This collection of documents on the Constitutional Convention explains why the Convention was held and illustrates the ideas of government and politics that the delegates carried with them to Philadelphia. Its pages recount the Convention’s critical debates over the purpose and powers of government, the nature of representation, and the relation between the states and the central government. They recount as well the way that slavery and the interests of the various states shaped those debates. With its document introductions, annotations, and helpful appendices, this collection is an indispensable resource for understanding the Constitution.

This volume is the second of four volumes covering the Founding in the Ashbrook Center’s document series. The American Founding, already published, is the capstone of the four. The others — this collection, and volumes on the ratification of the Constitution and the Bill of Rights (forthcoming) — tell aspects of the founding story in more detail.

The Ashbrook Center restores and strengthens the capacities of the American people for constitutional self-government. Ashbrook teaches students and teachers across our country what America is and what she represents in the long history of the world. Offering a variety of programs and resources, Ashbrook is the nation’s largest university-based educator in the enduring principles and practice of free government.

Gordon Lloyd is a Senior Fellow at the Ashbrook Center.
The Constitutional Convention:
Core Documents
About the Ashbrook Center

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General Editor’s Introduction

This collection of documents on the Constitutional Convention is part of the Ashbrook Center’s extended series of document collections covering major periods, themes, and institutions in American history and government. It is the second of four volumes that will cover the Founding of the United States. The American Founding, already published, is the capstone of the four. The others – this collection, and volumes on the ratification of the constitution and the Bill of Rights, which will follow it – tell aspects of the founding story in more detail. The documents in this collection explain why the constitutional convention was held and illustrate the ideas of government and politics that the delegates carried with them to Philadelphia, ideas wrung from their reading and, more important, from the extensive experience of self-government the colonists had enjoyed. Its pages recount the Convention’s critical debates over the purpose and powers of government, the nature of representation, and the relation between the states and the central government. They recount as well the way that slavery and the interests of the various states shaped those debates. Together, the four volumes on the Founding provide the essentials for understanding the Founding as the Founders understood it.

When the series of Ashbrook document collections is complete, it will be comprehensive and authoritative because it will present America’s story in the words of those who wrote it—America’s presidents, labor leaders, farmers, philosophers, industrialists, politicians, workers, explorers, religious leaders, judges, soldiers; its slaveholders and abolitionists; its expansionists and isolationists; its reformers and stand-patters; its strict and broad constructionists; its hard-eyed realists and visionary utopians—all united in their commitment to equality and liberty, yet all also divided often by their different understandings of these most fundamental American ideas. The documents are about all this—the still unfinished American experiment with self-government.

As this volume does, each of the volumes in the series will contain key documents on its period, theme, or institution, selected by an expert and reviewed by an editorial board. Each volume will have an introduction highlighting key documents and themes. In an appendix to each volume, there will also be a thematic table of contents, showing the connections between various documents. Another appendix will provide study questions for each
document, as well questions that refer to other documents in the collection, tying them together as the thematic table of contents does. Each document will be checked against an authoritative original source and have an introduction outlining its significance. We will provide notes to each document to identify people, events, movements, or ideas that may be unfamiliar to non-specialist readers and to improve understanding of the document’s historical context. As with *The American Founding*, this volume contains some additional appendices that provide information useful for understanding the debates it recounts.

In sum, our intent is that the documents and their supporting material provide reliable and unique access to the richness of the American story.

Gordon Lloyd, Senior Fellow at the Ashbrook Center, selected the documents and wrote the introductions, notes, and study questions. David Tucker edited the collection. Glenn Perkins provided excellent copyediting. Lisa Ormiston of the Ashbrook Center oversaw production. This publication was made possible through the support of a grant by the John Templeton Foundation. The opinions expressed in this publication are those of the editors and do not necessarily reflect the views of the John Templeton Foundation.

David Tucker
Senior Fellow
Ashbrook Center
Introduction

This collection of documents on the creation of the Constitution attempts to accomplish five objectives.

First, it draws attention to the American colonial experience. Why study the colonial past? Beginning with the French Revolution (1789–99), which ended in a dictatorship, revolutions have tended to ignore the past as a source of authority for the present and as a guide to the future. Americans, while acknowledging the importance of 1776 as the start of something new, showed a decent respect for the opinions and actions of their forefathers from the seventeenth and eighteenth centuries. In particular, they showed a concern for the forms of government under which they had lived. To secure these forms, charters were created and then signed by their creators. Two colonial charters (Documents 1 and 2) highlight the connection between the colonial experience of developing forms of government and the Constitution written in 1787, which continues to structure our government and laws today.

Second, this collection draws attention to the problems Americans confronted during the 1780s. Between 1776 and 1780 (Documents 3 and 6), Americans created a new kind of republicanism at the state level after due deliberation by elected representatives. Each of these republican forms had its own peculiarity, but all shared the premise that there should be a separation of powers, with the legislative branch being dominant, the executive branch dependent on the legislative, and the judicial branch practically nonexistent. (Massachusetts was a notable exception: its executive was elected by the people and the judiciary could issue advisory opinions.) These republican governments existed alongside a federal government of limited powers, established in 1781 (Document 6), whose legislative sessions were irregularly attended by state delegates. The documents thus highlight the problem of active and powerful state governments operating within a league with limited ability to direct the mutual affairs of its members. Document 7 is James Madison’s account in 1787 of the vices of this political system.

