations, by law, as will suit the circumstances of each state. It would have been impolitic to fix the mode of proceeding, because it would alter the {176} present mode of proceedings in such cases, in this state, or in several others; for there is such a dissimilarity in the proceedings of different states, that it would be impossible to make a general law which would be satisfactory to the whole; But as the trial is to be in the state, there is no doubt but it will be the usual and common mode practised in the state.

**3d section read without any observation.**

**Article 4th. The 1st section, and two first clauses of the 2d section, read without observation.**

**The last clause read.**

Mr. IREDELL

## SLAVERY

begged leave to explain the reason of this clause. In some of the Northern States they have emancipated all their *slaves*. If any of our slaves, said he, go there, and remain there a certain time, they would, by the present laws, be entitled to their freedom, so that their masters could not get them again. This would be extremely prejudicial to the inhabitants of the Southern States; and to prevent it, this clause is inserted in the Constitution. Though the word *slave* is not mentioned, this is the meaning of it. The northern delegates, owing to their particular scruples on the subject of *slavery*, did not choose the word *slave* to be mentioned.

The rest of the 4th article read without any observation.

Article 5th.

Mr. IREDELL.

Mr. Chairman, this is a very important clause. In every other constitution of government that I have ever heard or read of, no provision is made for necessary amendments. The misfortune attending most constitutions which have been deliberately formed, has been, that those who formed them thought their wisdom equal to all possible contingencies, and that there could be no error in what they did. The gentlemen who framed this Constitution thought with much more diffidence of their capacities; and, undoubtedly, without a provision for amendment it would have been more justly liable to objection, and the characters of its framers would have appeared much less meritorious. This, indeed, is one of the greatest beauties of the system, and should strongly recommend it to every candid mind. The Constitution of any government which cannot be regularly amended when its defects are experienced, reduces the people to this dilemma — they must either submit to its oppressions, or bring about amendments, more or less, by a civil war. Happy this, the country we live in! The Constitution before us, if it be adopted, can be altered with as much regularity, and as little confusion, as any act of Assembly; not, indeed, quite so easily, which would be extremely impolitic; but it is a most happy circumstance, that there is a remedy in the system itself for its own fallibility, so that alterations can without difficulty be made, agreeable to the general sense of the people. Let us attend to the manner in which amendments may be made. The proposition for amendments may arise from Congress itself, when two thirds of both houses shall deem it necessary. If they should not, and yet amendments be generally wished for by the people, two thirds of the legislatures of the different states may require a general convention for the purpose, in which case Congress are under the necessity of convening one. Any amendments which either Congress shall propose, or which shall be proposed by such general convention, are afterwards to be submitted to the legislatures of the different states, or conventions called for that purpose, as Congress shall think proper, and, upon the ratification of three fourths of the states, will become a part of the Constitution. By referring this business to the legislatures, expense would be saved; and in general, it may be presumed, they would speak the genuine sense of the people. It may, however, on some occasions, be better to consult an immediate delegation for that special purpose. This is therefore left discretionary. It is highly probable that amendments agreed to in either of these methods would be conducive to

the public welfare, when so large a majority of the states consented to them. And in one of these modes, amendments that are now wished for may, in a short time, be made to this Constitution by the states adopting it.

It is, however, to be observed, that the 1st and 4th clauses in the 9th section of the 1st article are protected from any alteration till the year 1808; and in order that no consolidation should take place, it is provided that no state shall, by any amendment or alteration, be ever deprived of an equal suffrage in the Senate without its own consent. The first two prohibitions are with respect to the census, (according to which direct taxes are imposed,) and with respect to the importation of slaves. As to the first, it must be observed, that there is a material difference between the Northern and Southern States. The Northern States have been much longer settled, and are much fuller of people, than the Southern, but have not land in equal proportion, nor scarcely any slaves. The subject of this article was regulated with great difficulty, and by a spirit of concession which it would not be prudent to disturb for a good many years. In twenty years, there will probably be a great alteration, and then the subject may be reconsidered with less difficulty and greater coolness. In the mean time, the compromise was upon the best footing that could be obtained. A compromise likewise took place in regard to the importation of slaves. It is probable that all the members reprobated this inhuman traffic; but those of South Carolina and Georgia would not consent to an immediate prohibition of it — one reason of which was, that, during the last war, they lost a vast number of negroes, which loss they wish to supply. In the mean time, it is left to the states to admit or prohibit the importation, and Congress may impose a limited duty upon it.

**Mr. BASS**

observed, that it was plain that the introduction of amendments depended altogether on Congress.

**Mr. IREDELL**

replied, that it was very evident that it did not depend on the will of Congress; for that the legislatures of two thirds of the states were authorized to make application for calling a convention to propose amendments, and, on such application, it is provided that Congress *shall* call such convention, so that they will have no option.

**Article 6th. 1st clause read without any observation.**

**2d clause read.**

**Mr. IREDELL.**

## **SUPREMACY**

This clause is supposed to give too much power, when, in fact, it only provides for the execution of those powers which are already given in the foregoing articles. What does it say? That "*this Constitution, and the laws of the United States which shall be made in pursuance thereof, and*

*all treaties made, or which shall be made, raider the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."* What is the meaning of this, but that, as we have given power, we will support the execution of it? We should act like children, to give power and deny the legality of executing it. It is saying no more than that, when we adopt the government, we will maintain and obey it; in the same manner as if the Constitution of this state had said that, when a law is passed in conformity to it, we must obey that law. Would this be objected to? Then, when the Congress passes a law consistent with the Constitution, it is to be binding on the people. If Congress, under pretence of executing one power, should, in fact, usurp another, they will violate the Constitution. I presume, therefore, that this explanation, which appears to me the plainest in the world, will be entirely satisfactory to the committee.

**Mr. BLOODWORTH.**

Mr. Chairman, I confess his explanation is not satisfactory to me. I wish the gentleman had gone farther. I readily agree that it is giving them no more power than to execute their laws. But how far does this go? It appears to me to sweep off all the constitutions of the states. It is a total repeal of every act and constitution of the states. The judges are sworn to uphold it. It will produce an abolition of the state governments. Its sovereignty absolutely annihilates them.

**Mr. IREDELL.**

Mr. Chairman, every power delegated to Congress is to be executed by laws made for that purpose. It is necessary to particularize the powers intended to be given, in the Constitution, as having no existence before; but, after having enumerated what we give up, it follows, of course, that whatever is done, by virtue of that authority, is legal without any new authority or power. The question, then, under this clause, will always be, whether Congress has exceeded its authority. If it has not exceeded it, we must obey, otherwise not. This Constitution, when adopted, will become a part of our state Constitution; and the latter must yield to the former only in those cases where power is given by it. It is not to yield to it in any other case whatever. For instance, there is nothing in the Constitution of this state establishing the authority of a federal court. Yet the federal court, when established, will be as constitutional as the superior Court is now under our Constitution. It appears to me merely a general clause, the amount of which is that, when they pass an act, if it be in the execution of a power given by the Constitution, it shall be binding on the people, otherwise not. As to the sufficiency or extent of the power, that is another consideration, and has been discussed before.

**Mr. BLOODWORTH.**

This clause will be the destruction of every law which will come in competition with the laws of the United States. Those laws and regulations which have been, or shall be, made in this state, must be destroyed by it, if they come in competition with the powers of Congress. Is it not necessary to define the extent of its operation? Is not the force of our tender-laws destroyed by it? The worthy gentleman from Wilmington has endeavored to obviate the objection as to the Constitution's destroying the credit of our paper money, and paying debts in coin, but

unsatisfactorily to me. A man assigns, by legal action, a bond to a man in another state; could that bond be paid by money? I know it is very easy to be wrong. I am conscious of being frequently so. I endeavor to be open to conviction. This clause seems to me too general, and I think its extent ought to be limited and defined. should suppose every reasonable man would think some amendments to k were necessary.

**Mr. MACLAINE.**

Mr. Chairman, that it will destroy the state sovereignty is a very popular argument. I beg leave to have the attention of the committee. Government is formed for the happiness and prosperity of the people at large. The powers given it are for their own good. We have found, by several years' experience, that government, taken by itself nominally, without adequate power, is not sufficient to promote their prosperity. Sufficient powers must be given to it. The powers to be given the general government are proposed to be withdrawn from the authority of the state governments, in order to protect and secure the Union at large. This proposal is made to the people No man will deny their authority to delegate powers and recall them, in all free countries. But, says the gentleman last up, the construction of the Constitution is in the power of Congress, and it will destroy the sovereignty of the state governments. It may be justify said that it diminishes the power of the state legislatures, and the diminution is necessary to the safety and prosperity of the people; but it may be fairly said that the members of the general government, — the President, senators, and representatives, — whom we send thither, by our free suffrages, to consult our common interest, will not wish to destroy the state governments, because the existence of the general government will depend on that of the state governments.

But what is the sovereignty, and who is Congress? One branch, the people at large; and the other branch, the states by their representatives. Do people fear the delegation of power to themselves — to their own representatives? But he objects that the laws of the Union are to be the supreme laws of the land. Is it not proper that their laws should be the laws of the land, and paramount to those of any particular state? — or is it proper that the laws of any particular state should control the laws of the United States? Shall a part control the whole? To permit the local laws of any state to control the laws of the Union, would be to give the general government no powers at all. If the judges are not to be bound by it, the powers of Congress will be nugatory. This is self-evident and plain. Bring it home to every understanding; it is so clear it will force itself upon it. The worthy gentleman says, in contradiction to what I have observed, that the clause which restrains the states from emitting paper money, &c., will operate upon the present circulating paper money, and that gold and silver must pay paper contracts. The clause cannot possibly have a retrospective view. It cannot affect the existing currency in any manner, except to enhance its value by the prohibition of future emissions. It is contrary to the universal principles of jurisprudence, that a law or constitution should have a retrospective operation, unless it be expressly provided that it shall. Does he deny the power of the legislature to fix a scale of depreciation as a criterion to regulate contracts made for depreciated money? As to the question he has put, of an assigned bond, I answer that it can be paid with paper money. For this reason, the assignee can be in no better situation than the assignor. If it be regularly transferred, it will appear what person had the bond originally, and the present possessor can recover nothing but what the original holder of it could. Another reason which may be urged is, that the federal courts could have no cognizance of such a suit. Those courts have no jurisdiction in cases of debt

between the citizens of the same state. The assignor being a citizen of the same state with the debtor, and assigning it to a citizen of another state, to avoid the intent of the Constitution, the assignee can derive no advantage from the assignment, except what the assignor had a right to; and consequently the gentleman's objection falls to the ground.

Every gentleman must see the necessity for the laws of the Union to be paramount to those of the separate states, and that the powers given by this Constitution must be executed. What, shall we ratify a government and then say it shall not operate? This would be the same as not to ratify. As to the amendments, the best characters in the country, and those whom I most highly esteem, wish for amendments. Some parts of it are not organized to my wish. But I apprehend no danger from the structure of the government. One gentleman (Mr. Bass) said he thought it neither necessary nor proper. For my part, I think it essential to our very existence as a nation, and our happiness and prosperity as a free people. The men who composed it were men of great abilities and various minds. They carried their knowledge with them. It is the result, not only of great wisdom and mutual reflection, but of "mutual deference and concession." It has trifling faults, but they are not dangerous. Yet at the same time I declare that, if gentlemen propose amendments, if they be not such as would destroy the government entirely, there is not a single member here more willing to agree to them than myself.

**Mr. DAVIE.**

Mr. Chairman: permit me, sir, to make a few observations on the operation of the clause so often mentioned. This Constitution, as to the powers therein granted, is constantly to be the supreme law of the land. Every power ceded by it must be executed, without being counteracted by the laws or constitutions of the individual states. Gentlemen should distinguish that it is not the supreme law in the exercise of a power not granted. It can be supreme only in cases consistent with the powers specially granted, and not in usurpations. If you grant any power to the federal government, the laws made in pursuance of that power must be supreme, and uncontrolled in their operation. This consequence is involved in the very nature and necessity of the thing. The only rational inquiry is, whether those powers are necessary, and whether they are properly granted. To say that you have vested the federal government with power to legislate for the Union, and then deny the supremacy of the laws, is a solecism in terms. With respect to its operation on our own paper money, I believe that a little consideration will satisfy every man that it cannot have the effect asserted by the gentleman from New Hanover. The Federal Convention knew that several states had large sums of paper money in circulation, and that it was an interesting property, and they were sensible that those states would never consent to its immediate destruction, or ratify any system that would have that operation. The mischief already done could not be repaired: all that could be done was, to form some limitation to this great political evil. As the paper money had become private property, and the object of numberless contracts, it could not be destroyed or intermeddled with in that situation, although its baneful tendency was obvious and undeniable. It was, however, effecting an important object to put bounds to this growing mischief. If the states had been compelled to sink the paper money instantly, the remedy might be worse than the disease. As we could not put an immediate end to it, we were content with prohibiting its future increase, looking forward to its entire extinguishment when the states that had an emission circulating should be able to call it in by a gradual redemption.

In Pennsylvania, their paper money was not a tender in discharge of private contracts. In South Carolina, their bills became eventually a tender; and in Rhode Island, New York, New Jersey, and North Carolina, the paper money was made a legal tender in all cases whatsoever. The other states were sensible that the destruction of the circulating paper would be a violation of the rights of private property, and that such a measure would render the accession of those states to the system absolutely impracticable. The injustice and pernicious tendency of this disgraceful policy were viewed with great indignation by the states which adhered to the principles of justice. In Rhode Island, the paper money had depreciated to eight for one, and a hundred per cent. with us. The people of Massachusetts and Connecticut had been great sufferers by the dishonesty of Rhode Island, and similar complaints existed against this state. This clause became in some measure a preliminary with the gentlemen who represented the other states. "You have," said they, "by your iniquitous laws and paper emissions, shamefully defrauded our citizens. The Confederation {184} prevented our compelling you to do them justice; but before We confederate with you again, you must not only agree to be honest, but put it out of your power to be otherwise? Sir, a member from Rhode Island itself could not have set his face against such language. The clause was, I believe, unanimously assented to: it has only a future aspect, and can by no means have a retrospective operation; and I trust the principles upon which the Convention proceeded will meet the approbation of every honest man.

**Mr. CABARRUS.**

Mr. Chairman, I contend that the clause which prohibits the states from emitting bills of credit will not affect our present paper money. The clause has no retrospective view. This Constitution declares, in the most positive terms, that no *ex post facto* law shall be passed by the general government. Were this clause to operate retrospectively, it would clearly be *ex post facto*, and repugnant to the express provision of the Constitution. How, then, in the name of God, can the Constitution take our paper money away? If we have contracted for a sum of money, we ought to pay according to the nature of our contract. Every honest man will pay in specie who engaged to pay it. But if we have contracted for a sum of paper money, it must be clear to every man in this committee, that we shall pay in paper money. This is a Constitution for the future government of the United States. It does not look back. Every gentleman must be satisfied, on the least reflection, that our paper money will not be destroyed. To say that it will be destroyed, is a popular argument, but not founded in fact, in my opinion. I had my doubts, but on consideration, I am satisfied.

**Mr. BLOODWORTH.**

Mr. Chairman, I beg leave to ask if the payment of sums now due be *ex post facto*. Will it be an *ex post facto* law to compel the payment of money now due in silver coin? If suit be brought in the federal court against one of our citizens, for a sum of money, will paper money be received to satisfy the judgment? I inquire for information; my mind is not yet satisfied. It has been said that we are to send our own gentlemen to represent us, and that there is not the least doubt they will put that construction on it which will be most agreeable to the people they represent. But it behoves us to consider whether they can do so if they would, when they mix with the body of {185} Congress. The Northern States are much more populous than the Southern ones. To the north of the Susquehannah there are thirty-six representatives, and to the south of it only twenty-

nine. They will always outvote us. Sir, we ought to be particular in adopting a Constitution which may destroy our currency, when it is to be the supreme law of the land, and prohibits the emission of paper money. I am not, for my own part, for giving an indefinite power. Gentlemen of the best abilities differ in the construction of the Constitution. The members of Congress will differ too. Human nature is fallible. I am not for throwing ourselves out of the Union; but we ought to be cautious by proposing amendments. The majority in several great adopting states was very trifling. Several of them have proposed amendments, but not in the mode most satisfactory to my mind. I hope this Convention never will adopt it till the amendments are actually obtained.

**Mr. IREDELL.**

## **EX POST FACTO**

Mr. Chairman, with respect to this clause, it cannot have the operation contended for. There is nothing in the Constitution which affects our present paper money. It prohibits, for the future, the emitting of any, but it does not interfere with the paper money now actually in circulation in several states. There is an express clause which protects it. It provides that there shall be no *ex post facto* law. This would be *ex post facto*, if the construction contended for were right, as has been observed by another gentleman. If a suit were brought against a man in the federal court, and execution should go against his property, I apprehend he would, under this Constitution, have a right to pay our paper money, there being nothing in the Constitution taking away the validity of it. Every individual in the United States will keep his eye watchfully over those who administer the general government, and no usurpation of power will be acquiesced in. The possibility of usurping powers ought not to be objected against it. Abuse may happen in any government. The only resource against usurpation is the inherent right of the people to prevent its exercise. This is the case in all free governments in the world. The people will resist if the government usurp powers not delegated to it. We must run the risk of abuse. We must take care to give no more power than is necessary; { 186 } but, having given that, we must submit to the possible dangers arising from it.

With respect to the great weight of the Northern States, it will not, on a candid examination, appear so great as the gentleman supposes. At present, the regulation of our representation is merely temporary. Whether greater or less, it will hereafter depend on actual population. The extent of this state is very great, almost equal to that of any state in the Union; and our population will probably be in proportion. To the north of Pennsylvania, there are twenty-seven votes. To the south of Pennsylvania, there are thirty votes, leaving Pennsylvania out. Pennsylvania has eight votes. In the division of what is called the northern and southern interests, Pennsylvania does not appear to be decidedly in either scale. Though there may be a combination of the Northern States, it is not certain that the interests of Pennsylvania will coincide with theirs. If, at any time, she join us, we shall have thirty-eight against twenty-seven. Should she be against us, they will have only thirty-five to thirty. There are two states to the northward, who have, in some respect, a similarity of interests with ourselves. What is the situation of New Jersey? It is, in one respect, similar to ours. Most of the goods they use come through New York, and they pay for the benefit of New York, as we pay for that of Virginia. It is so with Connecticut; so that, in every question between importing and non-importing states, we may expect that two of the Northern States would probably join with North Carolina. It is impossible to destroy altogether

this idea of separate interests. But the difference between the states does not appear to me so great as the gentleman imagines; and I beg leave to say, that, in proportion to the increase of population, the Southern States will have greater weight than the Northern, as they have such large quantities of land still uncultivated, which is not so much the case to the north. If we should suffer a Small temporary inconvenience, we shall be compensated for it by having the weight of population in our favor in future.