Third, the collection addresses how the delegates to the Constitutional Convention responded to the problems in the American political system. What should be done to correct them? Should the powers of the Confederation be increased and the structure kept the same? Was there an intrinsic problem – a
systemic deficiency – or a problem that could be settled with a few improvements here and there? And who should authorize changes and by what authority should these alterations be adopted? Thus the collection introduces the reader to the several alternative plans discussed over 88 days at the Convention by up to 55 delegates (for example, Documents 10, 13, 15).

Fourth, the collection allows the reader to grasp the personal dynamics at work during the Convention. Some delegates were eloquent and thoughtful; others petulant and shortsighted. Some stayed until the end, revising their views as the debates continued; others stuck to their original positions, leaving early in frustration. Still others rode out the entire convention, announcing only at the last minute the scruples that prevented them from signing the agreed-upon plan. Put differently, for the first time in the history of the world, a genuine democratic conversation took place over an attempt to secure a regime dedicated to liberty and justice. All previous regimes had been founded by one or a few persons and eventually collapsed because of the violence of faction. And none of these previous regimes had sought liberty as a defining principle. To reveal the personal dynamics and what was at stake, the collection covers the debates during several crucial days in the life of the Convention as well as the difficulty involved over the creation of the presidency and the meaning of the necessary and proper clause. Is the case for executive independence the same as the case for judicial independence? Is the necessary and proper clause an enabling or a restraining clause?

Fifth, the collection addresses the clauses of the Constitution that refer to slavery, which provoked controversy at the Convention and have continued to do so ever since. The collection traces the origin and development of the three slavery clauses of the Constitution: the Three-Fifths Clause; the Slave Trade Clause; and the Fugitive Slave Clause. When and why did these three clauses appear during the constitutional debates? How does the language used when the clauses were introduced change before their insertion in the Constitution? How do these changes affect the interpretation of the slavery clauses?

Thirty-nine delegates signed their names to the Constitution on the “Seventeenth Day of September in the Year of Our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth.” The conscious attempt to join together the old and the new represents an example of the American mind at work. We wonder whether the colonists of the seventeenth and eighteenth centuries would have recognized and applauded the work of the Founding Fathers? To be sure, even though several of the Framers of the Constitution had different ideas about what should be done to secure the blessings of liberty – see the variety of plans
39 reached sufficient agreement through a mixture of principle and compromise to sign the document. Aristotle might well call that prudent statesmanship. Others might well criticize their compromising as unacceptable and embarrassing.

But we need to remember that, unlike previous foundings in history that were the work of powerful individuals who could enforce their will, the American founding occurred through the civil deliberations of citizens from a variety of backgrounds, representing a variety of regional interests and philosophical positions. Never before had such a task been accomplished.

A Note on Usage

We have modernized spelling and some punctuation but not capitalization. On occasion we have divided longer speeches into paragraphs.

In recording the debates at the Convention, Madison uses the terms “house” and “branch” interchangeably with reference to what would become the House of Representatives and the Senate. To modern ears, “branch” connotes the three divisions of our government (legislative, executive, and judicial). However, to respect the language used by Madison and the delegates, in this volume we generally use the term “legislative branches” when speaking of the two houses of Congress.

While a few delegates, following the British way of thinking, used the terms “upper” and “lower” to distinguish between what we call the House and the Senate, most delegates preferred to speak of the House of Representatives as the “first” branch of the legislature and of the Senate as the “second” branch. The terms “upper” and “lower” carried an aristocratic connotation. Madison and many other delegates preferred the more democratic terminology of “first” and “second.”
The Constitutional Convention:
Core Documents
Fundamental Orders of Connecticut
1638–39

In 1635, immigrants from Massachusetts settled near Hartford, Connecticut, and by 1639 had created “Fundamental Orders” for the governance of their settlement. The settlers followed the covenanting tradition of the Mayflower Compact and made mutual promises to associate with each other under “an orderly and decent Government established according to God.” But the Connecticut founders did something different from their Puritan ancestors: the British monarch was not acknowledged as the authorizing agent of the document, as he was in the Mayflower Compact. There is no mention of the monarch anywhere in the agreement. The Fundamental Orders of Connecticut lists a fundamental right – and one that was not an Englishman’s right – the right to create the form of government under which one shall live. This right is implicit in the document, for it was the settlers who “Ordered, sentenced, and decreed” the laws under which they should live. The settlers established this political right along with provisions for annual elections, the secret ballot, rotation in office, and the “liberty of speech” for elected representatives. The Fundamental Orders of Connecticut is the official title for the compact agreed to by the freemen of the towns of Windsor, Hartford, and Wethersfield in 1638–39.


For as much as it hath pleased Almighty God by the wise disposition of his divine providence so to order and dispose of things that we the Inhabitants and Residents of Windsor, Hartford and Wethersfield are now cohabiting and dwelling in and upon the River of Connecticut and the lands thereunto adjoining; and well knowing where a people are gathered together the word of God requires that to maintain the peace and union of such a people there should be an orderly and decent Government established according to God, to
order and dispose of the affairs of the people at all seasons as occasion shall require; do therefore associate and conjoin ourselves to be as one Public State or Commonwealth; and do for ourselves and our successors and such as shall be adjoined to us at any time hereafter, enter into Combination and Confederation together, to maintain and preserve the liberty and purity of the Gospel of our Lord Jesus which we now profess, as also, the discipline of the Churches, which according to the truth of the said Gospel is now practiced amongst us; as also in our civil affairs to be guided and governed according to such Laws, Rules, Orders and Decrees as shall be made, ordered, and decreed as follows:

1. It is Ordered, sentenced, and decreed, that there shall be yearly two General Assemblies or Courts,¹ the one the second Thursday in April, the other the second Thursday in September following; the first shall be called the Court of Election, wherein shall be yearly chosen from time to time, so many Magistrates and other public Officers as shall be found requisite: Whereof one to be chosen Governor for the year ensuing and until another be chosen, and no other Magistrate to be chosen for more than one year: provided always there be six chosen besides the Governor, which being chosen and sworn according to an Oath recorded for that purpose, shall have the power to administer justice according to the Laws here established, and for want thereof, according to the Rule of the Word of God; which choice shall be made by all that are admitted freemen and have taken the Oath of Fidelity, and do cohabit within this Jurisdiction having been admitted Inhabitants by the major part of the Town wherein they live or the major part of such as shall be then present.