**Mr. BLOODWORTH.**

Mr. Chairman, when I was in Congress, the southern and northern interests divided at Susquehannah. I believe it is so now. The advantage to be gained by future population is no argument at all. Do {187} we gain any thing when the other states have an equality of members in the Senate, notwithstanding the increase of members in the House of Representatives? This is no consequence at all. I am sorry to mention it, but I can produce an instance which will prove the facility of misconstruction. [Here Mr. Bloodworth cited an instance which took place in Congress with respect to the Indian trade, which, not having been distinctly heard, is omitted.]

They may trample on the rights of the people of North Carolina if there be not sufficient guards and checks. I only mentioned this to show that there may be misconstructions, and that, in so important a case as a constitution, every thing ought to be clear and intelligible, and no ground left for disputes.

**Mr. CALDWELL.**

Mr. Chairman, it is very evident that there is a great necessity for perspicuity. In the sweeping clause, there are words which are not plain and evident. It says that "this Constitution, and the laws of the United States which shall be made in pursuance thereof, &c., shall be the supreme law of the land? The word *pursuance* is equivocal and ambiguous; a plainer word would be better. They may pursue bad as well as good measures, and therefore the word is improper; it authorizes bad measures. Another thing is remarkable, — that gentlemen, as an answer to every improper part of it, tell us that every thing is to be done by our own representatives, who are to be good men. There is no security that they will be so, or continue to be so. Should they be virtuous when elected, the laws of Congress will be unalterable. These laws must be annihilated by the same body which made them. It appears to me that the laws which they make cannot be altered without calling a convention. [Mr. Caldwell added some reasons for this opinion, but spoke too low to be heard.]

**Gov. JOHNSTON.**

Mr. Chairman, I knew that many gentlemen in this Convention were not perfectly satisfied with every article of this Constitution; but I did not expect that so many would object to this clause. The Constitution must be the supreme law of the land; otherwise, it would be in the power of any one state to counteract the other states, and withdraw itself from the Union. The laws made in pursuance thereof by Congress ought to be the supreme law of the land; otherwise, anyone state might repeal the laws {188} of the Union at large. Without this clause, the whole Constitution would be a piece of blank paper. Every treaty should be the supreme law of the land; without

this, any one state might involve the whole Union in war. The worthy member who was last up has started an objection which I cannot answer. I do not know a word in the English language so good as the word *pursuance*, to express the idea meant and intended by the Constitution. Can any one understand the sentence any other way than this? When Congress makes a law in virtue of their constitutional authority, it will be an actual law. I do not know a more expressive or a better way of representing the idea by words. Every law consistent with the Constitution will have been made in pursuance of the powers granted by it. Every usurpation or law repugnant to it cannot have been made in pursuance of its powers. The latter will be nugatory and void. I am at a loss to know what he means by saying the laws of the Union will be unalterable. Are laws as immutable as constitutions? Can any thing be more absurd than assimilating the one to the other? The idea is not warranted by the Constitution, nor consistent with reason.

**Mr. J. M'DOWALL**

wished to know how the taxes are to be paid which Congress were to lay in this state. He asked if paper money would discharge them. He calculated that the taxes would be higher, and did not know how they could be discharged; for, says he, every man is to pay so much more, and the poor man has not the money locked up in his chest. He was of opinion that our laws could be repealed entirely by those of Congress.

**Mr. MACLAINE.**

Mr. Chairman, taxes must be paid in gold or silver coin, and not in imaginary money. As to the subject of taxation, it has been the opinion of many intelligent men that there will be no taxes laid immediately, or, if any, that they will be very inconsiderable: There will be no occasion for it, as proper regulations will raise very large sums of money. We know that Congress will have sufficient power to make such regulations. The moment that the Constitution is established, Congress will have credit with foreign nations. Our situation being known, they can borrow any sum. It will be better for them to raise any money they want at present by borrowing than by taxation. It is well known that in this country gold and silver vanish when {189} paper money is made. When we adopt, if ever, gold and silver will again appear in circulation. People will not let their hard money go, because they know that paper money cannot repay it. After the war, we had more money in gold and silver, in circulation, than we have nominal money now. Suppose Congress wished to raise a million of money more than the imposts. Suppose they borrow it. They can easily borrow it in Europe at four per cent. The interest of that sum will be but £40,000. So that the people, instead of having the whole £1,000,000 to pay, will have but £40,000 to pay, which will hardly be felt. The proportion of £40,000 for this state would be a trifle. In seven years' time, the people would be able, by only being obliged to pay the interest annually, to save money, and pay the whole principal, perhaps, afterwards, without much difficulty. Congress will not lay a single tax when it is not to the advantage of the people at large. The western lands will also be a considerable fire. The sale of them will aid the revenue greatly, and we have reason to believe the impost will be productive.

**Mr. J. M'DOWALL.**

Mr. Chairman, instead of reasons and authorities to convince me, assertions are made. Many respectable gentlemen are satisfied that the taxes will be higher. By what authority does the gentleman say that the impost will be productive, when our trade is come to nothing? Sir, borrowing money is detrimental and ruinous to nations. The interest is lost money. We have been obliged to borrow money to pay interest! We have no way of paying additional and extraordinary sums. The people cannot stand them. I should be extremely sorry to live under a government which the people could not understand, and which it would require the greatest abilities to understand. It ought to be plain and easy to the meanest capacity. What would be the consequence of ambiguity? It may raise animosity and revolutions, and involve us in bloodshed. It becomes us to be extremely cautious.

**Mr. MACLAINE.**

Mr. Chairman, I would ask the gentleman what is the state of our trade. I do not pretend to a very great knowledge in trade, but I know something of it. If our trade be in a low situation, it must be the effect of our present weak government, I really believe that Congress will be able to raise almost what sums they please by { 190 } the impost. I know it will, though the gentleman may call it assertion, I am not unacquainted with the territory or resources of this country. The resources, under proper regulations, are very great. In the course of a few years, we can raise money without borrowing a single shilling. It is not disgraceful to borrow money. The richest nations have resorted to loans on some emergencies. I believe, as much as I do in my existence, that Congress will have it in their power to borrow money if our government be such as people can depend upon. They have been able to borrow now under the present feeble system. If so, can there be any doubt of their being able to do it under a respectable government?

**Mr. M'DOWALL**

replied, that our trade was on a contemptible footing; that it was come almost to nothing, and lower in North Carolina than any where; that therefore little could be expected from the impost.

**Mr. J. GALLOWAY.**

Mr. Chairman, I should make no objection to this clause were the powers granted by the Constitution sufficiently defined; for I am clearly of opinion that it is absolutely necessary for every government, and especially for a general government, that its laws should be the supreme law of the land. But I hope the gentlemen of the committee will advert to the 10th section of the 1st article. This is a negative which the Constitution of our own state does not impose upon us. I wish the committee to attend to that part of it which provides that no state shall pass any law which will impair the obligation of contracts. Our public securities are at a low ebb, and have been so for many years. We well know that this country has taken those securities as specie. This hangs over our heads as a contract. There is a million and a half in circulation at least. That clause of the Constitution may compel us to make good the nominal value of these securities. I trust this country never will leave it to the hands of the general government to redeem the securities which they have already given. Should this be the case, the consequence will be, that they will be purchased by speculators, when the citizens will part with them, perhaps for a very trifling consideration. Those speculators will look at the Constitution, and see that they will be

paid in gold and silver. They will buy them at a half-crown in the pound, and get the full nominal value {191} for them in gold and silver. I therefore wish the committee to consider whether North Carolina can redeem those securities in the manner most agreeable to her citizens, and justifiable to the world, if this Constitution be adopted.

**Mr. DAVIE.**

Mr. Chairman, I believe neither the 10th section, cited by the gentleman, nor any other part of the Constitution, has vested the general government with power to interfere with the public securities of any state. I will venture to say that the last thing which the general government will attempt to do will be this. They have nothing to do with it. The clause refers merely to contracts between individuals. That section is the best in the Constitution. It is founded on the strongest principles of justice. It is a section, in short, which I thought would have endeared the Constitution to this country. When the worthy gentleman comes to consider, he will find that the general government cannot possibly interfere with such securities. How can it? It has no negative clause to that effect. Where is there a negative clause, operating negatively on the states themselves? It cannot operate retrospectively, for this would be repugnant to its own express provisions. It will be left to ourselves to redeem them as we please. We wished we could put it on the shoulders of Congress, but could not. Securities may be higher, but never less. I conceive, sir, that this is a very plain case, and that it must appear perfectly clear to the committee that the gentleman's alarms are groundless.

**WEDNESDAY, *July 30, 1788.***

**The last clause of the 6th article read.**

**Mr. HENRY ABBOT,**

after a short exordium, which was not distinctly heard, proceeded thus: Some are afraid, Mr. Chairman, that, should the Constitution be received, they would be deprived of the privilege of worshipping God according to their consciences, which would be taking from them a benefit they enjoy under the present constitution, They wish to know if their religious and civil liberties be secured under this system, or whether the general government may not make laws infringing their religious liberties. The worthy member from Edenton mentioned sundry political reasons why treaties should be the supreme law of the land. It is feared, by some people, that, by the power of {192} making treaties, they might make a treaty engaging with foreign powers to adopt the Roman Catholic religion in the United States, which would prevent the people from worshipping God according to their own consciences. The worthy member. from Halifax has in some measure satisfied ray mind on this subject. But others may be dissatisfied. Many wish to know what *religion* shall be established. I believe a majority of the community are Presbyterians. I am, for my part, against any exclusive establishment; but if there were any, I would prefer the Episcopal. The exclusion of religious tests is by many thought dangerous and impolitic. They suppose that if there be no religious test required, pagans, deists, and Mahometans might obtain offices among us, and that the senators and representatives might all be pagans. Every person employed by the general and state governments is to take an oath to support the former. Some are desirous to know how and by whom they are to swear, since no religious tests are required —

whether they are to swear by Jupiter, Juno, Minerva, Proserpine, or Pluto. We ought to be suspicious of our liberties. We have felt the effects of oppressive measures, and know the happy consequences of being jealous of our rights. I would be glad some gentleman would endeavor to obviate these objections, in order to satisfy the religious art of the society. Could I be convinced that the objections were well founded, I would then declare my opinion against the Constitution. [Mr. Abbot added several other observations, but spoke too low to be heard.]

**Mr. IREDELL.**

Mr. Chairman, nothing is more desirable than to remove the scruples of any gentleman on this interesting subject. Those concerning religion are entitled to particular respect. I did not expect any objection to this particular regulation, which, in my opinion, is calculated to prevent evils of the most pernicious consequences to society. Every person in the least conversant in the history of mankind, knows what dreadful mischiefs have been committed by religious persecutions, Under the color of religious tests, the utmost cruelties have been exercised. Those in power have generally considered all wisdom centred in themselves; that they alone had a right to dictate to the rest of mankind; and that all opposition to their tenets was profane and impious. The consequence of this intolerant spirit had been, {193} that each church has in turn set itself up against every other; and persecutions and wars of the most implacable and bloody nature have taken place in every part of the world. America has set an example to mankind to think more modestly and reasonably — that a man may be of different religious sentiments from our own, without being a bad member of society. The principles of toleration, to the honor of this age, are doing away those errors and prejudices which have so long prevailed, even in the most intolerant countries. In the Roman Catholic countries, principles of moderation are adopted which would have been spurned at a century or two ago. I should be sorry to find, when examples of toleration are set even by arbitrary governments, that this country, so impressed with the highest sense of liberty, should adopt principles on this subject that were narrow and illiberal.

I consider the clause under consideration as one of the strongest proofs that could be adduced, that it was the intention of those who formed this system to establish a general religious liberty in America. Were we to judge from the examples of religious tests in other countries, we should be persuaded that they do not answer the purpose for which they are intended. What is the consequence of such in England? In that country no man can be a member in the House of Commons, or hold any office under the crown, without taking the sacrament according to the rites of the Church. This, in the first instance, must degrade and profane a rite which never ought to be taken but from a sincere principle of devotion. To a man of base principles, it is made a mere instrument of civil policy. The intention was, to exclude all persons from offices but the members of the Church of England. Yet it is notorious that dissenters qualify themselves for offices in this manner, though they never conform to the Church on any other occasion; and men of no religion at all have no scruple to make use of this qualification. It never was known that a man who had no principles of religion hesitated to perform any rite when it was convenient for his private interest. No test can bind such a one. I am therefore clearly of opinion that such a discrimination would neither be effectual for its own purposes, nor, if it could, ought it by any means to be made. Upon the principles I have stated, I confess the restriction on the power of Congress, in this particular, has my hearty approbation. {194} They Certainly have no authority to interfere in the establishment of any religion whatsoever; and I am astonished that any

gentleman should conceive they have. Is there any power given to Congress in matters of religion? Can they pass a single act to impair our religious liberties? If they could, it would be a just cause of alarm. If they could, sir, no man would have more horror against it than myself. Happily, no sect here is superior to another. As long as this is the case, we shall be free from those persecutions and distractions with which other countries have been torn. If any future Congress should pass an act concerning the religion of the country, it would be an act which they are not authorized to pass, by the Constitution, and which the people would not obey. Every one would ask, "Who authorized the government to pass such an act? It is not warranted by the Constitution, and is barefaced usurpation." The power to make treaties can never be supposed to include a right to establish a foreign religion among ourselves, though it might authorize a toleration of others.

But it is objected that the people of America may, perhaps, choose representatives who have no religion at all, and that pagans and Mahometans may be admitted into offices. But how is it possible to exclude any set of men, without taking away that principle of religious freedom which we ourselves so warmly contend for? This is the foundation on which persecution has been raised in every part of the world. The people in power were always right, and every body else wrong. If you admit the least difference, the door to persecution is opened. Nor would it answer the purpose, for the worst part of the excluded sects would comply with the test, and the best men only be kept out of our counsels. But it is never to be supposed that the people of America will trust their dearest rights to persons who have no religion at all, or a religion materially different from their own. It would be happy for mankind if religion was permitted to take its own course, and maintain itself by the excellence of its own doctrines. The divine Author of our religion never wished for its support by worldly authority. Has he not said that the gates of hell shall not prevail against it? It made much greater progress for itself, than when supported by the greatest authority upon earth.

It has been asked by that respectable gentleman (Mr. {195} Abbot) what is the meaning of that part, where it is said that the United States shall *guaranty* to every state in the Union a republican form of government, and why a *guaranty* of religious freedom was not included. The meaning of the guaranty provided was this: There being thirteen governments confederated upon a republican principle, it was essential to the existence and harmony of the confederacy that each should be a republican government, and that no state should have a right to establish an aristocracy or monarchy. That clause was therefore inserted to prevent any state from establishing any government but a republican one. Every one must be convinced of the mischief that would ensue, if any state had a right to change its government to a monarchy. If a monarchy was established in any one state, it would endeavor to subvert the freedom of the others, and would, probably, by degrees succeed in it. This must strike the mind of every person here, who recollects the history of Greece, when she had confederated governments. The king of Macedon, by his arts and intrigues, got himself admitted a member of the Amphictyonic council, which was the superintending government of the Grecian republics; and in a short time he became master of them all; it is, then, necessary that the members of a confederacy should have similar governments. But consistently with this restriction, the states may make what change in their own governments they think proper. Had Congress undertaken to guaranty religious freedom, or any particular species of it, they would then have had a pretence to interfere in a subject they

have nothing to do with. Each state, so far as the clause in question does not interfere, must be left to the operation of its own principles.

There is a degree of jealousy which it is impossible to satisfy. Jealousy in a free government ought to be respected; but it may be carried to too great an extent. It is impracticable to guard against all possible danger of people's choosing their officers indiscreetly. If they have a right to choose, they may make a bad choice.

I met, by accident, with a pamphlet, this morning, in which the author states, as a very serious danger, that the pope of Rome might be elected President. I confess this never struck me before; and if the author had read all the qualifications of a President, perhaps his fears might have {196} been quieted. No man but a native, or who has resided fourteen years in America, can be chosen President. I know not all the qualifications for pope, but I believe he must be taken from the college of cardinals; and probably there are many previous steps necessary before he arrives at this dignity. A native of America must have very singular good fortune, who, after residing fourteen years in his own country, should go to Europe, enter into Romish orders, obtain the promotion of cardinal, afterwards that of pope, and at length be so much in the confidence of his own country as to be elected President. It would be still more extraordinary if he should give up his popedom for our presidency. Sir, it is impossible to treat such idle fears with any degree of gravity. Why is it not objected, that there is no provision in the Constitution against electing one of the kings of Europe President? It would be a clause equally rational and judicious.

I hope that I have in some degree satisfied the doubts of the gentleman. This article is calculated to secure universal religious liberty, by putting all sects on a level — the only way to prevent persecution. I thought nobody would have objected to this clause, which deserves, in my opinion, the highest approbation. This country has already had the honor of setting an example of civil freedom, and I trust it will likewise have the honor of teaching the rest of the world the way to religious freedom also. God grant both may be perpetuated to the end of time!

**Mr. ABBOT,**

after expressing his obligations for the explanation which had been given, observed that no answer had been given to the question he put concerning the form of an *oath*.

**Mr. IREDELL.**

Mr. Chairman, I beg pardon for having omitted to take notice of that part which the worthy gentleman has mentioned. It was by no means from design, but from its having escaped my memory, as I have not the conveniency of taking notes. I shall now satisfy him in that particular in the best manner in my power.

According to the modern definition of an oath, it is considered a "solemn appeal to the Supreme Being, for the truth of what is said, by a person who believes in the existence of Supreme Being and in a future state of rewards and punishments, according to that form which will bind his conscience most." It was long held that no oath could be {197} administered but upon the New Testament, except to a Jew, who was allowed to swear upon the Old. According to this notion,

none but Jews and Christians could take an oath; and heathens were altogether excluded. At length, by the operation of principles of toleration, these narrow motions were done away. Men at length considered that there were many virtuous men in the world who had not had an opportunity of being instructed either in the Old or New Testament, who yet very sincerely believed in a Supreme Being, and in a future state of rewards and punishments. It is well known that many nations entertain this belief who do not believe either in the Jewish or Christian religion. Indeed, there are few people so grossly ignorant or barbarous as to have no religion at all. And if none but Christians or Jews could be examined upon oath, many innocent persons might suffer for want of the testimony of others. In regard to the form of an oath, that ought to be governed by the religion of the person taking it. I remember to have read an instance which happened in England, I believe in the time of Charles II. A man who was a material witness in a cause, refused to swear upon the book, and was admitted to swear with his uplifted hand. The jury had a difficulty in crediting him; but the chief justice told them, he had, in his opinion, taken as strong an oath as any of the other witnesses, though, had he been to swear himself, he should have kissed the book. A very remarkable instance also happened in England, about forty years ago, of a person who was admitted to take an oath according to the rites of his own country, though he was a heathen. He was an East Indian, who had a great suit in chancery, and his answer upon oath to a bill filed against him was absolutely necessary. Not believing either in the Old or New Testament, he could not be sworn in the accustomed manner, but was sworn according to the form of the Gentoo religion, which he professed, by touching the foot of a priest. It appeared that, according to the tenets of this religion, its members believed in a Supreme Being, and in a future state of rewards and punishments. It was accordingly held by the judges, upon great consideration, that the oath ought to be received; they considering that it was probable those of that religion were equally bound in conscience by an oath according to their form of swearing, as they themselves were by one of theirs; and that it would be {198} a reproach to the justice of the country, if a man, merely because he was of a different religion from their own, should be denied redress of an injury he had sustained. Ever since this great case, it has been universally considered that, in administering an oath, it is only necessary to inquire if the person who is to take it, believes in a Supreme Being, and in a future state of rewards and punishments. If he does, the oath is to be administered according to that form which it is supposed will bind his conscience most. It is, however, necessary that such a belief should be entertained, because otherwise there would be nothing to bind his conscience that could be relied on; since there are many cases where the terror of punishment in this world for perjury could not be dreaded. I have endeavored to satisfy the committee. We may, I think, very safely leave religion to itself; and as to the form of the oath, I think this may well be trusted to the general government, to be applied on the principles I have mentioned.

**Gov. JOHNSTON**

## **RELIGION**

expressed great astonishment that the people were alarmed on the subject of religion. This, he said, must have arisen from the great pains which had been taken to prejudice men's minds against the Constitution. He begged leave to add the following few observations to what had been so ably said by the gentleman last up.

I read the Constitution over and over, but could not see one cause of apprehension or jealousy on this subject. When I heard there were apprehensions that the pope of Rome could be the President of the United States, I was greatly astonished. It might as well be said that the king of England or France, or the Grand Turk, could be chosen to that office. It would have been as good an argument. It appears to me that it would have been dangerous, if Congress could intermeddle with the subject of religion. True religion is derived from a much higher source than human laws, When any attempt is made, by any government, to restrain men's consciences, no good consequence can possibly follow. It is apprehended that Jews, Mahometans, pagans, &c., may be elected to high offices under the government of the United States Those who are Mahometans, or any others who are not professors of the Christian religion, can never be elected to the office of President, or other high office, but in one of two cases. First, if the people of America lay aside the Christian religion altogether, it may happen. Should this unfortunately take place, the people will choose such men as think as they do themselves. Another case is, if any persons of such descriptions should, notwithstanding their religion, acquire the confidence and esteem of the people of America by their good conduct and practice of virtue, they may be chosen. I leave it to gentlemen's candor to judge what probability there is of the people's choosing men of different sentiments from themselves.

But great apprehensions have been raised as to the influence of the Eastern States. When you attend to circumstances, this will have no weight. I know but two or three states where there is the least chance of establishing any particular religion. The people of Massachusetts and Connecticut are mostly Presbyterians. In every other state, the people are divided into a great number of sects. In Rhode Island, the tenets of the Baptists, I believe, prevail. In New York, they are divided very much: the most numerous are the Episcopalians and the Baptists. In New Jersey, they are as much divided as we are. In Pennsylvania, if any sect prevails more than others, it is that of the Quakers. In Maryland, the Episcopalians are most numerous, though there are other sects. In Virginia, there are many sects; you all know what their religious sentiments are. So in all the Southern States they differ; as also in New Hampshire. I hope, therefore, that gentlemen will see there is no cause of fear that any one religion shall be exclusively established.

#### **Mr. CALDWELL**

thought that some danger might arise. He imagined it might be objected to in a political as well as in a religious view. In the first place, he said, there was an invitation for Jews and pagans of every kind to come among us. At some future period, said he, this might endanger the character of the United States. Moreover, even those who do not regard religion, acknowledge that the Christian religion is best calculated, of all religions, to make good members of society, on account of its morality. I think, then, added he, that, in a political view, those gentlemen who formed this Constitution should not have given this invitation to Jews and heathens. All those who have any religion are against the emigration of those people from the eastern hemisphere.

#### **Mr. SPENCER**

was an advocate for securing every unalienable right, and that of worshipping God according to the dictates of conscience in particular. He therefore thought that no one particular religion should be established. Religious tests, said he, have been the foundation of persecutions in all

countries. Persons who are conscientious will not take the oath required by religious tests, and will therefore be excluded from offices, though equally capable of discharging them as any member of the society. It is feared, continued he, that persons of bad principles, deists, atheists, &c., may come into this country; and there is nothing to restrain them from being eligible to offices. He asked if it was reasonable to suppose that the people would choose men without regarding their characters. Mr, Spencer then continued thus: Gentlemen urge that the want of a test admits the most vicious characters to offices. I desire to know what test could bind them. If they were of such principles, it would not keep them from enjoying those offices. On the other hand, it would exclude from offices conscientious and truly religious people, though equally capable as others. Conscientious persons would not take such an oath, and would be therefore excluded. This would be a great cause of objection to a religious test. But in this case, as there is not a religious test required, it leaves religion on the solid foundation of its own inherent validity, without any connection with temporal authority; and no kind of oppression can take place; I confess it strikes me so. I am sorry to differ from the worthy gentleman. I cannot object to this part of the Constitution, I wish every other part was as good and proper.

**Gov. JOHNSTON**

approved of the worthy member's candor. He admitted a possibility of Jews, pagans, &c., emigrating to the United States; yet, he said, they could not be in proportion to the emigration of Christians who should come froth other countries; that, in all probability, the children even of such people would be Christians; and that this, with the rapid population of the United States, their zeal for religion, and love of liberty, would, he trusted, add to the progress of the Christian religion among us.

**The 7th article read without any objection against it.**

**Gov. JOHNSTON,**

after a short speech, which was not distinctly heard, made a motion to the following effect: —

That this committee, having fully deliberated on the Constitution proposed for the future government of the United States of America, by the Federal Convention lately held at Philadelphia, on the 17th day of September last, and having taken into their serious consideration the present critical situation of America, which induces them to be of opinion, that though certain amendments to the said Constitution may be wished for, yet that those amendments should be proposed subsequent to the ratification on the part of this state, and not previous to it, — they therefore recommend that the Convention do ratify the Constitution, and at the Same time propose amendments, to take place in one of the modes prescribed by the Constitution.

**Mr. LENOIR.**

Mr. Chairman, I conceive that I shall not be out of order to make some observations on this last part of the system, and take some retrospective view of some other parts of it. I think it not proper for our adoption, as I consider that it endangers our liberties. When we consider this system collectively, we must be surprised to think that any set of men, who were delegated to

amend the Confederation, should propose to annihilate it; for that and this system are utterly different, and cannot exist together. It has been said that the fullest confidence should be put in those characters who formed this Constitution. We will admit them, in private and public transactions, to be good characters. But, sir, it appears to me, and every other member of this committee, that they exceeded their powers. Those gentlemen had no sort of power to form a new constitution altogether; neither had the citizens of this country such an idea in their view. I cannot undertake to say what principles actuated them. I must conceive they were mistaken in their politics, and that this system does not secure the unalienable rights of freemen. It has some aristocratical and some monarchical features, and perhaps some of them intended the establishment of one of these governments. Whatever might be their intent, according to my views, it will lead to the most dangerous aristocracy that ever was thought of — an aristocracy established on a constitutional bottom! I conceive (and I believe most of this committee will likewise) that this is so dangerous, that I should like as well to have no constitution at all. Their powers are almost unlimited.

[A constitution ought to be understood by every one.](#) The most humble and trifling characters in the country have a right to know what foundation they stand upon. I confess I do not see the end of the powers here proposed, nor {202} the reasons for granting them. The principal end of a constitution is to set forth what must be given up for the community at large, and to secure those rights which ought never to be infringed. The proposed plan secures no right; or, if it does, it is in so vague and undeterminate a manner, that we don't understand it. My constituents instructed me to oppose the adoption of this Constitution. The principal reasons are as follow: The right of representation is not fairly and explicitly preserved to the people, it being easy to evade that privilege as provided in this system, and the terms of election being too long. If our General Assembly be corrupt, at the end of the year we can make new men of them by sending others in their stead. It is not so here. If there be any reason to think that human nature is corrupt, and that there is a disposition in men to aspire to power, they may embrace an opportunity, during their long continuance in office, by means of their powers, to take away the rights of the people. The senators are chosen for six years, and two thirds of them, with the President, have most extensive powers. They may enter into a dangerous combination. And they may be continually reëlected. The President may be as good a man as any in existence, but he is but a man. He may be corrupt. He has an opportunity of forming plans dangerous to the community at large. I shall not enter into the *minutiæ* of this system, but I conceive, whatever may have, been the intention of its framers, that it leads to a most dangerous aristocracy. It appears to me that, instead of securing the sovereignty of the states, it is calculated to melt them down into one solid empire. If the citizens of this state like a consolidated government, I hope they will have virtue enough to secure their rights. I am sorry to make use of the expression, but it appears to me to be a scheme to reduce this government to an aristocracy. It guaranties a republican form of government to the states; when all these powers are in Congress, it will only be a form. It will be past recovery, when Congress has the power of the purse and the sword. The power of the sword is in explicit terms given to it. The power of direct taxation gives the purse. They may prohibit the trial by jury, which is a most sacred and valuable right. There is nothing contained in this Constitution to bar them from it. The federal courts have also appellate cognizance of law and fact; the sole {203} cause of which is to deprive the people of that trial, which it is optional in them to grant or not. We find no provision against infringement on the rights of conscience. Ecclesiastical courts may be established which will be destructive to our citizens. They may make any establishment

they think proper. They have also an exclusive legislation in their ten miles square, to which may be added their power over the militia, who may be carried thither and kept there for life. Should any one grumble at their acts, he would be deemed a traitor, and perhaps taken up and carried to the exclusive legislation, and there tried without a jury. We are told there is no cause to fear. When we consider the great powers of Congress, there is great cause of alarm. They can disarm the militia. If they were armed, they would be a resource against great oppressions. The laws of a great empire are difficult to be executed. If the laws of the Union were oppressive, they could not carry them into effect, if the people were possessed of proper means of defence.

It was cried out that we were in a most desperate situation, and that Congress could not discharge any of their most sacred contracts. I believe it to be the ease. But why give more power than is necessary? The men who went to the Federal Convention went for the express purpose of amending the government, by giving it such additional powers as were necessary. If we should accede to this system, it may be thought proper, by a few designing persons, to destroy it, in a future age, in the same manner that the old system is laid aside. The Confederation was binding on all the states. It could not be destroyed but with the consent of all the states. There was an express article to that purpose. The men who were deputed to the Convention, instead of amending the old, as they were solely empowered and directed to do, proposed a new system. If the best characters departed so far from their authority, what may not be apprehended from others, who may be agents in the new government?

It is natural for men to aspire to power — it is the nature of mankind to be tyrannical; therefore it is necessary for us to secure our rights and liberties as far as we can. But it is asked why we should suspect men who are to be chosen by ourselves, while it is their interest to act justly, and while {204} men have self-interest at heart. I think the reasons which I have given are sufficient to answer that question. We ought to consider the depravity of human nature, the predominant thirst of power which is in the breast of every one, the temptations our rulers may have, and the unlimited confidence placed in them by this system. These are the foundation of my fears, They would be so long in the general government that they would forget the grievances of the people of the states.

But it is said we shall be ruined if separated from the other states, which will be the case if we do not adopt. If so, I would put less confidence in those states. The states are all bound together by the Confederation, and the rest cannot break from us without violating the most solemn compact. If they break that, they will this.

## IMPEACH

But it is urged that we ought to adopt, because so many other states have. In those states which have patronized and ratified it, many great men have opposed it. The motives of those states I know not. It is the goodness of the Constitution we are to examine. We are to exercise our own judgments, and act independently. And as I conceive we are not out of the Union, I hope this Constitution will not be adopted till amendments are made. Amendments are wished for by the other states. It was urged here that the President should have power to grant reprieves and pardons. This power is necessary with proper restrictions. But the President may be at the head of a combination against the rights of the people, and may reprieve or pardon the whole, It is

answered to this, that he cannot pardon in cases of **impeachment**, What is the punishment in such cases? Only removal from office and future disqualification. It does not touch life or property. He has power to do away punishment in every other ease. It is too unlimited, in my opinion. It may be exercised to the public good, but may also be perverted to a different purpose. Should we get those who will attend to our interest, we should be safe under any Constitution, or without any. If we send men of a different disposition, we shall be in danger. Let us give them only such powers as are necessary for the good of the community.

The President has other great powers. He has the nomination of all officers, and a qualified negative on the laws. {205} He may delay the wheels of government. He may drive the Senate to concur with his proposal. He has other extensive powers. There is no assurance of the liberty of the press. They may make it treason to write against the most arbitrary proceedings. They have power to control our elections as much as they please. It may be very oppressive on this state, and all the Southern States.

Much has been said of taxation, and the inequality of it on the states. But nothing has been said of the mode of furnishing men. In what proportion are the states to furnish men? Is it in proportion to the whites and blacks? I presume it is. This state has one hundred thousand blacks. By this Constitution, fifty negroes are equal to thirty whites. This state, therefore, besides the proportion she must raise for her white people, must furnish an additional number for her blacks, in proportion as thirty is to fifty. Suppose there be a state to the northward that has sixty thousand persons; this state must furnish as many men for the blacks as that whole state, exclusive of those she must furnish for her whites. Slaves, instead of strengthening, weaken the state; the regulation, therefore, will greatly injure it, and the other Southern States. There is another clause which I do not, perhaps, understand. The power of taxation seems to me not to extend to the lands of the people of the United States; for the rule of taxation is the number of the whites and three fifths of the blacks. Should it be the case that they have no power of taxing this object, must not direct taxation be hard upon the greater part of this state? I am not confident that it is so, but it appears to me that they cannot lay taxes on this object. This will oppress the poor people who have large families of whites, and no slaves to assist them in cultivating the soil, although the taxes are to be laid in proportion to three fifths of the negroes, and all the whites. Another disadvantage to this state will arise from it. This state has made a contract with its citizens, The public securities and certificates I allude to. These may be negotiated to men who live in other states. Should that be the case, these gentlemen will have demands against this state on that account. The Constitution points out the mode of recovery; it must be in the federal court only, because controversies between a state and the citizens, another state are cognizable only in the federal courts. {206} They cannot be paid but in gold and silver. Actual specie will be recovered in that court. This would be an in, tolerable grievance without remedy.

I wish not to be so understood as to be so averse to this system, as that I should object to all parts of it, or attempt to reflect on the reputation of those gentlemen who formed it; though it appears to me that I would not have agreed to any proposal but the amendment of the Confederation. If there were any security for the liberty of the people, I would, for my own part, agree to it. But in this case, as millions yet unborn are concerned, and deeply interested in our decision, I would have the most positive and pointed security. I shall therefore hope that, before this house will proceed to adopt this Constitution, they will propose such amendments to it as will make it

complete; and when amendments are adopted, perhaps I will be as ready to accede to it as any man. One thing will make it aristocratical. Its powers are very indefinite. There was a very necessary clause in the Confederation, which is omitted in this system. That was a clause declaring that every power, &c., not given to Congress, was reserved to the states. The omission of this clause makes the power so much greater. Men will naturally put the fullest construction on the power given them. Therefore lay all restraint on them, and form a plan to be understood by every gentleman of this committee, and every individual of the community.

**Mr. SPAIGHT.**

Mr. Chairman, I am one of those who formed this Constitution. The gentleman says, we exceeded our powers. I deny the charge. We were sent with a full power to amend the existing system. This involved every power to make every alteration necessary to meliorate and render it perfect. It cannot be said that we arrogated powers altogether inconsistent with the object of our delegation. There is a clause which expressly provides for future amendments, and it is still in your power. What the Convention has done is a mere proposal. It was found impossible to improve the old system without changing its very form; for by that system the three great branches of government are blended together. All will agree that the concession of a power to a government so constructed is dangerous. The proposing a new system, to be established by the assent and ratification of nine states, arose from the necessity {207} of the case. It was thought extremely hard that one state, or even three or four states, should be able to prevent necessary alterations. The very refractory conduct of Rhode Island, in uniformly opposing every wise and judicious measure, taught us how impolitic it would be to put the general welfare in the power of a few members of the Union. It was, therefore, thought by the Convention, that, if so great a majority as nine states should adopt it, it would be right to establish it. It was recommended by Congress to the state legislatures to refer it to the people of their different states. Our Assembly has confirmed what they have done, by proposing it to the consideration of the people. It was there, and not here, that the objection should have been made. This Convention is therefore to consider the Constitution, and whether it be proper for the government of the people of America; and had it been proposed by any one individual, under these circumstances, it would be right to consider whether it be good or bad. The gentleman has insinuated that this Constitution, instead of securing our liberties, is a scheme to enslave us. He has produced no proof, but rests it on his bare assertion — an assertion which I am astonished to hear, after the ability with which every objection has been fully and dearly refuted in the course of our debates. I am, for my part, conscious of having had nothing in view but the liberty and happiness of my country; and I believe every member of that Convention was actuated by motives equally sincere and patriotic.

He says that it will tend to aristocracy. Where is the aristocratical part of it? It is ideal. I always thought that an aristocracy was that government where the few governed the many, or where the rulers were hereditary. This is a very different government from that. I never read of such an aristocracy. The first branch are representatives chosen freely by the people at large. This must be allowed upon all hands to be democratical. The next is the Senate, chosen by the people, in a secondary manner, through the medium of their delegates in the legislature, This cannot be aristocratical. They are chosen for six years, but one third of them go out every second year, and are responsible to the state legislatures. The President is elected for four years. By whom? By those who are elected in such manner as the state legislatures think proper. I hope the gentleman

{208} will not pretend to call this an aristocratical feature. The privilege of representation is secured in the most positive and unequivocal terms, and cannot be evaded. The gentleman has again brought on the trial by jury. The Federal Convention, sir, had no wish to destroy the trial by jury. It was three or four days before them. There were a variety of objections to any one mode. It was thought impossible to fall upon any one mode but what would produce some inconveniences. I cannot now recollect all the reasons given. Most of them have been amply detailed by other gentlemen here. I should suppose that, if the representatives of twelve states, with many able lawyers among them, could not form any unexceptionable mode, this Convention could hardly be able to do it. As to the subject of religion, I thought what had been said would fully satisfy that gentleman and every other. No power is given to the general government to interfere with it at all. Any act of Congress on this subject would be a usurpation.