2. It is Ordered, sentenced, and decreed, that the election of the aforesaid Magistrates shall be in this manner: every person present and qualified for choice shall bring in (to the person deputed to receive them) one single paper with the name of him written in it whom he desires to have Governor, and he that hath the greatest number of papers shall be Governor for that year. And the rest of the Magistrates or public officers to be chosen in this manner: the Secretary for the time being shall first read the names of all that are to be put to choice and then shall severally nominate them distinctly, and every one that would have the person nominated to be chosen shall bring in one single paper written upon, and he that would not have him chosen shall bring in a blank; and every one that hath more written papers than blanks shall be a Magistrate.

¹ The General Court was the legislative, administrative, and judicial body by which the freemen of the colonies in New England governed themselves. See Document 10 below.
for that year; which papers shall be received and told\(^2\) by one or more that shall be then chosen by the court and sworn to be faithful therein; but in case there should not be six chosen as aforesaid, besides the Governor, out of those which are nominated, then he or they which have the most written papers shall be a Magistrate or Magistrates for the ensuing year, to make up the aforesaid number.

3. It is Ordered, sentenced, and decreed, that the Secretary shall not nominate any person, nor shall any person be chosen newly into the Magistracy which was not propounded\(^3\) in some General Court before, to be nominated the next election; and to that end it shall be lawful for each of the Towns aforesaid by their deputies to nominate any two whom they conceive fit to be put to election; and the Court may add so many more as they judge requisite.

4. It is Ordered, sentenced, and decreed, that no person be chosen Governor above once in two years, and that the Governor be always a member of some approved Congregation, and formerly of the Magistracy within this Jurisdiction; and that all the Magistrates, Freemen of this Commonwealth: and that no Magistrate or other public officer shall execute any part of his or their office before they are severally sworn, which shall be done in the face of the court if they be present, and in case of absence by some deputed for that purpose.

5. It is Ordered, sentenced, and decreed, that to the aforesaid Court of Election the several Towns shall send their deputies, and when the Elections are ended they may proceed in any public service as at other Courts. Also the other General Court in September shall be for making of laws, and any other public occasion, which concerns the good of the Commonwealth.

6. It is Ordered, sentenced, and decreed, that the Governor shall, either by himself or by the Secretary, send out summons to the Constables of every Town for the calling of these two standing Courts one month at least before their several times: And also if the Governor and the greatest part of the Magistrates see cause upon any special occasion to call a General Court, they may give order to the Secretary so to do within fourteen days warning; And if urgent necessity so require, upon a shorter notice, giving sufficient grounds for it to the deputies when they meet, or else be questioned for the same; And if the Governor and major part of Magistrates shall either neglect or refuse to call the two General standing Courts or either of them, as also at other times when

\(^2\) determined to be accurate

\(^3\) put forward
the occasions of the Commonwealth require, the Freemen thereof, or the major part of them, shall petition to them so to do: if then it be either denied or neglected, the said Freemen, or the major part of them, shall have the power to give order to the Constables of the several Towns to do the same, and so may meet together, and choose to themselves a Moderator, and may proceed to do any act of power which any other General Courts may.

7. It is Ordered, sentenced, and decreed, that after there are warrants given out for any of the said General Courts, the Constable or Constables of each Town, shall forthwith give notice distinctly to the inhabitants of the same, in some public assembly or by going or sending from house to house, that at a place and time by him or them limited and set, they meet and assemble themselves together to elect and choose certain deputies to be at the General Court then following to agitate the affairs of the Commonwealth: which said deputies shall be chosen by all that are admitted Inhabitants in the several Towns and have taken the oath of fidelity; provided that none be chosen a Deputy for any General Court which is not a Freeman of this Commonwealth.

The aforesaid deputies shall be chosen in manner following: every person that is present and qualified as before expressed, shall bring the names of such, written in several papers, as they desire to have chosen for that employment, and these three or four, more or less, being the number agreed on to be chosen for that time, that have the greatest number of papers written for them shall be deputies for that Court; whose names shall be endorsed on the back side of the warrant and returned into the Court, with the Constable’s or Constables’s hand unto the same.

8. It is Ordered, sentenced, and decreed, that Windsor, Hartford, and Wethersfield shall have power, each Town, to send four of their Freemen as their deputies to every General Court; and Whatsoever other Town shall be hereafter added to this Jurisdiction, they shall send so many deputies as the Court shall judge meet,⁴ a reasonable proportion to the number of Freemen that are in the said Towns being to be attended therein; which deputies shall have the power of the whole Town to give their votes and allowance to all such laws and orders as may be for the public good, and unto which the said Towns are to be bound.