No sect is preferred to another. Every man has a right to worship the Supreme Being in the manner he thinks proper. No test is required. All men of equal capacity and integrity, are equally eligible to offices. Temporal violence might make mankind wicked, but never religious. A test would enable the prevailing sect to persecute the rest. I do not suppose an infidel, or any such person, will ever be chosen to any office, unless the people themselves be of the same opinion. He says that Congress may establish ecclesiastical courts. I do not know what part of the Constitution warrants that assertion. It is impossible. No such power is given them. The gentleman advises such amendments as would satisfy him, and proposes a mode of amending before ratifying. If we do not adopt first, we are no more a part of the Union than any foreign power. It will be also throwing away the influence of our state to propose amendments as the condition of our ratification. If we adopt first, our representatives will have a proportionable weight in bringing about amendments, which will not be the case if we do not adopt. It is adopted by ten states already. The question, then, is, not whether the Constitution be good, but whether we will or will not confederate with the other states. The gentleman supposes that the liberty of the press is not secured. The Constitution does not take it away. {209} It says nothing of it, and can do nothing to injure it. But it is secured by the constitution of every state in the Union in the most ample manner.

## GUN

He objects to giving the government exclusive legislation; in a district not exceeding ten miles square, although the previous consent and cession of the state within which it may be, is required. Is it to be supposed that the representatives of the people will make regulations therein dangerous to liberty? Is there the least color or pretext for saying that the militia will be carried and kept there for life? Where is there any power to do this? The power of calling forth the militia is given for the common defence; and can we suppose that our own representatives, chosen for so short a period, will dare to pervert a power, given for the general protection, to an absolute oppression? But the gentleman has gone farther, and says, that any man who will complain of their oppressions, or write against their usurpation, may be deemed a traitor, and tried as such in the ten miles square, without a jury. What an astonishing misrepresentation! Why did not the gentleman look at the Constitution, and see their powers? Treason is there defined. It says, expressly, that treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. Complaining, therefore, or writing, cannot be treason. [Here Mr. Lenoir rose, and said he meant misprision of treason.] The

same reasons hold against that too. The liberty of the press being secured, creates an additional security. Persons accused cannot be tried without a jury; for the same article provides that "the trial of all crimes shall be by jury." They cannot be carried to the ten miles square; for the same clause adds, "and such trial shall be held in the state where the said crimes shall have been committed." He has made another objection, that land might not be taxed, and the other taxes might fall heavily on the poor people. Congress has a power to lay taxes, and no article is exempted or excluded. The proportion of each state may be raised in the most convenient manner. The census or enumeration provided is meant for the salvation and benefit of the Southern States. It was mentioned that land ought to be the only object of taxation. As an acre of land in the Northern States is worth many acres in the Southern States, this would have greatly {210} oppressed the latter, It was then judged that the number of people; as therein provided, was the best criterion for fixing the proportion of each state, and that proportion in each state to be raised in the most easy manner for the people. But he has started another objection, which I never heard before — that Congress may call for men in proportion to the number of negroes. The article with respect to requisitions of men is entirely done away. Men are to be raised by bounty. Suppose it had not been done away. The Eastern States could not impose on us a man for every black. It was not the case during the war, nor ever could be. But the quotas of men are entirely done away.

Another objection which he makes is, that the federal courts will have cognizance of contracts between this state and citizens of another state; and that public securities, negotiated by our citizens, to those of other states, will be recoverable in specie in those courts against this state. They cannot be negotiated. What do these certificates say? Merely that the person therein named shall, for a particular service, receive so much money. They are not negotiable. The money must be demanded for them in the name of those therein mentioned. No other person has a right. There can be no danger, therefore, in this respect. The gentleman has made several other objections; but they have been so fully answered and clearly refuted by several gentlemen in the course of the debates, that I shall pass them by unnoticed. I cannot, however, conclude without observing that I am amazed he should call the powers of the general government indefinite. It is the first time I heard the objection. I will venture to say they are better defined than the powers of any government he ever heard of.

#### **Mr. J. M'DOWALL.**

Mr. Chairman, I was in hopes that amendments would have been brought forward to the Constitution before the idea of adopting it had been thought of or proposed. From the best information, there is a great proportion of the people in the adopting states averse to it as it stands. I collect my information from respectable authority. I know the necessity of a federal government. I therefore wish this was one in which our liberties and privileges were secured; for I consider the Union as the rock of our political salvation. I am for the strongest federal government. A bill of rights ought to have been inserted, to ascertain our most valuable and unalienable rights.

The 1st clause of the 4th section gives the Congress an unlimited power over elections. This matter was not cleared up to my satisfaction. They have full power to alter it from one time of the year to another, so as that it shall be impossible for the people to attend. They may fix the

time in winter, and the place at Edenton, when the weather will be so bad that the people cannot attend. The state governments will be mere boards of election. The clause of elections gives the Congress power over the time and manner of choosing the Senate. I wish to know why reservation was made of the place of choosing senators, and not also of electing representatives. It points to the time when the states shall be all consolidated into one empire. Trial by jury is not secured. The objections against this want of security have not been cleared up in a satisfactory manner. It is neither secured in civil nor criminal cases. The federal appellate cognizance of law and fact puts it in the power of the wealthy to recover unjustly of the poor man, who is not able to attend at such extreme distance, and bear such enormous expense as it must produce. It ought to be limited so as to prevent such oppressions.

I say the trial by jury is not sufficiently secured in criminal cases. The very retention of the trial by jury is, that the accused may be tried by persons who come from the vicinage or neighborhood, who may be acquainted with his character. The substance, therefore, of this privilege is taken away.

By the power of taxation, every article capable of being taxed may be so heavily taxed that the people cannot bear the taxes necessary to be raised for the support of their state governments. Whatever law we may make, may be repealed by their laws. All these things, with others, tend to make us one general empire. Such a government cannot be well regulated. When we are connected with the Northern States, who have a majority in their favor, laws maybe made which will answer their convenience, but will be oppressive to the last degree upon the Southern States. They differ in climate, soil, customs, manners, &c. A large majority of the people of this country are against this Constitution, because they think it replete with dangerous defects. They ought to be satisfied with it before it is adopted; otherwise it cannot operate happily. Without the affections of {212} the people, it will not have sufficient energy. To enforce its execution, recourse must be had to arms and bloodshed. How much better would it be if the people were satisfied with it! From all these considerations, I now rise to oppose its adoption; for I never will agree to a government that tends to the destruction of the liberty of the people.

**Mr. WILSON**

wished that the Constitution had excluded Popish priests from offices. As there was no test required, and nothing to govern them but honor, he said that when their interest clashed with their honor, the latter would fly before the former.

**Mr. LANCASTER.**

Mr. Chairman, it is of the utmost importance to decide this great question with candor and deliberation. Every part of this Constitution has been elucidated. It hath been asserted, by several worthy gentlemen, that it is the most excellent Constitution that ever was formed. I could wish to be of that opinion if it were so. The powers vested therein were very extensive. I am apprehensive that the power of taxation is unlimited. It expressly says that Congress shall have the power to lay taxes, &c. It is obvious to me that the power is unbounded, and I am apprehensive that they may lay taxes too heavily on our lands, in order to render them more productive. The amount of the taxes may be more than our lands will sell for. It is obvious that

the lands in the Northern States, which gentlemen suppose to be more populous than this country, are more valuable and, better cultivated than ours; yet their lands will be taxed no higher than our lands. A rich man there, from report, does not possess so large a body of land as a poor man to the southward. If so, a common poor man here will have much more to pay for poor land, than the rich man there for land of the best quality. This power, being necessarily unequal and oppressive, ought not to be given up. I shall endeavor to be as concise as possible. We find that the ratification of nine states shall be sufficient for its establishment between the states so ratifying the same. This, as has been already taken notice of, is a violation of the Confederation. We find that, by that system, no alteration was to take place, except it was ratified by every state in the Union. Now, by comparing this last article of the Constitution to that part of the Confederation, we find a most flagrant violation. The Articles of Confederation were sent {213} out with all solemnity on so solemn an occasion, and were to be always binding on the states; but, to our astonishment, we see that nine states may do away the force of the whole. I think, without exaggeration, that it will be looked upon, by foreign nations, as a serious and alarming change.

How do we know that, if we propose amendments, they shall be obtained after actual ratification? May not these amendments be proposed with equal propriety, and more safety, as the condition of our adoption? If they violate the 13th article of the Confederation in this manner, may they not, with equal propriety, refuse to adopt amendments, although agreed to and wished for by two thirds of the states? This violation of the old system is a precedent for such proceedings as these. That would be a violation destructive to our felicity. We are now determining a question deeply affecting the happiness of millions yet unborn. It is the policy of freemen to guard their privileges. Let us, then, as far as we can, exclude the possibility of tyranny. The President is chosen for four years; the senators for six years. Where is our remedy for the most flagrant abuses? It is thought that North Carolina is to have an opportunity of choosing one third of their senatorial members, and all their representatives, once in two years. This would be the case as to senators, if they should be of the first class; but, at any rate, it is to be after six years. But if they deviate from their duty, they cannot be excluded and changed the first year, as the members of Congress can now by the Confederation. How can it be said to be safe to trust so much power in the hands of such men, who are not responsible or amenable for misconduct?

As it has been the policy of every state in the Union to guard elections, we ought to be more punctual in this case. The members of Congress now may be recalled. But in this Constitution they cannot be recalled. The continuance of the President and Senate is too long. It will be objected, by some gentlemen, that, if they are good, why not continue them? But I would ask, How are we to find out whether they be good or bad? The individuals who assented to any bad law are not easily discriminated from others. They will, if individually inquired of, deny that they gave it their approbation; and it is in their power to conceal their transactions as long as they please.

There is also the President's conditional negative on the laws. After a bill is presented to him, and he disapproves of it, it is to be sent back to that house where it originated, for their consideration. Let us consider the effects of this for a few moments. Suppose it originates in the Senate, and passes there by a large majority; suppose it passes in the House of Representatives unanimously;

it must be transmitted to the President. If he objects, it is sent back to the Senate; if two thirds do not agree to it in the Senate, what is the consequence? Does the House of Representatives ever hear of it afterwards? No, it drops, because it must be passed by two thirds of both houses; and as only a majority of the Senate agreed to it, it cannot become a law. This is giving a power to the President to overrule fifteen members of the Senate and every member of the House of Representatives. These are my objections. I look upon it to be unsafe to drag each other from the most remote parts in the state to the Supreme Federal Court, which has appellate jurisdiction of causes arising under the Constitution, and of controversies between citizens of different states. I grant, if it be a contract between a citizen of Virginia and a citizen of North Carolina, the suit must be brought here; but may they not appeal to the Supreme Court, which has cognizance of law and fact? They may be carried to Philadelphia, They ought to have limited the sum on which appeals should lie. They may appeal on a suit for only ten pounds. Such a trifling sum as this would be paid by a man who thought he did not owe it, rather than go such a distance. It would be prudence in him so to do. This would be very oppressive.

I doubt my own judgment; experience has taught me to be diffident; but I hope to be excused and put right if I be mistaken.

The power of raising armies is also very exceptionable. I am not well acquainted with the government of other countries, but a man of any information knows that the king of Great Britain cannot raise and support armies. He may call for and raise men, but he has no money to support them. But Congress is to have power to raise and support armies. Forty thousand men from North Carolina could not be refused without violating the Constitution. I wish amendments to these parts. I agree it is not our business to {215} inquire whether the continent be invaded or not. The general legislature ought to superintend the care of this, Treaties are to be the supreme law of the land. This has been sufficiently discussed: it must be amended some way or other. If the Constitution be adopted, it ought tube the supreme law of the land, and a perpetual rule for the governors and governed. But if treaties are to be the supreme law of the land, it may repeal the laws of different states, and render nugatory our bill of rights.

As to a religious test, had the article which excludes it provided none but what had been in the states heretofore, I would not have objected to it. It would secure religion. Religious liberty ought to be provided for. I acquiesce with the gentleman, who spoke, on this point, my sentiments better than I could have done myself. For my part, in reviewing the qualifications necessary for a President, I did not suppose that the pope could occupy the President's chair. But let us remember that we form a government for millions not yet in existence. I have not the art of divination. In the course of four or five hundred years, I do not know how it will work. This is most certain, that Papists may occupy that chair, and Mahometans may take it. I see nothing against it. There is a disqualification, I believe, in every state in the Union — it ought to be so in this system. It is said that all power not given is retained. I find they thought proper to insert negative clauses in the Constitution, restraining the general government from the exercise of certain powers. These were unnecessary if the doctrine be true, that every thing not given is retained. From the insertion of these we may conclude the doctrine to be fallacious. Mr. Lancaster then observed, that he would disapprove of the Constitution as it then stood. His own feelings, and his duty to his constituents, induced him to do so. Some people; he said, thought a delegate might act independently of the people. He thought otherwise, and that every delegate

was bound by their instructions, and if he did any thing repugnant to their wishes, he betrayed his trust, He thought himself bound by the voice of the people, whatever other gentlemen might think. He would cheerfully agree to adopt, if he thought it would be of general utility; but as he thought it would have a contrary effect, and as he believed a great majority of the people were against it, he would oppose its adoption.

**Mr. WILLIE JONES**

was against ratifying in the manner proposed. He had attended, he said, with patience to the debates of the speakers on both sides of the question. One party said the Constitution was all perfection. The other party said it wanted a great deal of perfection. For his part, he thought so. He treated the dangers which were held forth in case of non-adoption, as merely ideal and fanciful. After adding other remarks, he moved that the previous question might be put, with an intention, as he said, if that was carried, to introduce a resolution which he had in his hand, and which he was then willing to read if gentlemen thought proper, stipulating for certain amendments to be made previous to the adoption by this state.

**Gov. JOHNSTON**

begged gentlemen to recollect that the proposed amendments could not be laid before the other states unless we adopted and became part of the Union.

**Mr. TAYLOR**

wished that the previous question might be put, as it would save much time. He feared the motion first made was a manoeuvre or contrivance to impose a constitution on the people which a majority disapproved of.

**Mr. IREDELL**

wished the previous should be withdrawn, and that they might debate the first question. The great importance of the subject, and the respectability of the gentleman who made the motion, claimed more deference and attention than to decide it in the, very moment it was introduced, by getting rid of it by the previous question. A decision was now presented in a new form by a gentleman of great influence in the house, and gentlemen ought to have time to consider before they voted precipitately upon it.

A desultory conversation now arose.

**Mr. J. GALLOWAY**

wished the question to be postponed till to-morrow morning.

**Mr. J. M'DOWALL**

was for immediately putting the question. Several gentlemen expatiated on the evident necessity of amendments.

**Gov. JOHNSTON**

declared that he disdained all manoeuvres and contrivance; that an intention of imposing an improper system on the people, contrary to their wishes, was unworthy of any man. He wished the motion to be fairly and fully argued and investigated. He observed that the very motion before them proposed amendments to be made; that they were proposed as they had been in other states. {217} He wished, therefore, that the motion for the previous question should be withdrawn.

**Mr. WILLIE JONES**

could not withdraw his motion, Gentlemen's arguments, he said, had been listened to attentively, but he believed no person had changed his opinion. It was unnecessary, then, to argue it again. His motion was not conclusive. He only wished to know what ground they stood on — whether they should ratify it unconditionally or not.

**Mr. SPENCER**

wished to hear the arguments and reasons for and against the motion. Although he was convinced the house wanted amendments, and that all had nearly determined the question in their own minds, he was for hearing the question argued, and had no objection to the postponement of it till to-morrow.

**Mr. IREDELL**

urged the great importance of consideration; that the consequence of the previous question, if carried, would be an exclusion of this state out of the Union. He contended that the house had no right to make a conditional ratification; and, if excluded from the Union, they could not be assured of an easy admission at a future day, though the impossibility of existing out of the Union must be obvious to every thinking man. The gentleman from Halifax had said that his motion would not be conclusive. For his part, he was certain it would be tantamount to immediate decision. He trusted gentlemen would consider the propriety of debating the first motion at large.

**Mr. PERSON**

observed, that the previous question would produce no inconvenience. The other party, he said, had all the debating to themselves, and would probably have; it again, if they insisted on further argument. He saw no propriety in putting it off till to-morrow, as it was not customary for a committee to adjourn with two questions before them.

**Mr. SHEPHERD**

declared that, though he had made up his mind, and believed other gentlemen had done so, yet he had no objection to giving gentlemen an opportunity of displaying their abilities, and convincing the rest of their error if they could. He was for putting it off till to-morrow.

**Mr. DAVIE**

took notice that the gentleman from Granville had frequently used ungenerous insinuations, and had taken much pains out of doors to irritate the minds of his countrymen against the Constitution. He called upon gentlemen {218} to act openly and aboveboard, adding that a contrary conduct, on this occasion, was extremely despicable. He came thither, he said, for the common cause of his country, and he knew no party, but wished the business to be conducted with candor and moderation. The previous question he thought irregular, and that it ought not to be put till the other question was called for; that it was evidently intended to preclude all further debate, and to precipitate the committee upon the resolution which it had been suggested was immediately to follow, which they were not then ready to enter upon; that he had not fully considered the consequences of a conditional ratification, but at present they appeared to him alarmingly dangerous, and perhaps equal to those of an absolute rejection.

**Mr. WILLIE JONES**

observed, that he had not intended to take the house by surprise; that, though he had his motion ready, and had heard of the motion which was intended for ratification, he waited till that motion should be made, and had afterwards waited for some time, in expectation that the gentleman from Halifax, and the gentleman from Edenton, would both speak to it. He had no objection to adjourning, but his motion would be still before the house.

Here there was a great cry for the question.

**Mr. IREDELL.**

[The cry for the question still continuing.] Mr. Chairman, I desire to be heard, notwithstanding the cry of "The question! the question!" Gentlemen have no right to prevent any member from speaking to it, if he thinks it. [The house subsided into order.] Unimportant as I may be myself, my constituents are as respectable as those of any member in the house. It has, indeed, sir, been my misfortune to be under the necessity of troubling the house much oftener than I wished, owing to a circumstance which I have greatly regretted — that so few gentlemen take a share in our debates, though many are capable of doing so with propriety. I should have spoken to the question at large before, if I had not fully depended on some other gentleman doing it; and therefore I did not prepare myself by taking notes of what was said. However, I beg leave now to make a few observations. I think this Constitution safe. I have not heard a single objection which, in my opinion, showed that it was dangerous. Some particular parts have been objected to, and amendments pointed out. {219} Though I think it perfectly safe, yet, with respect to any amendments which do not destroy the substance of the Constitution, but will tend to give greater satisfaction, I should approve of them, because I should prefer that system which would most tend to conciliate all parties. On these principles, I am of opinion that some amendments should be proposed.

The general ground of the objections seems to be, that the power proposed to the general government may be abused. If we give no power but such as may not be abused, we shall give none; for all delegated powers may be abused. There are two extremes equally dangerous to liberty. These are *tyranny* and *anarchy*. The medium between these two is the true government to protect the people. In my opinion, this Constitution is well calculated to guard against both these extremes. The possibility of general abuses ought not to be urged, but particular ones pointed out. A gentleman who spoke some time ago (Mr. Lenoir) observed, that the government might make it treason to write against the most arbitrary proceedings. He corrected himself afterwards, by saying he meant *misprision of treason*. But in the correction he committed as great a mistake as he did at first. Where is the power given to them to do this? They have power to define and punish piracies and felonies committed on the high seas, and offences against the law of nations. They have no power to define any other crime whatever. This will show how apt gentlemen are to commit mistakes. I am convinced, on the part of the worthy member, it was not designed, but arose merely from inattention.

**Mr. LENOIR**

arose, and declared, that he meant that those punishments might be inflicted by them within the ten miles square, where they would have exclusive powers of legislation.

**Mr. IREDELL**

continued: They are to have exclusive power of legislation, — but how? Wherever they may have this district, they must possess it from the authority of the state within which it lies; and that state may stipulate the conditions of the cession. Will not such state take care of the liberties of its own people? What would be the consequence if the seat of the government of the United States, with all the archives of America, was in the power of any one particular state? Would not this be most unsafe {220} and humiliating? Do we not all remember that, in the year 1783, a band of soldiers went and insulted Congress? The sovereignty of the United States was treated with indignity. They applied for protection to the state they resided in, but could obtain none. It is to be hoped such a disgraceful scene will never happen again; but that, for the future, the national government will be able to protect itself. The powers of the government are particularly enumerated and defined: they can claim no others but such as are so enumerated. In my opinion, they are excluded as much from the exercise of any other authority as they could be by the strongest negative clause that could be framed. A gentleman has asked, What would be the consequence if they had the power of the purse and sword? I ask, In what government under heaven are these not given up to some authority or other? There is a necessity of giving both the purse and the sword to every government, or else it cannot protect the people.

But have we not sufficient security that those powers shall not be abused? The immediate power of the purse is in the immediate representatives of the people, chosen every two years, who can lay no tax on their constituents but what they are subject to at the same time themselves. The power of taxation must be vested somewhere. Do the committee wish it to be as it has been? Then they must suffer the evils which they have done. Requisitions will be of no avail. No money will be collected but by means of military force. Under the new government, taxes will probably be much lighter than they can be under our present one. The impost will afford vast

advantages, and greatly relieve the people from direct taxation. In time of peace, it is supposed by many, the imposts may be alone sufficient; but in the time of war, it cannot be expected they will. Our expenses would be much greater, and our ports might be locked up by the enemy's fleet. Think, then, of the advantage of a national government possessed of energy and credit. Could government borrow money to any advantage without the power of taxation? If they could secure funds, and wanted immediately, for instance, £100,000, they might borrow this sum, and immediately raise only money to pay the interest of it. If they could not, the £100,000 must be instantly raised, however distressing to the people, {221} or our country perhaps overrun by the enemy. Do not gentlemen see an immense difference between the two cases? It is said that there ought to be jealousy in mankind. I admit it as far as is consistent with prudence; but unlimited jealousy is very pernicious.

We must be contented if powers be as well guarded as the nature of them will permit. In regard to amending before or after the adoption, the difference is very great. I beg leave to state my idea of that difference. I mentioned, one day before, the adoption by ten states. When I did so? it was not to influence any person with respect to the merits of the Constitution, but as a reason for coolness and deliberation. In my opinion, when so great a majority of the American people have adopted it, it is a strong evidence in its favor; for it is not probable that ten states would have agreed to a bad constitution. If we do not adopt, we are no longer in the Union with the other states. We ought to consider seriously before we determine our connection with them. The safety and happiness of this state depend upon it. Without that union, what would have been our condition now? A striking instance will point out this very clearly. At the beginning of the late war with Great Britain, the Parliament thought proper to stop all commercial intercourse with the American provinces. They passed a general prohibitory act, from which New York and North Carolina were at first excepted. Why were they excepted? They had been as active in opposition as the other states; but this was an expedient to divide the Northern from the Middle States, and to break the heart of the Southern. Had New York and North Carolina been weak enough to fall into this snare, we probably should not now have been an independent people. [Mr. Person called to order, and intimated that the gentleman meant to reflect on the opposers of the Constitution, as if they were friendly to the British interest. Mr. Iredell warmly resented the interruption, declaring he was perfectly in order, that it was disorderly to interrupt him; and, in respect to Mr. Person's insinuation as to his intention, he declared, in the most solemn manner, he had no such, being well assured the opposers of the Constitution were equally friendly to the independence of America as its supporters. He then proceeded:]

I say, they endeavored to divide us. North Carolina and {222} New York had too much sense to be taken in by their artifices. Union enabled us then to defeat their endeavors: union will enable us to defeat all the machinations of our enemies hereafter. The friends of their country must lament our present unhappy divisions. Most free countries have lost their liberties by means of dissensions among themselves. They united in war and danger. When peace and apparent security came, they split into factions and parties, and thereby became a prey to foreign invaders. This shows the necessity of union. In urging the danger of disunion so strongly, I beg leave again to say, that I mean not to reflect on any gentleman whatsoever, as if his wishes were directed to so wicked a purpose. I am sure such an insinuation as the gentleman from Granville supposed I intended, would be unjust, as I know some of the warmest opposers of Great Britain are now among the warmest opponents of the proposed Constitution. Such a suggestion never entered my

head; and I can say with truth that, warmly as I am attached to this Constitution, and though I am convinced that the salvation of our country depends upon the adoption of it, I would not procure its success by one unworthy action or one ungenerous word. A gentleman has said that we ought to determine in the same manner as if no state had adopted the Constitution. The general principle is right; but we ought to consider our peculiar situation. We cannot exist by ourselves. If we imitate the examples of some respectable states that have proposed amendments subsequent to their ratification, we shall add our weight to have these amendments carried, as our representatives will be in Congress to enforce them. Gentlemen entertain a jealousy of the Eastern States. To withdraw ourselves from the Southern States will be increasing the northern influence. The loss of one state may be attended with particular prejudice. It will be a good while before amendments of any kind can take place; and in the mean time, if we do not adopt, we shall have no share or agency in their transactions, though we may be ultimately hound by them. The first session of Congress will probably be the most important of any for many years. A general code of laws will then be established in execution of every power contained in the Constitution. If we ratify, and propose amendments, our representatives will be thereto act in this important business. If {223} we do not, our interest may suffer; nor will the system be afterwards altered merely to accommodate our wishes. Besides that, one house may prevent a measure from taking place, but both must concur in repealing it. I therefore think an adoption proposing subsequent amendments far safer and more desirable than the other mode; nor do I doubt that every amendment, not of a local nature, nor injuring essentially the material power of the Constitution, but principally calculated to guard against misconstruction the real liberties of the people, will be readily obtained.

The previous question, after some desultory conversation, was now put: for it, 183; against it, 84; majority in favor of the motion, 99.

**THURSDAY, *July 31, 1788.***

**Gov. JOHNSTON.**

Mr. Chairman, it appears to me that, if the motion made yesterday, by the gentleman from Halifax, be adopted, it will not answer the intention of the people. It determines nothing with respect to the Constitution. We were sent here to determine upon it. [Here his excellency read the resolution of the Assembly under which the Convention met.] If we do not decide upon the Constitution, we shall have nothing to report to Congress. We shall be entirely out of the Union, and stand by ourselves. I wish gentlemen would pause a moment before they decide so awful a question. To whom are we to refer these amendments which are to be proposed as the condition of our adoption? The present Congress have nothing to do with them. Their authority extends only to introduce the new government, not to receive any proposition of amendments. Shall we present them to the new Congress? In what manner can that be done? We shall have no representatives to introduce them. We may indeed appoint ambassadors to the United States of America, to represent what scruples North Carolina has in regard to their Constitution. I know no other way. A number of states have proposed amendments to the Constitution, and ratified in the mean time. These will have great weight and influence in Congress, and may prevail in getting material amendments proposed. We shall have no share in voting upon any of these amendments; for, in my humble opinion, we shall be entirely out of the Union, and can be

considered {224} only as a foreign power. It is true, the United States may admit us hereafter. But they may admit us on terms unequal and disadvantageous to us. In the mean time, many of their laws, by which we shall be hereafter bound, may be particularly injurious to the interests of this state, as we shall have no share in their formation. Gentlemen say they will not be influenced by what others have done. I must confess that the example of great and good men, and wise states, has great weight with me.

It is said there is a probability New York will not adopt this Constitution. Perhaps she may not. But it is generally supposed that the principal reason of her opposing it arises from a selfish motive. She has it now in her power to tax indirectly two contiguous states. Connecticut and New Jersey contribute to pay a great part of the taxes of that state, by consuming large quantities of goods, the duties of which are now levied for the benefit of New York only. A similar policy may induce the United States to lay restrictions on us, if we are out of the Union. These considerations ought to have great weight with us. We can derive very little assistance from any thing New York will do on our behalf. Her views are diametrically opposite to ours. That state wants all her imposts for her own exclusive support. It is our interest that all imposts should go into the general treasury. Should Congress receive our commissions, it will be a considerable time before this business will be decided on. It will be some time after Congress meets before a convention is appointed, and some time will elapse before the convention meets, What they will do, will be transmitted to each of the states, and then a convention, or the legislature, in each state, will have to ratify it ultimately, This will probably take up eighteen months or two years, In the mean time, the national government is going on. Congress will appoint all the great officers and will proceed to make laws and form regulations for the future government of the United States. This state, during that time, will have no share in their proceedings, or any negative on any business before them. Another inconvenience which will arise is this: we shall be deprived of the benefit of the impost, which, under the new government, is an additional fund; all the states having a common right to it. By being in the Union we should have a right to our {225} proportionate share of all the duties and imposts collected in all the states. But by adopting this resolution, we shall lose the benefit of this, which is an object worthy of attention. Upon the whole, I can see no possible good that will result to this state from following the resolution before us. I have not the vanity to think that any reasons I offer will have any weight. But I came from a respectable country to give my reasons for or against the Constitution. They expect them from me, and to suppress them would be a violation of my duty.

Mr. WILLIE JONES. Mr. Chairman, the gentleman last up has mentioned the resolution of Congress now lying before us, and the act of Assembly under which we met here, which says that we should deliberate and determine on the Constitution. What is to be inferred from that? Are we to ratify it at all events? Have we not an equal right to reject? We do not determine by neither rejecting nor adopting. It is objected we shall be out of the Union. So I wish to be. We are left at liberty to come in at any time. It is Said we shall suffer a great loss for want of a share of the impost. I have no doubt we shall have it when we come in, as much as if we adopted now. I have a resolution in my pocket, which I intend to introduce if this resolution is carried, recommending it to the legislature to lay an impost, for the use of Congress, on goods imported into this state, similar to that which may be laid by Congress on goods imported into the adopting states. This shows the committee what is my intention, and on what footing we are to be. This being the case, I will forfeit my life that we shall come in for a share. It is said that all the offices

of Congress will be filled, and we shall have no share in appointing the officers. This is an objection of very little importance. Gentlemen need not be in such haste. If left eighteen months or two years without offices, it is no great cause of alarm. The gentleman further said that we could send no representatives, but must send ambassadors to Congress, as a foreign power. I assert the contrary; and that, whenever a convention of the states is called, North Carolina will be called upon like the rest. I do not know what these gentlemen would desire.

I am very sensible that there is a great majority against the Constitution. If we take the question as they propose, {226} they know it would be rejected, and bring on us all the dreadful consequences which they feelingly foretell, but which can never in the least alarm me. I have endeavored to fall in with their opinions, but could not. We have a right, in plain terms, to refuse it if we think proper. I have, in my proposition, adopted, word for word, the Virginia amendments, with one or two additional ones. We run no risk of being excluded from the Union when we think proper to come in. Virginia, our next neighbor, will not oppose our admission. We have a common cause with her. She wishes the same alterations. We are of the greatest importance to her. She will have great weight in Congress; and there is no doubt but she will do every thing she can to bring us into the Union. South Carolina and Georgia are deeply interested in our being admitted. The Creek nation would overturn these two states without our aid. They cannot exist without North Carolina. There is no doubt we shall obtain our amendments, and come into the Union when we please. Massachusetts, New Hampshire, and other states, have proposed amendments. New York will do also, if she ratifies. There will be a majority of the states, and the most respectable, important, and extensive states also, desirous of amendments, and favorable to our admission.

As great names have been mentioned, I beg leave to mention the authority of Mr. Jefferson, whose great abilities and respectability are well known. When the Convention sat in Richmond, in Virginia, Mr. Madison received a letter from him. In that letter he said he wished nine states would adopt it, not because it deserved ratification, but to preserve the Union. But he wished that the other four states would reject it, that there might be a certainty of obtaining amendments. Congress may go on, and take no notice of our amendments; but I am confident they will do nothing of importance till a convention be called. If I recollect rightly, amendments may be ratified either by conventions or the legislatures of the states. In either case, it may take up about eighteen months. For my part, I would rather be eighteen years out of the Union than adopt it in its present defective form.

**Gov. JOHNSTON.**

Mr. Chairman, I wish to clear myself from the imputation of the gentleman last up. If any part of my conduct warrants his aspersion, — if ever I hunted {227} after offices, or sought public favors to promote private interest, — let the instances be pointed out. If I know myself, I never did. It is easy for any man to throw out illiberal and ungenerous insinuations. I have no view to offices under this Constitution. My views are much humbler. When I spoke of Congress establishing offices, I meant great offices, the establishment of which might affect the interests of the states; and I added that they would proceed to make laws, deeply affecting us, without any influence of our own. As to the appointment of the officers, it is of no importance to me who is an officer, if he be a good man.

**Mr. JONES**

replied, that in every publication one might see ill motives assigned to the opposers of the Constitution, One reason assigned for their opposition was, that they feared the loss of their influence, and diminution of their importance, He said, that it was fair its opposers should be permitted to retort, and assign a reason equally selfish for the conduct of its friends. Expectation to offices might influence them, as well as the loss of office and influence might bias the others. He intended no allusion to that gentleman, for whom he declared he had the highest respect.

**Mr. SPENCER**

rose in support of the motion of the gentleman from Halifax. He premised, that he wished no resolution to be carried without the utmost deliberation and candor. He thought the proposition was couched in such modest terms as could not possibly give offence to the other states; that the amendments it proposed were to be laid before Congress, and would probably be admitted, as they were similar to those which were wished for and proposed by several of the adopting states. He always thought it more proper, and agreeable to prudence, to propose amendments previous, rather, than subsequent, to ratification. He said that, if two or more persons entered into a copartnership, and employed a scrivener to draw up the articles of copartnership in a particular form, and, on reading them, they found them to be erroneous, — it would be thought very strange if any of them should say, "Sign it first, and we shall have it altered hereafter." If it should be signed before alteration, it would be considered as an act of indiscretion. As, therefore, it was a principle of prudence, in matters of private property, not to assent to any obligation till its errors were removed, he thought the principle infinitely more necessary {228} to be attended to in a matter which concerned such a number of people, and so many millions yet unborn. Gentlemen said they should be out of the Union. He observed, that they were before confederated with the other states by a solemn compact, which was not to be dissolved without the consent of every state in the Union. North Carolina had not assented to its dissolution. If it was dissolved, it was not their fault, but that of the adopting states. It was a maxim of law that the same solemnities were necessary to destroy, which were necessary to create, a deed or contract. He was of opinion that, if they should be out of the Union by proposing previous amendments, they were as much so now. If the adoption by nine states enabled them to exclude the other four states, he thought North Carolina might then be considered as excluded. But he did not think that doctrine well founded. On the contrary, he thought each state might come into the Union when She thought proper. He confessed it gave him some concern, but he looked on the short exclusion of eighteen months — if it might be called exclusion — as infinitely less dangerous than an unconditional adoption. He expected the amendments would be adopted, and when they were, this state was ready to embrace it. No great inconvenience Could result from this. [Mr. Spencer made some other remarks, but spoke too low to be heard.]

**Mr. IREDELL.**

Mr. Chairman, in my opinion, this is a very awful moment. On a right decision of this question may possibly depend the peace and happiness of our country for ages. Whatever be the decision of the house on this subject, it ought to be well weighed before it is given. We ought to view our situation in all its consequences, and determine with the Utmost caution and deliberation. It has

been suggested, not only out of doors, but during the course of the debates, that, if we are out of the Union, it will be the fault of other states, and not ours. It is true that, by the Articles of Confederation, the consent of each state was necessary for any alteration. It is also true that the consent of nine states renders the Constitution binding on them. The unhappy consequences of that unfortunate article in this Confederation produced the necessity of this article in the Constitution. Every body knows that, through the peculiar obstinacy of Rhode Island, many great advantages were lost. {229} Notwithstanding her weakness, she uniformly opposed every regulation for the benefit and honor of the Union at large. The other states were driven to the necessity of providing for their own security and welfare, without waiting for the consent of that little state. The deputies from twelve states unanimously concurred in opinion that the happiness of all America ought not to be sacrificed to the caprice and obstinacy of so inconsiderable a part.

It will often happen, in the course of human affairs, that the policy which is proper on common occasions fails, and that laws which do very well in the regular administration of a government cannot stand when every thing is going into confusion. In such a case, the safety of the community must supersede every other consideration, and every subsisting regulation which interferes with that must be departed from, rather than that the people should be ruined. The Convention, therefore, with a degree of manliness which I admire, dispensed with a unanimous consent for the present change, and at the same time provided a permanent remedy for this evil, not barely by dispensing with the consent of one member in future alterations, but by making the consent of nine sufficient for the whole, if the rest. did not agree, considering that the consent of so large a number ought in reason to govern the whole; and the proportion was taken from the old Confederation, which in the most important cases required the consent of nine, and in every thing, except the alteration of the Constitution, made that number sufficient. It has been objected, that the adoption of this government would be improper, because it would interfere with the oath of allegiance to the state. No oath of allegiance requires us to sacrifice the safety of our country. When the British government attempted to establish a tyranny in America, the people did not think their oath of allegiance bound them to submit to it. I had taken that oath several times myself, but had no scruple to oppose their tyrannical measures. The great principle is, The safety of the people is the supreme law. Government was originally instituted for their welfare, and whatever may be its form, this ought to be its object. This is the fundamental principle on which our government is founded, In other countries, they suppose the existence of and infer that, if the sovereign violates his part of it, the {230} people have a right to resist. If he does not, the government must remain unchanged, unless the sovereign consents to an alteration. In America, our governments have been clearly created by the people themselves. The same authority that created can destroy; and the people may undoubtedly change the government, not because it is ill exercised, but because they conceive another form will be more conducive to their welfare. I have stated the reasons for departing from the rigid article in the Confederation requiring a unanimous consent. We were compelled to do this, or see our country ruined. In the manner of the dispensation, the Convention, however, appear to have acted with great prudence, in copying the example of the Confederation in all other particulars of the greatest moment, by authorizing nine states to bind the whole. It is suggested, indeed, that, though ten states have adopted this new Constitution, yet, as they had no right to dissolve the old Articles of Confederation, these still subsist, and the old Union remains, of which we are a part. The truth of that suggestion may well be doubted, on this ground: when the principles of a constitution are violated, the constitution itself is dissolved, or may be dissolved at the pleasure of the parties to it. Now,

according to the Articles of Confederation, Congress had authority to demand money, in a certain proportion, from the respective states, to answer the exigencies of the Union. Whatever requisitions they made for that purpose were constitutionally binding on the states. The states had no discretion except as to the mode of raising the money. Perhaps every state has committed repeated violations of the demands of Congress. I do not believe it was from any dishonorable intention in many of the states; but whatever was the cause, the fact is, such violations were committed. The consequence is that, upon the principle I have mentioned, (and in which I believe all writers agree,) the Articles of Confederation are no longer binding. It is alleged that, by making the consent of nine sufficient to form a government for themselves, the first nine may exclude the other four. This is a very extraordinary allegation. When the new Constitution was proposed, it was proposed to the thirteen states in the Union. It was desired that all should agree, if possible; but if that could not be obtained, they took care that nine states might at least save themselves {231} from destruction. Each, undoubtedly, had a right on the first proposition, because it was proposed to them all. The only doubt can be, whether they had a right afterwards. In my opinion, when any state has once rejected the Constitution, it cannot claim to come in afterwards as a matter of right.