9. It is Ordered, sentenced, and decreed, that the deputies thus chosen shall have power and liberty to appoint a time and a place of meeting together before any General Court, to advise and consult of all such things as may concern the good of the public, as also to examine their own Elections,

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⁴ suitable or proper
whether according to the order, and if they or the greatest part of them find any election to be illegal they may seclude such for present from their meeting, and return the same and their reasons to the Court; and if it be proved true, the Court may fine the party or parties so intruding, and the Town, if they see cause, and give out a warrant to go to a new election in a legal way, either in part or in whole. Also the said deputies shall have power to fine any that shall be disorderly at their meetings, or for not coming in due time or place according to appointment; and they may return the said fines into the Court if it be refused to be paid, and the Treasurer to take notice of it, and to escheat or levy the same as he does other fines.

10. It is Ordered, sentenced, and decreed, that every General Court, except such as through neglect of the Governor and the greatest part of the Magistrates the Freemen themselves do call, shall consist of the Governor, or some one chosen to moderate the Court, and four other Magistrates at least, with the major part of the deputies of the several Towns legally chosen; and in case the Freemen, or major part of them, through neglect or refusal of the Governor and major part of the Magistrates, shall call a Court, it shall consist of the major part of Freemen that are present or their deputies, with a Moderator chosen by them: In which said General Courts shall consist the supreme power of the Commonwealth, and they only shall have power to make laws or repeal them, to grant levies, to admit of Freemen, dispose of lands undisposed of, to several Towns or persons, and also shall have power to call either Court or Magistrate or any other person whatsoever into question for any misdemeanor, and may for just causes displace or deal otherwise according to the nature of the offense; and also may deal in any other matter that concerns the good of this Commonwealth, except the election of Magistrates, which shall be done by the whole body of Freemen. In which Court the Governor or Moderator shall have power to order the Court, to give liberty of speech, and silence unseasonable and disorderly speakings, to put all things to vote, and in case the vote be equal to have the casting voice. But none of these Courts shall be adjourned or dissolved without the consent of the major part of the Court.

11. It is Ordered, sentenced, and decreed, that when any General Court upon the occasions of the Commonwealth have agreed upon any sum, or sums of money to be levied upon the several Towns within this Jurisdiction, that a committee be chosen to set out and appoint what shall be the proportion of every Town to pay of the said levy, provided the committee be made up of an equal number out of each Town.
The Oath of the Governor, for the Present
I, N. W. being now chosen to be Governor within this Jurisdiction, for the year ensuing, and until a new be chosen, do swear by the great and dreadful name of the everliving God, to promote the public good and peace of the same, according to the best of my skill; as also will maintain all lawful privileges of this Commonwealth; as also that all wholesome laws that are or shall be made by lawful authority here established, be duly executed; and will further the execution of Justice according to the rule of God’s word; so help me God, in the name of the Lord Jesus Christ.

The Oath of a Magistrate, for the Present
I, N. W. being chosen a Magistrate within this Jurisdiction for the year ensuing, do swear by the great and dreadful name of the everliving God, to promote the public good and peace of the same, according to the best of my skill, and that I will maintain all the lawful privileges thereof according to my understanding, as also assist in the execution of all such wholesome lawes as are made or shall be made by lawful authority hear established, and will further the execution of Justice for the time aforesaid according to the righteous rule of God’s word; so help me God, etc.

14th January 1638, the 11 Orders above said are voted.
Charter of Privileges Granted by William Penn, Esq., to the Inhabitants of Pennsylvania and Territories

1701

The 1701 Pennsylvania Charter of Privileges was the last and among the most famous of all colonial constitutions. Approved by William Penn, to whom King Charles had given the colony, the charter of 1701 replaced the original 1682 charter as the fundamental law of the colony. The new charter, which remained in force for the next 75 years, was designed to be more “suitable to the present Circumstances of the Inhabitants.” The most important structural changes from the 1682 charter were provisions for annual county-based elections, a unicameral general assembly, and an enhanced political role for the legislature. Note that freedom of conscience was also protected. The free exercise of religion clause was placed first, that clause was permanent, and religious qualification for holding office was limited to belief in Jesus Christ. Finally, the charter included the right of criminals to have “the same Privileges of Witness and Council as their prosecutors.”


... Know ye therefore, That for the further Well-being and good Government of the said Province, and Territories; and in Pursuance of the Rights and Powers before-mentioned, I the said William Penn do declare, grant and confirm, unto all the Freemen, Planters and Adventurers, and other Inhabitants of this Province and Territories, these following Liberties, Franchises and Privileges, so far as in me lieth, to be held, enjoyed and kept, by the Freemen, Planters and Adventurers, and other Inhabitants of and in the said Province and Territories thereunto annexed, for ever.

1

Because no People can be truly happy, though under the greatest Enjoyment of Civil Liberties, if abridged of the Freedom of their Consciences,
as to their Religious Profession and Worship: And Almighty God being the only Lord of Conscience, Father of Lights and Spirits; and the Author as well as Object of all divine Knowledge, Faith and Worship, who only doth enlighten the Minds, and persuade and convince the Understandings of People, I do hereby grant and declare, That no Person or Persons, inhabiting in this Province or Territories, who shall confess and acknowledge One almighty God, the Creator, Upholder and Ruler of the World; and profess him or themselves obliged to live quietly under the Civil Government, shall be in any Case molested or prejudiced, in his or their Person or Estate, because of his or their conscientious Persuasion or Practice, nor be compelled to frequent or maintain any religious Worship, Place or Ministry, contrary to his or their Mind, or to do or suffer any other Act or Thing, contrary to their religious Persuasion.