If it does not, in plain terms, reject, but refuses to accede for the present, I think the other states may regard this as an absolute rejection, and refuse to admit us afterwards but at their pleasure, and on what terms they please. Gentlemen wish for amendments. On this subject, though we may differ as to the necessity of amendments, I believe none will deny the propriety of proposing some, if only for the purpose of giving more general satisfaction. The question, then, is, whether it is most prudent for us to come into the Union immediately, and propose amendments, (as has been done in the other states,) or to propose amendments, and be out of the Union till all these be agreed to by the other states. The consequences of either resolution I beg leave to state. By adopting, we shall be in the Union without sister states, which is the only foundation of our prosperity and safety. We shall avoid the danger of a separation, a danger of which the latent effects are unknown; So far am I convinced of the necessity of the Union, that I would give up many things against my own opinion to obtain it. If we sacrificed it by a rejection of the Constitution, or a refusal to adopt, (which amounts, I think, nearly to the same thing,) the very circumstance of disunion may occasion animosity between us and the inhabitants of the other states, which may be the means of severing us forever.

We shall lose the benefit which must accrue to the other states from the new government. Their trade will flourish; goods will sell cheap; their commodities will rise in value; and their distresses, occasioned by the war, will gradually be removed. Ours, for want of these advantages, will continue. Another very material consequence will result from it: we shall lose our share of the imposts in all the states, which, under this Constitution, is to go into the federal treasury. It is the particular local interest of this state to adopt, on this account, more, perhaps, than that of any other member of the Union. At present, all these imposts go into the treasury of each state, and we well know our own are of little {232} consequence, compared to those of the other states in general. The gentleman from Halifax (Mr. Jones) has offered an expedient to prevent the loss of our share of the impost. In my opinion, that expedient will not answer the purpose. The amount of duties on goods imported into this state is very little; and if these resolutions are agreed to, it will be less. I ask any gentleman whether the United States would receive, from the duties of this state, so much as would be our proportion, under the Constitution, of the duties on goods

imported in all the states. Our duties would be no manner of compensation for such proportion. What would be the language of Congress on our holding forth such an offer? "If you are willing to enjoy the benefits of the Union, you must be subject to all the laws of it. We will make no partial agreement with you." This would probably be their language. I have no doubt all America would wish North Carolina to be a member of the Union. It is of importance to them. But we ought to consider whether ten states can do longer without one, or one without ten. On a competition, which will give way? The adopting states will say, "Other states had objections as well as you; but rather than separate, they agreed to come into the Union, trusting to the justice of the other states for the adoption of proper amendments afterwards. One most respectable state, Virginia, has pursued this measure, though apparently averse to the system as it now stands. But you have laid down the condition on which alone you will come into the Union. We must accede to your particular propositions, or be disunited from you altogether. Is it fit that North Carolina shall dictate to the whole Union? We may be convinced by your reason, but our conduct will certainly not be altered by your resistance."

I beg leave to say, if Virginia thought it right to adopt and propose amendments, under the circumstances of the Constitution at that time, surely it is much more so for us in our present situation. That state, as was justly observed, is a most powerful and respectable one. Had she held out, it would have been a subject of most serious alarm. But she thought the risk of losing the union altogether too dangerous to be incurred. She did not then know of the ratification of New Hampshire. If she thought it necessary to adopt, when only eight states had ratified, is it not much more necessary for us after the ratification by ten? I do not say that we {233} ought servilely to imitate any example. But I may say, that the examples of wise men and intelligent nations are worthy of respect; and that, in general, we may be much safer in following than in departing from them. In my opinion, as many of the amendments proposed are similar to amendments recommended not only by Virginia, but by other states, there is great probability of their being obtained. All the amendments proposed, undoubtedly, will not be, nor I think ought to be; but such as tend to secure more effectually the liberties of the people against an abuse of the powers granted, in all human probability, will; for in such amendments all the states are equally interested. The probability of such amendments being obtained is extremely great; for though three states ratified the Constitution unanimously, there has been a considerable opposition in the other states. In New Hampshire, the majority was small. In Massachusetts, there was a strong opposition. In Connecticut, the opposition was about one third: so it was in Pennsylvania. In Maryland, the minority was small, but very respectable. In Virginia, they had little more than a bare majority. There was a powerful minority in South Carolina. Can any man pretend to say that, thus circumstanced, the states would disapprove of amendments calculated to give satisfaction to the people at large? There is a very great probability, if not an absolute certainty, that amendments will be obtained. The interest of North Carolina would add greatly to the scale in their favor; If we do not accede, we may injure the states who wish for amendments, by withdrawing ourselves from their assistance. We are not, at any event, in a condition to stand alone. God forbid we should be a moment separated from our sister states! If we are, we shall be in great danger of a separation forever. I trust every gentleman will pause before he contributes to so awful an event.

We have been happy in our connection with the other states. Our freedom, independence, everything dear to us? has been derived from that union we are now going rashly to dissolve. If

we are to be separated, let every gentleman well weigh the ground he stands on before he votes for the separation. Let him not have to reproach himself, hereafter, that he voted without due consideration for a measure that proved the destruction of his country.

Mr. Iredell then observed that there were insinuations {234} thrown out, against those who favored the Constitution, that they had a view of getting offices and emoluments. He said, he hoped no man thought him so wicked as to sacrifice the interest of his country to private views. He declared, in the most solemn manner, the insinuation was unjust and ill-founded as to himself. He believed it was so with respect to the rest. The interest and happiness of his country solely governed him on that occasion. He could appeal to some members in the house, and particularly to those who knew him in, the lower part of the country, that his disposition had never been pecuniary, and that he had never aspired to offices. At the beginning of the revolution, he said, he held one of the best offices in the state under the crown — an office in which he depended for his support. His relations were in Great Britain; yet, though thus circumstanced, so far was he from being influenced by pecuniary motives, or emoluments of office, that, as soon as his situation would admit of it, he did not hesitate a moment to join the opposition to Great Britain; nor would the richest office of America have tempted him to adhere to that unjust cause of the British government. He apologized for taking up the time of the committee; but he observed, that reflections of that kind were considered as having applied, unless they were taken notice of. He attributed no unworthy motives to any gentleman in the house. He believed most of them wished to pursue the interest of their country according to their own ideas of it. He hoped other gentlemen would be equally liberal.

#### **Mr. WILLIE JONES**

observed, that he assigned unworthy motives to no one. He thought a gentleman had insinuated that the opposition all acted from base motives. He was well assured that their motives were as good as those of the other party, and he thought he had a right to retort by showing that selfish views might influence as well on one side as the other. He intended, however, no particular reflection on those two gentlemen who had applied the observation to themselves — for whom, he said, he had the highest respect, and was sorry he had made the observation, as it had given them pain. But if they were conscious that the observation did not apply to them, they ought not to be offended at it. He then explained the nature of the resolutions he proposed; and the plain question was, whether they {235} should adopt them or not. He was not afraid that North Carolina would not be admitted at any time hereafter. Maryland, he said, had not confederated for many years with the other states; yet she was considered in the mean time as a member of the Union, was allowed as such to send her proportion of men and money, and was at length admitted into the confederacy, in 1781. This, he said, showed how the adopting states would act on the present occasion, North Carolina might come into the Union when she pleased.

#### **Gov. JOHNSTON**

made some observations as to the particular case of Maryland, but in too low a voice to be distinctly heard.

#### **Mr. BLOODWORTH**

observed, that the first convention which met to consult on the necessary alterations of the Confederation, so as to make it efficient, and put the commerce of the United States on a better footing, not consisting of a sufficient number from the different states, so as to authorize them to proceed, returned without effecting any thing; but proposed that another convention should be called, to have more extensive powers to alter and amend the Confederation. This proposition of that convention was warmly opposed in Congress. Mr. King, from Massachusetts, insisted on the impropriety of the measure, and that the existing system ought to stand as it was. His arguments, he said, were, that it might destroy the Confederation to propose alterations; that the unanimous consent of all the states was necessary to introduce those alterations, which could not possibly be obtained; and that it would, therefore, be in vain to attempt it. He wondered how gentlemen came to entertain different opinions now. He declared he had listened with attention to the arguments of the gentlemen. on the other side, and had endeavored to remove every kind of bias from his mind; yet he had heard nothing of sufficient weight to induce him to alter his opinion. He was sorry that there was any division on that important occasion, and wished they could all go hand in hand.

As to the disadvantages of a temporary exclusion from the Union, he thought them trifling. He asked if a few political advantages could be put in competition with our liberties: Gentlemen said that amendments would probably be obtained. He thought their arguments and reason were {236} not so sure a method to obtain them as withholding their consent would be. He could not conceive that the adopting states would take any measures to keep this state out of the Union. If a right view were taken of the subject, he said they could not be blamed in staying out of the Union till amendments were obtained. The compact between the states was violated by the other states, and not by North Carolina. Would the violating party blame the upright party? This determination would correspond with the opinion of the gentleman who had written from France on the subject; He would lay stress on no man's opinion, but the opinion of that gentleman was very respectable.

**Mr. DAVIE.**

Mr. Chairman, it is said that there is a great majority against the Constitution, and in favor of the gentleman's proposition. The object of the majority, I suppose, is to pursue the most probable method of obtaining amendments. The honorable gentleman from Halifax has said this is the most eligible method of obtaining them. My opinion is the very reverse. Let us weigh the probability of both modes proposed, and determine with candor which is the safest and surest method of obtaining the wished-for alterations. The honorable gentleman from Anson has said that our conduct in adhering to these resolutions would be modest. What is his idea or definition of modesty? The term must be very equivocal. So far from being modest, it appears to me to be no less than an arrogant, dictatorial proposal of a constitution to the United States of America. We shall be no part of that confederacy, and yet attempt to dictate to one of the most powerful confederacies in the world. It is also said to be most agreeable to *prudence*. If our real object be amendments, every man must agree that the most likely means of obtaining them are the most prudent. Four of the most respectable states have adopted the Constitution, and recommended amendments. New York, (if she refuses to adopt,) Rhode Island, and North Carolina, will be the only states out of the Union. But if these three were added, they would compose a majority in favor of amendments, and might, by various means, compel the other states into the measure. It

must be granted that there is no way of obtaining amendments but the mode prescribed in the Constitution; two thirds of the legislatures of the states in the *confederacy* may require Congress to call a convention to {237} propose amendments, or the same proportion of both houses may propose them. It will then be of no consequence that we stand out and propose amendments. Without adoption we are not a member of the confederacy, and, possessing no federal rights, can neither make any proposition nor require Congress to call a convention.

Is it not clear, however strange it may be, that we are withholding our weight from those states who are of our own opinion, and by a perverse obstinacy obstructing the very measure we wish to promote? If two thirds of both houses are necessary to send forward amendments to the states, would it not be prudent that we should be there, and add our vote to the number of those states who are of the same sentiment? The honorable member from Anson has likened this business to a copartnership, comparing small things to great. The comparison is only just in one respect: the dictatorial proposal of North Carolina to the American confederacy is like a beggarly bankrupt addressing an opulent company of merchants, and arrogantly telling them, "I wish to be in copartnership with you, but the terms must be such *as I please*." What has North Carolina to put into the stock with the other states? Have we not felt our poverty? What was the language of Congress on their last requisition on this state? Surely gentlemen must remember the painful terms in which our delinquency was treated. The gentleman has also said that we shall still be a part of the Union, and if we be separated, it is not our fault. This is an obvious solecism. It is our *own fault*, sir, and the direct consequence of the means we are now pursuing. North Carolina stands foremost in the point of delinquency, and has repeatedly violated the Confederation. The conduct of this state has been among the principal causes which produced this revolution in our federal government. The honorable gentleman has also added, "that it was a rule in law that the same solemnities were necessary to annul, which were necessary to create or establish, a compact; and that, as thirteen states created, so thirteen states must concur in the dissolution of the Confederation." — This may be talking like a lawyer or a judge, but it is very *unlike* a politician. A majority is the rule of republican decisions. It was the voice of a majority of the people of America that gave that system validity, and the same authority can and will annul {238} it at any time. Every man of common sense knows that political power is *political right*. Lawyers may cavil and quibble about the necessity of unanimity, but the true principle is otherwise. In every republican community, the majority binds the minority; and whether confederated or separated, the principle will equally apply. We have no right to come into the Union until we exercise the right of deciding on the question referred to us. Adoption places us in the Union — rejection extinguishes the *right* forever. The scheme proposed by these gentlemen will certainly be considered as an absolute rejection; it may amuse the people, and answer a purpose *here*, but will not answer any purpose *there*.

The honorable gentleman from Halifax asserts, "We may come in when we please." The gentleman from Hanover, on the same side of the question, endeavored to alarm and frighten us about the dangerous influence of the Eastern States. If he deserves any credit, can we expect they will let us into the Union, until they have accomplished their particular views, and then but on the most disadvantageous terms? Commercial regulations will be one of the great objects of the first session of Congress, in which our interests will be totally neglected. Every man must be convinced of the importance of the first acts and regulations, as they will probably give a tone to

the policy of ages yet to come; and this scheme will add greatly to the influence of the Eastern States, and proportionably diminish the power and interests of the Southern States.

The gentleman says he has a project in his pocket, which, he risks his life, will induce the other states to give us a share of the general impost. I am fully satisfied, sir. this project will not answer the purpose, and the forfeiture of his life will be no compensation for irretrievable public loss. Every man who knows the resources of our commerce, and our situation, will be clearly convinced that the project cannot succeed. The whole produce of our duties, both by land and water, is very trifling. For several years past, it has not exceeded £10,000 of our own paper money. It will not be more — probably less — if we were out of the Union. The whole proportion, of this state of the public debts, except this mere pittance, must be raised from the people by direct and immediate taxation.

But the fact is, sir, it cannot be raised, because it cannot be paid; and without sharing in the general impost, we shall never discharge our quota of the federal debt. What does he offer the other states? The poor pittance I have mentioned. Can we suppose Congress so lost to every sense of duty, interest, and justice? Would their constituents permit them to put their hands into their pockets to pay *our debts*? We have no equivalent to give them for it. As several powerful states have proposed amendments, they will, no doubt, be supported with zeal and perseverance, so that it is not probable that the object of amendments will be lost. We may struggle on for a few years, and render ourselves wretched and contemptible; but we must at last come into the Union on their terms, however humiliating they maybe. The project on the table is little better than an absolute rejection, and is neither rational nor politic, as it cannot promote the end proposed.

**Mr. LOCKE,**

in reply to Mr. Davie, expressed some apprehensions that the Constitution, if adopted as it then stood, would render the people poor and miserable. He thought it would be very productive of expenses. The advantages of the impost he considered as of little consequence, as he thought all the money raised that way, and more, would be swept away by courtly parade — the emoluments of the President, and other members of the government, the Supreme Court, &c. These expenses would double the impost, in his opinion. They would render the states bankrupt. The imposts, he imagined, would be inconsiderable. The people of America began to import less foreign frippery. Every wise planter was fond of home manufacture. The Northern States manufactured considerably, and he thought manufactures would increase daily. He thought a previous ratification dangerous. The worst that could happen would be, that we should be thrown out of the Union. He would rather that should be the case, than embrace a tyrannical government, and give away our rights and privileges. He was therefore determined to vote for the resolutions of the gentleman from Halifax.

**Mr. SPENCER**

observed that, if the conduct of North Carolina would be immodest and dictatorial in proposing amendments, and if it was proposing a constitution to the other states, he was sure the other states, who had proposed the same amendments, were equally guilty of immodesty and {240}

dictating a constitution to the other states; the only difference being, that this state does not adopt previously. The gentleman had objections to his legal maxims, and said they were not politic. He would be extremely sorry, he said, if the maxims of justice should not take place in politics. Were this to be the case, there could be no faith put in any compact. He thought the comparison of the state to a beggar was a degradation of it, and insisted on the propriety of his own comparison, which he thought obvious to any one. He acknowledged that an exclusion from the Union would be a most unhappy circumstance; but he had no idea that it would be the case. As this mode of proceeding would hasten the amendments, he could not but vote for it.

**Mr. JONES**

defined the word *modesty* by contrasting it with its antagonist, *impudence*. The gentleman found fault with the observation, that this was the most decent and best way of obtaining amendments. If gentlemen would propose a more eligible method, he would consent to that. He said the gentleman had reviled the state by his comparison, and must have hurt the feelings of every gentleman in the house. He had no apprehension that the other states would refuse to admit them into the Union, when they thought proper to come in. It was their interest to admit them. He asked if a beggar would refuse a boon, though it were but a shilling; or if twelve men, struggling under a heavy load, would refuse the assistance of a thirteenth man.

A desultory conversation now took place.

**Mr. DAVIE**

hoped they would not take up the whole collectively, but that the proposed amendments would be considered one by one. Some other gentlemen expressed the same desire.

Many other gentlemen thought the resolution very proper as it stood.

The question being put, the resolution was agreed to by a great majority of the committee.

It was then resolved that the committee should rise. Mr. President resumed the chair, and Mr. Kenan reported, from the committee of the whole Convention, that the committee had again had the Constitution proposed for the future government of the United States under consideration, and had come to a resolution thereupon; which he read in his place, and afterwards delivered in at the clerk's table.

*Ordered*, That the said report lie on the table until to-morrow morning, 9 o'clock; to which time the house adjourned.

**FRIDAY, August 1, 1788.**

The Convention met according to adjournment.

**Mr. IREDELL.**

Mr. President: I believe, sir, all debate is now at an end. It is useless to contend any longer against a majority that is irresistible. We submit, with the deference that becomes us, to the decision of a majority; but my friends and myself are anxious that something may appear on the Journal to show our sentiments on the subject. I have therefore a resolution in my hand to offer, not with a view of creating any debate, (for I know it will be instantly rejected,) but merely that it may be entered on the Journal, with the yeas and nays taken upon it, in order that our constituents and the world may know what our opinions really were on this important occasion. We prefer this to the exceptionable mode of a protest, which might increase the spirit of party animosity among the people of this country, which is an event we wish to prevent, if possible. I therefore, sir, have the honor of moving —

"That the consideration of the report of the committee be postponed, in order to take up the consideration of the following resolution."