And that all Persons who also profess to believe in Jesus Christ, the Savior of the World, shall be capable (notwithstanding their other Persuasions and Practices in Point of Conscience and Religion) to serve this Government in any Capacity, both legislatively and executively he or they solemnly promising, when lawfully required, Allegiance to the King as Sovereign, and Fidelity to the Proprietary and Governor, and taking the Attests as now established by the Law made at New-Castle, in the Year One Thousand and Seven Hundred, entitled, An Act directing the Attests of several Officers and Ministers, as now amended and confirmed this present Assembly.¹

II

For the well governing of this Province and Territories, there shall be an Assembly yearly chosen, by the Freemen thereof, to consist of Four Persons out of each County, of most Note for Virtue, Wisdom and Ability, (or of a greater number at any Time, as the Governor and Assembly shall agree) upon the First Day of October for ever; and shall sit on the Fourteenth Day of the same Month, at Philadelphia, unless the Governor and Council for the Time being, shall see Cause to appoint another Place within the said Province or Territories: Which Assembly shall have the Power to choose a Speaker and other their Officers; and shall be Judges of the Qualifications and Elections of their own Members; sit upon their own Adjournments; appoint Committees; prepare Bills in order to pass into Laws; impeach Criminals, and redress Grievances; and shall have all other Powers and Privileges of an Assembly, according to the Rights of the free-born Subjects of England, and as is usual in any of the King’s Plantations in America.

¹ The capital of Delaware territory also belonged to Penn. Attests were oaths of office.
And if any County or Counties, shall refuse or neglect to choose their respective Representatives as aforesaid, or if chosen, do not meet to serve in Assembly, those who are so chosen and met, shall have the full Power of an Assembly, in as ample Manner as if all the Representatives had been chosen and met, provided they are not less than Two Thirds of the whole Number that ought to meet.

And that the Qualifications of Electors and Elected, and all other Matters and Things related to Elections of Representatives to serve in Assemblies, though not herein particularly expressed, shall be and remain as by a Law of this Government, made at New-Castle in the Year One Thousand Seven Hundred, entitled, An Act to ascertain the Number of Members of Assembly, and to regulate the Elections.

III

That the Freemen in each respective County, at the Time and Place of Meeting for Electing their Representatives to serve in Assembly may as often as there be Occasion, choose a double Number of Persons to present to the Governor for Sheriffs and Coroners to serve for Three Years, if so long they behave themselves well; out of which respective Elections and Presentments, the Governor shall nominate and commissionate one for each of the said Offices, the Third Day after such Presentment, or else the First named in such Presentment, for each Office as aforesaid, shall stand and serve in that Office for the Time before respectively limited; and in Case of Death or Default, such Vacancies shall be supplied by the Governor, to serve to the End of the said Term.

Provided always, That if the said Freemen shall at any Time neglect or decline to choose a Person or Persons for either or both the aforesaid Offices, then and in such Case, the Persons that are or shall be in the respective Offices of Sheriffs or Coroners, at the Time of Election, shall remain therein, until they shall be removed by another Election as aforesaid.

And that the Justices of the respective Counties shall or may nominate and present to the Governor Three Persons, to serve for Clerk of the Peace for the said County, when there is a Vacancy, one of which the Governor shall commissionate within Ten Days after such Presentment, or else the First nominated shall serve in the said Office during good Behavior.

IV

That the Laws of this Government shall be in this Style, viz. By the Governor, with the Consent and Approbation of the Freemen in General

2 presenting something or someone – in this case, those elected
Assembly met; and shall be, after Confirmation by the Governor, forthwith recorded in the Rolls Office, and kept at Philadelphia, unless the Governor and Assembly shall agree to appoint another Place.

V

That all Criminals shall have the same Privileges of Witnesses and Council as their Prosecutors.

VI

That no Person or Persons shall or may, at any Time hereafter, be obliged to answer any Complaint, Matter or Thing whatsoever, relating to Property, before the Governor and Council, or in any other Place, but in ordinary Course of Justice, unless Appeals thereunto shall be hereafter by law appointed.

VII

That no Person within this Government, shall be licensed by the Governor to keep an Ordinary, Tavern or House of Public Entertainment, but such who are first recommended to him, under the Hands of the Justices of the respective Counties, signed in open Court; which Justices are and shall be hereby empowered, to suppress and forbid any Person, keeping such Public-House as aforesaid, upon their Misbehavior, on such Penalties as the Law doth or shall direct; and to recommend others from time to time, as they shall see Occasion.

VIII

If any Person, through Temptation or Melancholy, shall destroy himself; his Estate, real and personal, shall notwithstanding descend to his Wife and Children, or Relations, as if he had died a natural Death; and if any Person shall be destroyed or killed by Casualty or Accident, there shall be no Forfeiture to the Governor by reason thereof.

And no Act, Law or Ordinance whatsoever, shall at any Time hereafter, be made or done, to alter, change or diminish the Form or Effect of this Charter, or of any Part or Clause therein, contrary to the true Intent and Meaning thereof, without the Consent of the Governor for the Time being, and Six Parts of Seven of the Assembly met.

But because the Happiness of Mankind depends so much upon the Enjoying of Liberty of their Consciences as aforesaid, I do hereby solemnly declare, promise and grant, for me, my Heirs and Assigns, That the First

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1 a government office where property or voting records are kept
2 an inn providing meals
3 a business licensed to sell alcoholic drinks, commonly known as a "pub"
Article of this Charter relating to Liberty of Conscience, and every Part and Clause therein, according to the true Intent and Meaning thereof, shall be kept and remain, without any Alteration, inviolably for ever.