**Mr. IREDELL**

then read the resolution in his place, and afterwards delivered it in at the clerk's table, and his motion was seconded by Mr. JOHN SKINNER.

**Mr. JOSEPH M'DOWALL,**

and several other gentlemen, most strongly objected against the propriety of this motion. They thought it improper, unprecedented, and a great contempt of the voice of the majority.

**Mr. IREDELL**

replied, that he thought it perfectly regular, and by no means a contempt of the majority. The sole intention of it was to show the opinion of the minority, which could not, in any other manner, be so properly done. They wished to justify themselves to their constituents, and the people at large would judge between the merits of the two propositions. They wished also to avoid, if possible, the disagreeable alternative of a protest. This being the first time he ever had the honor of being a member of a representative body, he did not solely confide in his own judgment, as to the proper manner of bringing his resolution forward, but had consulted a very respectable and experienced member of that house, who recommended this method to him; and he well knew it was conformable to a frequent practice in Congress, as he had observed by their Journals. Each member had an equal right to make a motion, and if seconded, a vote ought to be taken upon it; and he trusted {242} the majority would not be so arbitrary as to prevent them from taking this method to deliver their sentiments to the world.

He was supported by Mr. MACLAINE and Mr. SPAIGHT.

**Mr. WILLIE JONES and Mr. SPENCER**

insisted on its being irregular, and said they might protest. Mr. Jones said, there never was an example of the kind before; that such a practice did not prevail in Congress when he was a member of it, and he well knew no such practice had ever prevailed. in the Assembly.

## Mr. DAVIE

said, he was sorry that gentlemen should not deal fairly and liberally with one another. He declared it was perfectly parliamentary, and the usual practice in Congress. They were in possession of the motion, and could not get rid of it without taking a vote upon it. It was in the nature of a previous question. He declared that nothing hurt his feelings so much as the blind tyranny of a dead majority.

After a warm discussion on this point by several gentlemen on both sides of the house, it was at length intimated to Mr. Iredell, by Mr. Spaight, across the house, that Mr. Lenoir, mid some other gentlemen of the majority, wished he would withdraw his motion for the present, on purpose that the resolution of the committee might be first entered on the Journal, which had not been done; and afterwards his motion might be renewed. Mr. Iredell declared he would readily agree to this, if the gentleman who had seconded him would, desiring the house to remember that he only withdrew his motion for that reason, and hoped he should have leave to introduce it afterwards; which seemed to be understood. He accordingly, with the consent of Mr. Skinner, withdrew his motion; and the resolution of the committee of the whole house as then read, and ordered to be entered on the Journal. The resolution was accordingly read and entered, as follows, viz.: —

*"Resolved*, That a declaration of rights, asserting and securing from encroachment the great principles of civil and religious liberty, and the unalienable rights of the people, together with amendments to the most ambiguous and exceptionable parts of the said Constitution of government, ought to be laid before Congress, and the convention of the states that shall or may be called for the purpose of amending the said Constitution, for their consideration, previous to the ratification of the Constitution aforesaid on the part of the state of North Carolina."

### **"DECLARATION OF RIGHTS.**

- "1. That there are certain natural rights, of which men, when they form a social compact, cannot deprive or divest their posterity, among which are the enjoyment of life and liberty, with the means of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.
- "2. That all power is naturally vested in, and consequently derived from, the people; that magistrates, therefore, are their trustees and agents, and at all times amenable to them.
- "3. That government ought to be instituted for the common benefit, protection, and security, of the people; and that the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive to the good and happiness of mankind.
- "4. That no man or set of men are entitled to exclusive or separate public emoluments or privileges from the community, but in consideration of public services, which not being descendible, neither ought the offices of magistrate, legislator, or judge, or any other public office to be hereditary.
- "5. That the legislative, executive, and judiciary powers of government should be separate and distinct, and that the members of the two first may be restrained from oppression by feeling and participating the public burdens: they should, at fixed periods, be reduced to a private station, return into the mass of the people, and the vacancies be

supplied by certain and regular elections, in which all or any part of the former members to be eligible or ineligible, as the rules of the constitution of government and the laws shall direct.

- "6. That elections of representatives in the legislature ought to be free and frequent, and all men having sufficient evidence of permanent common interest with, and attachment to, the community, ought to have the right of suffrage; and no aid, charge, tax, or fee, can be set, rated, or levied, upon the people without their own consent, or that of their representatives so elected; nor can they be bound by any law to which they have not in like manner assented for the public good.
- "7. That all power of suspending laws, or the execution of laws, by any authority, without the consent of the representatives of the people in the legislature, is injurious to their rights, and ought not to be exercised.
- "8. That, in all capital and criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence, and be allowed counsel in his favor, and a fair and speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty, (except in the government of the land and naval forces;) nor can he be compelled to give evidence against himself.
- "9. That no freeman ought to be taken, imprisoned, or disseized of his freehold, liberties, privileges, or franchises, or outlawed or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the law of the land.
- "10. That every freeman, restrained of his liberty, is entitled to a remedy to inquire into the lawfulness thereof, and to remove the same if unlawful; and that such remedy ought not to be denied nor delayed.
- "11. That, in controversies respecting property, and in suits between {244} man and man, the ancient trial by jury is one of the greatest securities to the rights of the people, and ought to remain sacred and inviolable.
- "12. That every freeman ought to find a certain remedy, by recourse to the laws, for all injuries and wrongs he may receive in his person, property, or character; he ought to obtain right and justice freely without sale, completely and without denial, promptly and without delay; and that all establishments or regulations contravening these rights are oppressive and unjust.
- "13. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
- "14. That every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers and property; all warrants; therefore, to search suspected places, or to apprehend any suspected person, without specially naming or describing the place or person, are dangerous, and ought not to be granted.
- "15. That the people have a right peaceably to assemble together, to consult for the common good, or to instruct their representatives; and that every freeman has a right to petition or apply to the legislature for redress of grievances.
- "16. That the people have a right to freedom of speech, and of writing and publishing their sentiments that freedom of the press is one of the greatest bulwarks of liberty, and ought not to be violated.
- "17. That the people have a right to keep and bear arms; that a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe

defence of a free state; that standing armies, in time of peace, are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the community will admit; and that. in all cases, the military should be under strict subordination to, and governed by, the civil power.

- "18. That no soldier, in time of peace, ought to be quartered in any house Without the consent of the owner, and in time of war, in such manner only as the laws direct.
- "19. That any person religiously scrupulous of bearing arms ought to be exempted, upon payment of an equivalent to employ another to bear arms in his stead.
- "20. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence: and therefore all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience; and that no particular religious sect or society ought to be favored or established by law in preference to others."

### **"AMENDMENTS TO THE CONSTITUTION.**

- "1. That each state in the Union shall respectively retain every power, jurisdiction, and right, which is not by this Constitution delegated to the Congress of the United States, or to the departments of the federal government.
- "2. That there shall be one representative for every thirty thousand, according to the, enumeration or census mentioned in the Constitution, be continued or increased as Congress shall direct, {245} upon the principles fixed in the Constitution, by apportioning the representatives of each state to some greater number of the people; from time to time, as the population increases.
- "3. When Congress shall lay direct taxes or excises, they shall, immediately inform the executive power of each state of the quota of such state, according to the census herein directed, which is proposed to be thereby raised; and if the legislature of any state shall pass any law. which shall be effectual for raising such quota at the time required by Congress, the taxes and excises laid by Congress shall not be collected in such state.
- "4. That the members of the Senate and House of Representatives shall be ineligible to, and incapable of holding, any civil office under the authority of the United States, during the time for which they shall respectively be elected.
- "5. That the Journals of the proceedings of the Senate and House of Representatives shall be published at least once in every year, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy.
- "6. That a regular statement and account of receipts and expenditures of all public moneys shall be published at least once in every year.
- "7. That no commercial treaty shall be ratified without the concurrence of two thirds of the whole number of the members of the Senate. And no treaty, ceding, contracting, restraining, or suspending, the territorial rights or claims of the United States, or any of them, or their, or any of their, rights or claims of fishing in the American seas, or navigating the American rivers, shall be made, but in cases of the most urgent and extreme necessity; nor shall any such treaty be ratified without the concurrence of three fourths of the whole number of the members of both houses respectively.
- "8. That no navigation law, or law regulating commerce, shall be passed without the consent of two thirds of the members present in both houses:

- "9. That no standing army or regular troops shall be raised or kept up in time of peace, without the consent of two thirds of the members present in both houses.
- "10. That no soldier shall be enlisted for any longer term than four years, except in time of war, and then for no longer term than the continuance of the war.
- "11. That each state respectively shall have the power to provide for organizing, arming, and disciplining its own militia; whensoever: Congress shall omit or neglect to provide for the same; that the militia shall not be subject to martial law, except when in actual service in time of war, invasion, or rebellion; and when not in the actual service of the United States, shall be subject only to such fines, penalties, and punishments, as shall be directed or inflicted by the laws of its own state.
- "12. That Congress shall not declare any state to be in rebellion, without the consent of at least two thirds of all the members present, in both houses.
- "13. That the exclusive power of legislation given to Congress Over the federal town and its adjacent district, and other places purchased or to be purchased by Congress of any of the states, shall extend only to such regulations as respect the police and good government thereof.
- "14. That no person shall be capable of being President of the United States for more than eight years in any term of fifteen years.
- {246} "15. That the judicial power of the United States shall be vested in one. Supreme Court, and in such courts of admiralty as Congress may from time to time ordain and establish in any of the different states. The judicial power shall extend to all cases in law and equity arising under treaties made, or which shall be made, under the authority of the United States; to all cases affecting ambassadors, other foreign ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the united States shall be a party; to controversies between two or more states, and between parties claiming lauds under the grants of different states. In all cases affecting ambassadors, other foreign ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction as to matters of law only, except in cases of equity, and of admiralty and maritime jurisdiction, in which the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make: but the judicial power of the United States shall extend to no case where the cause of action shall have originated before the ratification of this Constitution, except in disputes between states about their territory, disputes between persons claiming lands under the grants of different, states, and suits for debts due to the United States.
- "16. That, in criminal prosecutions, no man shall be restrained in the exercise of the usual and accustomed right of challenging or excepting to the jury.
- "17. That Congress shall not alter, modify, or interfere in, the times, places, or manner, of holding elections for senators and representatives, or either of them, except when the legislature of any state shall neglect, refuse, or be disabled, by invasion or rebellion, to prescribe the same.
- "18. That those clauses which declare that Congress shall not exercise certain powers be not interpreted in any manner whatsoever to extend the power of Congress; but that they be construed either as making exceptions to the specified powers where this shall be the case, or otherwise as inserted merely for greater caution.

- "19. That the laws ascertaining the compensation of senators and representatives for their services, be postponed in their operation until after the election of representatives immediately succeeding the passing thereof, that excepted which shall first be passed on the subject.

## IMPEACH

- "20. That some tribunal other than the Senate be provided for trying **impeachments of senators.**
- "21. That the salary of a judged shall not be increased or diminished during his continuance in office, otherwise than by general regulations of salary, which may take place on a revision of the subject at stated periods of not less than seven years, to commence froth the time such salaries shall be first ascertained by Congress.
- "22. That Congress erect no company of merchants with exclusive advantages of commerce.
- "23. That no treaties which shall be directly opposed to the existing laws of the United States in Congress assembled shall be valid until such laws shall be repealed, or made conformable to such treaty; nor shall any treaty be valid which is contradictory to the Constitution of the United States.
- "24. What the latter part of the 5th paragraph of the 9th section of the 1st article be altered to read thus: 'Nor shall vessels hound to a particular {247} state be obliged to enter or pay duties in any other; nor, when bound from any one of the states, be obliged to clear in another.'
- "25. That Congress shall not, directly or indirectly; either by themselves or through the judiciary, interfere with any one of the states in the redemption of paper money already emitted and now in circulation, or in liquidating and discharging the public securities of any one of the states; but each and every state shall have the exclusive right of making such laws and regulations, for the above purposes, as they shall think proper.
- "26. That Congress shall not introduce foreign troops into the United States without the consent of two thirds of the members present of both houses."

### Mr. SPENCER

then moved that the report of the committee be concurred with, and was seconded by Mr. J. M'DOWALL.

### Mr. IREDELL

moved that the consideration of that motion be postponed, in order to take into consideration the following resolution:

[Which resolution was the same he introduced before, and which he afterwards, in substance, moved by way of amendment.]

This gave rise to a very warm altercation on both sides, during which the house was in great confusion. Many gentlemen in the majority (particularly Mr. WILLIE JONES) strongly

contended against the propriety of the motion. Several gentlemen in the minority resented, in strong terms, the arbitrary attempt of the majority (as they termed it) to suppress their sentiments; and Mr. SPAIGHT, in particular, took notice, with great indignation, of the motion made to concur with the committee, when the gentleman from Edenton appeared in some measure to have had the faith of the house that he should have an opportunity to renew his motion, which he had withdrawn at the request of some of the majority themselves. Mr. WHITMILL HILL spoke with great warmth, and declared that, in his opinion, if the majority persevered in their tyrannical attempt, the minority should secede.

**Mr. WILLIE JONES**

still contended that the motion was altogether irregular and improper, and made a motion calculated to show that such a motion, made and seconded under the circumstances in which it had been introduced, was not entitled to be entered on the Journal. His motion, being seconded, was carried by a great majority. The yeas and nays were moved for, and were taken, when Mr. IREDELL arose, and said he was sensible of the irregularity he {248} was guilty of, and hoped he should be excused for it, but it arose from his desire of saving the house trouble; that Mr. Jones (he begged pardon for naming him) had proposed an expedient to him, with which he should be perfectly satisfied, if the house approved of it, as it was indifferent to him what was the mode, if his object in substance was obtained. The method proposed was, that the motion for concurrence should be withdrawn, and his resolution should be moved by way of an amendment. If the house, therefore, approved of this method, and the gentlemen who had moved and seconded the motion would agree to withdraw it, he hoped it would be deemed unnecessary to proceed with the yeas and nays.

**Mr. NATHAN BRYAN**

said, the gentleman treated the majority with contempt.

**Mr. IREDELL**

declared he had no such intention; but as the yeas and nays were taken on a difference between both sides of the house, which he hoped might be accommodated, he thought he might be excused for the liberty he had taken.

**Mr. SPENCER and Mr. M'DOWALL,**

after some observations not distinctly heard, accordingly withdrew their motion; and it was agreed that the yeas and nays should not be taken, nor the motion which occasioned them entered on the Journal. Mr. IREDELL then moved as follows, viz.: —

That the report of the committee be amended, by striking out all the words of the said report except the two first, viz.: "*Resolved*, That," and that the following words be inserted in their room, viz.: — "this Convention, having fully deliberated on the Constitution proposed for the future government of the United States of America by the Federal Convention lately held, at Philadelphia, on the 17th day of September last, and having taken into their serious and solemn

consideration the present critical situation of America, which induces them to be of opinion that, though certain amendments to the said Constitution may be wished for, yet that those amendments should be proposed subsequent to the ratification on the part of this state, and not previous to it: — they do, therefore, on behalf of the state of North Carolina, and the good people thereof, and by virtue of the authority to the, delegated, ratify the said Constitution on the part of this state; and they do at the same time recommend that, as early as possible, the following amendments to the said Constitution may be proposed for the consideration and adoption of the several states in the Union, in one of the modes prescribed by the 5th article thereof:" —

### "AMENDMENTS.

- "1. Each state in the Union shall respectively retain every power, jurisdiction, and right, which is not by this Constitution delegated to the Congress of the United States, or to the departments of the general government; nor shall the said Congress, nor any department of the said government, exercise any act of authority over any individual in any of the said states, but such as can be justified under some power particularly given in this Constitution; but the said Constitution shall be considered at all times a solemn Instrument, defining the extent of their authority, and the limits of which they cannot rightfully in any instance exceed.
- "2. There shall be one representative for every thirty thousand, according to the enumeration or census mentioned in the Constitution, until the whole number of representatives amounts to two hundred; after which, that number shall be continued or increased, as Congress shall direct, upon the principles fixed in the Constitution, by apportioning the representatives of each state to some greater number of people, from time to time, as the population increases.
- "3. Each state respectively shall have the power to provide for organizing, arming, and disciplining, its own militia, whensoever Congress shall omit or neglect to provide for the same. The militia shall not be subject to martial law, except when in actual service in time of war, invasion, or rebellion; and when they are not in the actual service of the United States, they shall be subject only to such fines, penalties, and punishments, as shall be directed or inflicted by the laws of its own state.
- "4. The Congress shall not alter, modify, or interfere in the times, places, or manner, of holding elections for senators and representatives, or either of them, except when the legislature of any state shall neglect, refuse, or be disabled by invasion or rebellion, to prescribe the same.
- "5. The laws ascertaining the compensation of senators and representatives, for their services, shall be postponed in their operation until after the election of representatives immediately succeeding the passing thereof; that excepted which shall first be passed on the subject.
- "6. Instead of the following words in the 9th section of the 1st article, viz., 'Nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties, in another,' [the meaning of which is by many deemed not sufficiently explicit,] it is proposed that the following shall be substituted: 'No vessel bound to one state shall be obliged to enter or pay duties, to which such vessel may be liable at any port of entry, in any other state than that to which such vessel is bound; nor shall any vessel bound from one state be

obliged to clear, or pay duties to which such vessel shall be liable at any port of clearance, in any other state than that from which such vessel is bound."

He was seconded by Mr. JOHN SKINNER.