And lastly, I the said William Penn, Proprietary and Governor of the Province of Pennsylvania, and Territories thereunto belonging, for myself, my Heirs and Assigns, have solemnly declared, granted and confirmed, and do hereby solemnly declare, grant and confirm, That neither I, my Heirs or Assigns, shall procure or do any Thing or Things whereby the Liberties in this Charter contained and expressed, nor any Part thereof, shall be infringed or broken: And if any thing shall be procured or done, by any Person or Persons, contrary to these Presents, it shall be held of no Force or Effect. . . .

William Penn

This Charter of Privileges being distinctly read in Assembly; and the whole and every Part thereof, being approved of and agreed to, by us, we do thankfully receive the same from our Proprietary and Governor, at Philadelphia, this Twenty-Eighth Day of October, One Thousand Seven Hundred and One. Signed on Behalf, and by Order of the Assembly.

per Joseph Growdon, Speaker

Edward Shippen, Griffith Owen,
Phineas Pemberton, Caleb Pusey,
Samuel Carpenter, Thomas Story,
Proprietary and Governor’s Council
The Virginia Declaration of Rights was adopted by the House of Burgesses in June 1776. Among the delegates were George Mason, the most important contributor, and 25-year-old James Madison, who drafted the section on the “free exercise of religion.” Also present at the creation of the Virginia Declaration and Constitution were John Blair and Edmund Randolph. Eleven years later, these four delegates were chosen to be part of the seven-member Virginia delegation to the Constitutional Convention.

The “rights” listed in the first five sections might strike the contemporary reader as odd; it is important to remember, however, that among the most fundamental rights articulated by the revolutionary generation was the right of the people to choose their form of government. Note the articulation of the separation of powers doctrine. Sections 6 through 14 cover familiar ground. Most of the civil rights and criminal procedures listed were part of the Americanized version of the “rights of Englishmen” tradition. Section 15 reflects the traditional republican argument that free government could survive only if the people were virtuous. Because colonial America turned to religion to perform this important political function, there was a presumption that religion had an “established” status. In 1776, the Anglican Church was the established church of Virginia, and there is nothing in the Virginia Declaration of Rights that challenges this establishment. On the other hand, Madison incorporated into Section 16 an argument for the free exercise of religion, claiming that “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.” This assertion challenges the establishment of any particular sect, even for the purpose of inculcating the morality that Madison himself elsewhere argued was essential to republican government.

The same convention also framed and adopted the Virginia Constitution. The first, and longest, section anticipates the Declaration of Independence: 21 separate indictments are listed against King George. Section 2 provides the authorization for establishing a new foundation. Sections 3–8 and 10–12 pertain to the bicameral legislature; and most of the remaining sections focus on the election, appointment, or removal of executive and judicial officers. Section 21 lays the foundation for the
Northwest Ordinance by ceding western lands disputed between Virginia and other states to the latter and by anticipating the creation of new states in the western territory Virginia still held title to. (The ordinance, which laid the plan for settling the western territory and admitting sections of it as new states, would be passed by the Confederation Congress in 1787.)

The Arabic numerals identifying the separate sections of the Declaration of Rights are in the original. We have followed W. W. Hening, Statutes at Large (Richmond, VA: George Cochran, 1823), 9:109–19, and added section numbers to the Virginia Constitution. These sections are identified by Roman numerals.

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

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

2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

3. 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 maladministration; and that whenever any government shall be found inadequate or contrary to these 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.\(^1\)

4. That no man, or set of men, are entitled to exclusive or separate emoluments and privileges from the community, but in consideration of public services; which, not being descendible,\(^2\) neither ought the offices of magistrate, legislator, or judge to be hereditary.

\(^1\) welfare

\(^2\) able to descend to an heir
5. That the legislative and executive powers of the State should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.

6. 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 representative so elected, nor 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 consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

8. That in all capital or 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 in his favor, and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty, nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

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

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

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

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

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1 burdens
4 living in the same area or neighborhood
13. That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that, in all cases, the military should be under strict subordination to, and governed by, the civil power.

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

15. That no free government, or the blessing 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.

16. 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 are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other.

**Virginia Constitution**

The CONSTITUTION or FORM of GOVERNMENT, agreed to and resolved upon by the Delegates and Representatives of the several counties and corporations of Virginia.

1. WHEREAS George the third, King of Great Britain and Ireland, and elector of Hanover, heretofore entrusted with the exercise of the kingly office in this government, hath endeavored to pervert the same into a detestable and insupportable tyranny, by putting his negative on laws the most wholesome and necessary for the public good;

By denying his governors permission to pass laws of immediate and pressing importance, unless suspended in their operation for his assent, and, when so suspended, neglecting to attend to them for many years;

By refusing to pass certain other laws, unless the persons to be benefitted by them would relinquish the inestimable right of representation in the legislature;

By dissolving legislative Assemblies repeatedly and continually, for opposing with manly firmness his invasions of the rights of the people;

When dissolved, by refusing to call others for a long space of time, thereby leaving the political system without any legislative head;