The question was then put, "Will the Convention adopt that amendment or not?" and it was negatived; whereupon Mr. IREDELL moved that the yeas and nays should be taken, and he was seconded by Mr. STEELE. They were accordingly taken, and were as follows: —

- **YEAS.**
- His excellency, Samuel Johnston, *President.*
- Messrs. Ja's Iredell,
- Archibald Maclaine,
- Nathan Keas,
- John G. Blount,
- Thomas Alderson,
- John Johnson,
- Andrew Oliver,
- Goodwin Elliston,
- Charles M'Dowall,
- Richard D. Spaight,
- William J. Dawson,
- James Porterfield,
- Wm. Barry Grove,
- George Elliott,
- Wallis Styron,
- William Shepperd,
- *Carteret.*
- James Philips,
- John Humphreys,
- Michael Payne,
- Charles Johnston,
- Stephen Cabarrus,
- Edmund Blount,
- *Chowan.*
- Henry Abbot,
- Isaac Gregory,
- Peter Dauge,
- Charles Grandy,
- Enoch Sawyer,
- George Lucas,
- John Willis,
- John Cade,
- Elias Barnes,
- Neil Brown,
- James Winchester,

- William Stokes,
- Thomas Stewart,
- Josiah Collins,
- Thomas Hines,
- Nathaniel Jones,
- John Steele,
- William R. Davie,
- Joseph Reddick,
- James Gregory,
- Thomas Hunter,
- *Gates.*
- Thomas Wyns,
- Abraham Jones,
- John Eborne,
- James Jasper,
- Caleb Forman,
- Seth Horny,
- John Sloan,
- John Moore,
- William Maclaine,
- Nathan Mayo,
- William Slade,
- William M'Kenzie,
- Robert Erwin,
- John Lane,
- Thomas Reading,
- Edward Everagain,
- Enoch Rolfe,
- Devotion Davis,
- William Skinner,
- Joshua Skinner,
- Thomas Hervey,
- John Skinner,
- Samuel Harrel,
- Joseph Leech,
- Wm. Bridges,
- Wm. Burden,
- Edmund Blount,
- *Tyrel.*
- Simeon Spruil,
- David Tanner,
- Whitmill Hill,
- Benjamin Smith,
- John Sitgreaves,
- Nathaniel Allen,
- Thomas Owen,

- George Wyns,
- David Perkins,
- Joseph Ferebee,
- Wm. Ferebee,
- Wm. Baker,
- Abner Neale.

84.

- **NAYS.**
- Messrs. Willie Jones,
- Samuel Spencer,
- Lewis Lanier,
- Thomas Wade,
- Daniel Gould,
- James Bonner,
- Alexius M. Foster,
- Lewis Dupree,
- Thomas Brown,
- James Greenlee,
- Joseph M'Dowall,
- Robert Miller,
- Benjamin Williams,
- Richard Nixon,
- Thomas Armstrong,
- Alex M'Allister,
- Robert Dickens,
- George Roberts,
- John Womack,
- Ambrose Ramsey,
- James Anderson,
- Jos. Stewart,
- Wm. Vestal,
- Thomas Evans,
- Thomas Hardiman,
- Robert Weakly,
- Wm. Donnelson,
- Wm. Dobins,
- Robert Diggs,
- Bythel Bell,
- Elisha Battle,
- Wm. Fort,
- Etheld. Gray,
- Wm. Lancaster,
- Thomas Sherrod,
- John Norward,
- Sterling Dupree,

- Robert Williams,
- Richard Moye,
- Arthur Forbes,
- David Caldwell,
- Wm. Goudy,
- Daniel Gillespie,
- John Anderson,
- John Hamilton,
- Thomas Person,
- Joseph Taylor,
- Thornton Yancey,
- Howell Lewis, Jun.,
- E. Mitchell,
- George Moore,
- George Ledbetter,
- Wm. Porter,
- Zebedee Wood,
- Edmund Waddell,
- James Galloway,
- J. Regan,
- Joseph Winston,
- James Gains,
- Charles M'Annelly,
- Absalom Bostick,
- John Scott,
- John Dunkin,
- David Dodd,
- Curtis Ivey,
- Lewis Holmes,
- Richard Clinton,
- H. Holmes,
- Robert Alison,
- James Stewart,
- John Tipton,
- John Macon,
- Thomas Christmass,
- H. Monfort,
- Wm. Taylor,
- James Hanley,
- Britain Saunders,
- Wm. Lenoir,
- R. Allen,
- John Brown,
- Joseph Herndon,
- James Fletcher,
- Lemuel Burkit,

- Wm. Little,
- Thomas King,
- Nathan Bryan,
- John H. Bryan,
- Edward Whitty,
- Robert Alexander,
- James Johnson,
- John Cox,
- John Carrel,
- Cornelius Doud,
- Thomas Tyson,
- W. Martin,
- Thomas Hunter,
- *Martin.*
- John Graham,
- Wm. Loftin,
- Wm. Kindal,
- Thomas Ussery,
- Thomas Butler,
- John Bentford,
- James Vaughan,
- Robert Peebles,
- James Vinson,
- Wm. S. Marnes,
- Howell Ellin,
- Redman Bunn,
- John Bonds,
- David Pridgen,
- Daniel Yates,
- Thomas Johnston,
- John Spicer,
- A. Tatom,
- Alex. Mebane,
- Wm. Mebane,
- Wm. M'Cauley,
- Wm. Shepperd,
- *Orange.*
- Jonathan Linley,
- Wyatt Hawkins,
- James Payne,
- John Graves,
- {251}
- John Blair,
- Joseph Tipton,
- Wm. Bethell,
- Abraham Phillips,

- John May,
- Charles Galloway,
- James Boswell,
- John M'Allister,
- David Looney,
- John Sharpe,
- Joseph Gaitier,
- John A. Campbell,
- John P. Williams,
- Wm. Marshall,
- Charles Robertson,
- James Gillespie,
- Charles Ward,
- Wm. Randal,
- Frederick Harget,
- Richard M'Kinnie,
- John Cains,
- Jacob Leonard,
- Thomas Carson,
- Richard Singleton,
- James Whitside,
- Caleb Phifer,
- Zachias Wilson,
- Joseph Douglass,
- Thomas Dougan,
- James Kenan,
- John Jones,
- Egbert Haywood,
- Wm. Wootten,
- John Branch,
- Henry Hill,
- Andrew Bass,
- Joseph Boon,
- Wm. Farmer,
- John Bryan,
- Edward Williams,
- Francis Oliver,
- Matthew Brooks,
- Griffith Rutherford,
- Geo. H Barringer,
- Timo. Bloodworth,
- Everet Pearce,
- Asahel Rawlins,
- James Wilson,
- James Roddy,
- Samuel Cain,

- B. Covington,
  - J. M'Dowall, Jun.,
  - Durham Hall,
  - Jas Bloodworth,
  - Joel Lane,
  - James Hinton,
  - Thomas Devane,
  - James Brandon,
  - Wm. Dickson,
  - Burwell Mooring,
  - Matthew Locke,
  - Stokely Donelson.
- 184.

## **SATURDAY, *August 2, 1788.***

The Convention met according to adjournment.

The report of the committee of the whole Convention, according to order, was taken up and read in the same words as on yesterday; when it was moved by Mr. PERSON, and seconded by Mr. MACON, that the Convention do concur therewith, which was objected to by Mr. A. MACLAINE.

The question being put, "Will the Convention concur with the report of the committee of the whole convention, or not?" it was carried in the affirmative; whereupon Mr. DAVIE moved for the yeas and nays, and was seconded by Mr. CABARRUS. They were accordingly taken; and those who voted yesterday against the amendment, voted for concurring with the report of the committee: those who voted in favor of the amendment, now voted against a concurrence with the report.

On motion of Mr. WILLIE JONES, and seconded by Mr. JAMES GALLOWAY, the following resolution was adopted by a large majority, viz.: —

"Whereas this Convention has thought proper neither to ratify nor reject the Constitution proposed for the government of the United States, and as Congress will proceed to act under the said Constitution, ten states having ratified the same, and probably lay an impost on goods imported into the said ratifying states, —

*Resolved*, That it be recommended to the legislature of this state, that whenever Congress shall pass a law for collecting an impost in the states aforesaid, this state enact a law for collecting a similar impost on goods imported into this state, and appropriate the money arising therefrom to the use of Congress."

On the motion made by Mr. WILLIE JONES, and seconded by Mr. JAMES GALLOWAY, —

"*Resolved, unanimously*, That it be recommended to the General Assembly to take effectual measures for the redemption of the paper currency, as speedily as may be, consistent with the situation and circumstances of the people of this state."

On a motion made by Mr. WILLIE JONES, and seconded by Mr. JAMES GALLOWAY, —

"*Resolved, unanimously*, That the honorable the president be requested to transmit to Congress, and to the executives of New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, and Georgia, a copy of the resolution of the committee of the whole Convention on the subject of the Constitution proposed for the government of the United States, concurred with by this Convention, together with a copy of the resolutions on the subject of impost and paper money."

The Convention afterwards proceeded to the business of fixing the seat of government, and on Monday, the 4th of August, adjourned *sine die*.

---

1. Something had been said about order, which was not distinctly heard.

---

## **Ratification of the Constitution by the State of Rhode Island; May 29, 1790**

Ratification of the [Constitution](#), by the Convention of the State of Rhode-Island and Providence Plantations

We the Delegates of the People of the State of Rhode-Island, and Providence Plantations, duly elected and met in Convention, having maturely considered the [Constitution for the United States of America](#), agreed to on the seventeenth day of September, in the year one thousand seven hundred and eighty seven, by the Convention then assembled at Philadelphia, in the Commonwealth of Pennsylvania (a Copy whereof precedes these presents) and having also seriously and deliberately considered the present situation of this State, do declare and make known

In That there are certain natural rights, of which men when they form a social compact, cannot deprive or divest their posterity, among which are the enjoyment of Life and Liberty, with the means of acquiring, possessing and protecting Property, and pursuing and obtaining happiness and safety.

2d That all power is naturally vested in, and consequently derived from the People; that magistrates therefore are their trustees and agents, and at all times amenable to them.

3d That the powers of government may be reassumed by the people, whensoever it shall become necessary to their happiness:- That the rights of the States respectively, to nominate and appoint all State Officers, and every other power, jurisdiction and right, which is not by the said constitution clearly delegated to the Congress of the United States or to the departments of government thereof, remain to the people of the several states, or their respective State Governments to whom they may have granted the same; and that those clauses in the said constitution which declare that Congress shall not have or exercise certain powers, do not imply, that Congress is entitled to any powers not given by the said constitution, but such clauses are to be construed as exceptions to certain specified powers, or as inserted merely for greater caution.

4th That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, and not by force or violence, and therefore all men, have an equal, natural and unalienable right to the free exercise of religion, according to the dictates of conscience, and that no particular religious sect or society ought to be favoured, or established by law in preference to others.

5th That the legislative, executive and judiciary powers of government, should be separate and distinct, and that the members of the two first may be restrained from oppression, by feeling and participating the publick burthens, they should at fixed periods be reduced to a private station, return into the mass of the people, and the vacancies be supplied by certain and regular elections, in which all, or any part of the former members, to be eligible or ineligible, as the rules of the constitution of government and the laws shall direct.

6th That elections of representatives in legislature ought to be free and frequent, and all men having sufficient evidence of permanent common interest with, and attachment to the community ought to have the right of suffrage, and no aid, charge tax or fee can be set, rated or levied upon the people, without their own consent or that of their representatives so elected, nor can they be bound by any law, to which they have not in like manner assented for the publick good.

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

8th That in all capital and criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence and be allowed counsel in his favour, and to a fair and speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty; (except in the government of the land and naval forces) nor can he be compelled to give evidence against himself.

9th That no freeman ought to be taken, imprisoned or disseised of his freehold, liberties, privileges, or franchises, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property but by the trial by jury, or by the law of the land.

10th That every freeman restrained of his liberty, is intitled to a remedy, to enquire into the lawfulness thereof, and to remove the same if unlawful, and that such remedy ought not to be denied or delayed.

11th That in controversies respecting property, and in suits between man and man the antient trial by jury, as bath been exercised by us and our ancestors, from the time whereof the memory of man is not to the contrary, is one of the greatest securities to the rights of the people, and ought to remain sacred and inviolate.

12th That every freeman ought to obtain right and justice, freely and without sale, completely and without denial, promptly and without delay, and that all establishments or regulations contravening these rights, are oppressive and unjust.

13th That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

14th That every person has a right to be secure from all unreasonable searches and seizures of his person, his papers or his property, and therefore that all warrants to search suspected places or seize any person, his papers or his property, without information upon oath, or affirmation, of sufficient cause, are grievous and oppressive, and that all general warrants for such in which the place or person suspected, are not particularly designated,) are dangerous, and ought not to be granted.

15th That the people have a right peaceably to assemble together, to consult for their common good, or to instruct their representatives; and that every person has a right to petition or apply to the legislature for redress of grievances.

16th That the people have a right to freedom of speech and of writing, and publishing their sentiments, that freedom of the press is one of the greatest bulwarks of liberty, and ought not to be violated.

17th That the people have a right to keep and bear arms, that a well regulated militia, including the body of the people capable of bearing arms, is the proper, natural and safe defence of a free state; that the militia shall not be subject to martial law except in time of war, rebellion or insurrection; that standing armies in time of peace, are dangerous to liberty, and ought not to be kept up, except in cases of necessity; and that at all times the military should be under strict subordination to the civil power; that in time of peace no soldier ought to be quartered in any house, without the consent of the owner, and in time of war, only by the civil magistrate, in such manner as the law directs.

18th That any person religiously scrupulous of bearing arms, ought to be exempted, upon payment of an equivalent, to employ another to bear arms in his stead.

Under these impressions, and declaring, that the rights aforesaid cannot be abridged or violated, and that the explanations aforesaid, are consistent with the said [constitution](#), and in confidence that the amendments hereafter mentioned, will receive an early and mature consideration, and conformably to the [fifth article of said constitution](#), speedily become a part thereof; We the said delegates, in the name, and in the behalf of the People, of the State of Rhode-Island and Providence-Plantations, do by these Presents, assent to, and ratify the said [Constitution](#). In full confidence nevertheless, that until the amendments hereafter proposed and undermentioned shall be agreed to and ratified, pursuant to the aforesaid fifth article, the militia of this State will not be continued in service out of this State for a longer term than six weeks, without the consent of the legislature thereof; That the Congress will not make or alter any regulation in this State, respecting the times, places and manner of holding elections for senators or representatives, unless the legislature of this state shall neglect, or refuse to make laws or regulations for the purpose, or from any circumstance be incapable of making the same; and that in those cases, such power will only be exercised, until the legislature of this State shall make provision in the Premises, that the Congress will not lay direct taxes within this State, but when the monies arising from the Impost, Tonnage and Excise shall be insufficient for the publick exigencies, nor until the Congress shall have first made a requisition upon this State to assess, levy and pay the amount of such requisition, made agreeable to the census fixed in the said constitution, in such way and manner, as the legislature of this State shall judge best, and that the Congress will not lay any capitation or poll tax.

Done in Convention, at Newport in the County of Newport, in the State of Rhode-Island and Providence-Plantations, the twenty ninth day of May, in the Year of our Lord one thousand seven hundred and ninety, and in the fourteenth year of the Independence of the United States of America.

By order of the Convention,

DANIEL OWEN President

Attest, DANIEL UPDIKE Secty

And the Convention, do in the name and behalf of the People of the State of Rhode-Island and Providence Plantations, enjoin it upon their Senators and Representative or Representatives, which may be elected to represent this State in Congress, to exert all their influence, and use all reasonable means to obtain a ratification of the following Amendments to the said Constitution, in the manner prescribed therein, and in all laws to be passed by the Congress in the mean time, to conform to the spirit of the said amendments, as far as the constitution will admit.

## AMENDMENTS

1st The United States shall guarantee to each State its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this constitution expressly delegated to the United States.

2d That Congress shall not alter, modify or interfere in the times, places or manner of holding elections for Senators and Representatives, or either of them, except when the legislature of any state shall neglect, refuse or be disabled by invasion or rebellion to prescribe the same; or in case when the provision made by the states, is so imperfect as that no consequent election is had, and then only until the legislature of such state, shall make provision in the premises.

3d It is declared by the Convention, that the judicial power of the United States, in cases in which a state may be a party, does not extend to criminal prosecutions, or to authorize any suit by any person against a State; but to remove all doubts or controversies respecting the same, that it be especially expressed as a part of the constitution of the United States, that Congress shall not directly or indirectly, either by themselves or through the judiciary, interfere with any one of the states, in the redemption of paper money already emitted and now in circulation, or in liquidating or discharging the publick securities of any one state: that each and every state shall have the exclusive right of making such laws and regulations for the before mentioned purpose, as they shall think proper.

4th That no amendments to the constitution of the United States hereafter to be made, pursuant to the fifth article, shall take effect, or become a part of the constitution of the United States after the Year one thousand seven hundred and ninety three, without the consent of eleven of the states, heretofore united under one confederation.

5th That the judicial powers of the United States shall extend to no possible case, where the cause of action shall have originated before the ratification of this constitution, except in disputes between states about their territory, disputes between persons claiming lands under grants of different states, and debts due to the United States.

6th That no person shall be compelled to do military duty, otherwise than by voluntary enlistment, except in cases of general invasion; any thing in the second paragraph of the [sixth article of the constitution](#), or any law made under the constitution to the contrary notwithstanding.

7th That no capitation or poll-tax shall ever be laid by Congress.

8th In cases of direct taxes, Congress shall first make requisitions on the several states to assess, levy and pay their respective proportions of such requisitions, in such way and manner, as the legislatures of the several states shall judge best; and in case any state shall neglect or refuse to pay its proportion pursuant to such requisition, then Congress may assess and levy such state's proportion, together with interest at the rate of six per cent. per annum, from the time prescribed in such requisition.

9th That Congress shall lay no direct taxes, without the consent of the legislatures of three fourths of the states in the Union.

10th That the journals of the proceedings of the Senate and house of Representatives shall be published as soon as conveniently may be, at least once in every year, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy.

11th That regular statements of the receipts and expenditures of all publick monies, shall be published at least once a year.

12th As standing armies in time of peace are dangerous to liberty and ought not to be kept up, except in cases of necessity; and as at all times the military should be under strict subordination to the civil power, that therefore no standing army, or regular toops shall be raised, or kept up in time of peace.

13th That no monies be borrowed on the credit of the United States without the assent of two thirds of the Senators and Representatives present in each house.

14th That the Congress shall not declare war, without the concurrence of two thirds of the Senators and Representatives present in each house.

15th That the words " without the consent of Congress " in the [seventh clause in the ninth section of the first article of the constitution](#) be expunged.

16th That no judge of the supreme court of the United States, shall hold any other office under the United States, or any of them; nor shall any officer appointed by Congress, or by the President and Senate of the United States, be permitted to hold any office under the appointment of any of the states.

17th As a traffick tending to establish or continue the slavery of any part of the human species, is disgraceful to the cause of liberty and humanity, that Congress shall, as soon as may be, promote

and establish such laws and regulations, as may effectually prevent the importation of slaves of very description into the United States.

18th That the State Legislatures have power to recall, when they think it expedient, their federal senators, and to send others in their stead.

19th That Congress have power to establish a uniform rule of inhabitancy, or settlement of the poor of the different States throughout the United States.

20th That Congress erect no company with exclusive advantages of commerce.

21st That when two members shall move or call for the ayes and nays on any question, they shall be entered on the journals of the houses respectively.

Done in Convention at Newport, in the County of Newport in the State of Rhode-Island and Providence Plantations, the twenty ninth day of May, in the year of our Lord one thousand seven hundred and ninety, and the fourteenth year of the independence of the United States of America. By order of the Convention,

DANIEL OWEN President.

Attest DANIEL UPDIKE. Secty.

(1) Reprinted from Documentary History of the Constitution, Vol. II (1894), pp. 310-320.