By endeavoring to prevent the population of our country, and, for that purpose, obstructing the laws for the naturalization of foreigners;
By keeping among us, in times of peace, standing armies and ships of war;
By affecting to render the military independent of, and superior to, the civil power;
By combining with others to subject us to a foreign jurisdiction, giving his consent to their pretended acts of legislation;
For quartering large bodies of armed troops among us;
For cutting off our trade with all parts of the world;
For imposing taxes on us, without our consent;
For depriving us of the benefits of trial by jury;
For transporting us beyond seas, to be tried for pretended offences;
For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever;
By plundering our seas, ravaging our coasts, burning our towns, and destroying the lives of our people;
By inciting insurrections of our fellow subjects, with the allurements of forfeiture and confiscation;
By prompting our negroes to rise in arms among us, those very negroes whom, by an inhuman use of his negative, he hath refused us permission to exclude by law;
By endeavoring to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions of existence;
By transporting, at this time, a large army of foreign mercenaries, to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy unworthy the head of a civilized nation;
By answering our repeated petitions for redress with a repetition of injuries;
And finally, by abandoning the helm of government, and declaring us out of his allegiance and protection.
By which several acts of misrule, the government of this country, as formerly exercised under the crown of Great Britain, is TOTALLY DISSOLVED.

II. We therefore, the delegates and representatives of the good people of Virginia, having maturely considered the premises, and viewing with great concern the deplorable condition to which this once happy country must be reduced, unless some regular, adequate mode of civil polity is speedily adopted, and in compliance with a recommendation of the General Congress, do ordain and declare the future form of government of Virginia to be as follows:
III. The legislative, executive, and judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the other; nor shall any person exercise the powers of more than one of them at the same time, except that the justices of the county courts shall be eligible to either House of Assembly.

IV. The legislative shall be formed of two distinct branches, who, together, shall be a complete legislature. They shall meet once, or oftener, every year, and shall be called the GENERAL ASSEMBLY OF VIRGINIA.

V. One of these shall be called the HOUSE OF DELEGATES, and consist of two representatives to be chosen for each county, and for the District of West-Augusta, annually, of such men as actually reside in, and are freeholders of the same, or duly qualified according to law, and also of one delegate or representative to be chosen annually for the city of Williamsburg, and one for the borough of Norfolk, and a representative for each of such other cities and boroughs as may hereafter be allowed particular representation by the legislature; but when any city or borough shall so decrease as that the number of persons having right of suffrage therein shall have been for the space of seven years successively less than half the number of voters in some one county in Virginia, such city or borough thenceforward shall cease to send a delegate or representative to the Assembly.

VI. The other shall be called the SENATE, and consist of twenty-four members, of whom thirteen shall constitute a House to proceed on business, for whose election the different counties shall be divided into twenty-four districts, and each county of the respective district, at the time of the election of its delegates, shall vote for one Senator, who is actually a resident and freeholder within the district, or duly qualified according to law, and is upwards of twenty-five years of age; and the sheriffs of each county within five days at farthest after the last county election in the district, shall meet at some convenient place, and from the poll so taken in their respective counties return as a Senator the man who shall have the greatest number of votes in the whole district. To keep up this Assembly by rotation, the districts shall be equally divided into four classes, and numbered by lot. At the end of one year after the general election, the six members elected by the first division shall be displaced, and the vacancies thereby occasioned supplied from such class or division, by new election, in the manner aforesaid. This rotation shall be applied to each division, according to its number, and continued in due order annually.

VII. The right of suffrage in the election of members for both Houses shall remain as exercised at present, and each House shall choose its own speaker,
appoint its own officers, settle its own rules of proceeding, and direct writs of election for supplying intermediate vacancies.

VIII. All laws shall originate in the House of Delegates, to be approved or rejected by the Senate, or to be amended with the consent of the House of Delegates; except money bills, which in no instance shall be altered by the Senate, but wholly approved or rejected.

IX. A Governor, or chief magistrate, shall be chosen annually, by joint ballot of both Houses, to be taken in each House respectively, deposited in the conference room, the boxes examined jointly by a committee of each house, and the numbers severally reported to them, that the appointments may be entered (which shall be the mode of taking the joint ballot of both Houses in all cases) who shall not continue in that office longer than three years successively, nor be eligible until the expiration of four years after he shall have been out of that office. An adequate, but moderate salary, shall be settled on him during his continuance in office; and he shall, with the advice of a Council of State, exercise the executive powers of government according to the laws of this commonwealth; and shall not, under any pretense, exercise any power or prerogative by virtue of any law, statute, or custom, of England: But he shall, with the advice of the Council of State, have the power of granting reprieves or pardons, except where the prosecution shall have been carried on by the House of Delegates, or the law shall otherwise particularly direct; in which cases, no reprieve or pardon shall be granted, but by resolve of the House of Delegates.

X. Either House of the General Assembly may adjourn themselves respectively. The Governor shall not prorogue or adjourn the Assembly during their sitting, nor dissolve them at any time; but he shall, if necessary, either by advice of the Council of State, or on application of a majority of the House of Delegates, call them before the time to which they shall stand prorogued or adjourned.

XI. A Privy Council, or Council of State, consisting of eight members, shall be chosen by joint ballot of both Houses of Assembly, either from their own members or the people at large, to assist in the administration of government. They shall annually choose out of their own members a president, who, in case of the death, inability, or necessary absence of the Governor from the government, shall act as Lieutenant Governor. Four members shall be sufficient to act, and their advice and proceedings shall be entered on record; and signed by the members present (to any part whereof any member may

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5 discontinue or postpone the meetings of
enter his dissent) to be laid before the General Assembly, when called for by them. This Council may appoint their own clerk, who shall have a salary settled by law, and take an oath of secrecy in such matters as he shall be directed by the board to conceal. A sum of money appropriated to that purpose shall be divided annually among the members, in proportion to their attendance; and they shall be incapable, during their continuance in office, of sitting in either House of Assembly. Two members shall be removed by joint ballot of both Houses of Assembly at the end of every three years, and be ineligible for the three next years. These vacancies, as well as those occasioned by death or incapacity, shall be supplied by new elections, in the same manner.

XII. The delegates for Virginia to the Continental Congress shall be chosen annually, or superseded in the mean time by joint ballot of both Houses of Assembly.

XIII. The present militia officers shall be continued, and vacancies supplied by appointment of the Governor, with the advice of the Privy Council, or recommendations from the respective county courts; but the Governor and Council shall have a power of suspending any officer, and ordering a court-martial on complaint for misbehavior or inability, or to supply vacancies of officers happening when in actual service. The Governor may embody the militia, with the advice of the Privy Council; and, when embodied, shall alone have the direction of the militia under the laws of the country.

XIV. The two Houses of Assembly shall, by joint ballot, appoint Judges of the Supreme Court of Appeals, and General Court, Judges in Chancery, Judges of Admiralty, Secretary, and the Attorney-General, to be commissioned by the Governor, and continue in office during good behavior. In case of death, incapacity, or resignation, the Governor, with the advice of the Privy Council, shall appoint persons to succeed in office, to be approved or displaced by both Houses. These officers shall have fixed and adequate salaries, and, together with all others holding lucrative offices, and all ministers of the Gospel of every denomination, be incapable of being elected members of either House of Assembly, or the Privy Council.

XV. The Governor, with the advice of the Privy Council, shall appoint Justices of the Peace for the counties; and in case of vacancies, or a necessity of increasing the number hereafter, such appointments to be made upon the recommendation of the respective county courts. The present acting Secretary in Virginia, and Clerks of all the County Courts, shall continue in office. In case of vacancies, either by death, incapacity, or resignation, a Secretary shall be appointed as before directed, and the Clerks by the respective courts. The present and future Clerks shall hold their offices during good behavior, to be
judged of and determined in the General Court. The Sheriffs and Coroners shall be nominated by the respective courts, approved by the Governor, with the advice of the Privy Council, and commissioned by the Governor. The Justices shall appoint Constables, and all fees of the aforesaid officers be regulated by law.

XVI. The Governor, when he is out of office, and others offending against the state, either by maladministration, corruption, or other means by which the safety of the state may be endangered, shall be impeachable by the House of Delegates. Such impeachment to be prosecuted by the Attorney-General, or such other person or persons as the House may appoint in the General Court, according to the laws of the land. If found guilty, he or they shall be either for ever disabled to hold any office under government, or removed from such Office pro tempore, or subjected to such pains or penalties as the laws shall direct.

XVII. If all, or any of the Judges of the General Court, shall, on good grounds (to be judged of by the House of Delegates) be accused of any of the crimes or offences before-mentioned, such House of Delegates may, in like manner, impeach the Judge or Judges so accused, to be prosecuted in the Court of Appeals; and he or they, if found guilty, shall be punished in the same manner as is prescribed in the preceding clause.

XVIII. Commissions and grants shall run, In the name of the COMMONWEALTH of VIRGINIA, and bear test by the Governor with the seal of the commonwealth annexed. Writs shall run in the same manner, and bear test by the clerks of the several courts. Indictments shall conclude, Against the peace and dignity of the commonwealth.

XIX. A treasurer shall be appointed annually, by joint ballot of both Houses.

XX. All escheats, penalties, and forfeitures, heretofore going to the king, shall go to the commonwealth, save only such as the legislature may abolish, or otherwise provide for.

XXI. The territories contained within the charters erecting the colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released, and for ever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction, and government, and all other rights whatsoever which might at any time heretofore have been claimed by

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6 temporarily
7 reversions of property in absence of a legal heir
Virginia, except the free navigation and use of the rivers Potowmack\(^8\) and Pohomoke,\(^9\) with the property of the Virginia shores or strands bordering on either of the said rivers, and all improvements which have been or shall be made thereon. The western and northern extent of Virginia shall in all other respects stand as fixed by the Charter of King James the first, in the year one thousand six hundred and nine, and by the public treaty of peace between the courts of Great Britain and France in the year one thousand seven hundred and sixty three; unless by act of legislature, one or more territories shall hereafter be laid off, and governments established westward of the Allegheny mountains. And no purchase of land shall be made of the Indian natives but on behalf of the public, by authority of the General Assembly.

XXII. In order to introduce this government, the representatives of the people met in Convention shall choose a Governor and Privy Council, also such other officers directed to be chosen by both Houses as may be judged necessary to be immediately appointed. The Senate to be first chosen by the people, to continue until the last day of March next, and the other officers until the end of the succeeding session of Assembly. In case of vacancies, the speaker of either House shall issue writs for new elections.

\(^8\) Potomac River

\(^9\) Pocomoke River
Draft of the Declaration of Independence

Thomas Jefferson
July 2-4, 1776

Nowhere were the novel and transcendental implications of the Declaration of Independence so visible as in Jefferson’s attempt to include a denunciation of slavery. The Second Continental Congress received a draft of the Declaration from Jefferson that made the British rejection of the petition submitted by the First Continental Congress to end the slave trade one of the grounds for severing ties with the crown. However, in order not to offend the sensibilities of certain delegates, the Congress elected to omit Jefferson’s denunciation of slavery from the final Declaration of Independence. The inclusion of such an indictment would have had a profound impact on the continuing American conversation about rights.

In Jefferson’s notes on the debate in Congress over the Declaration, reproduced here, he gave a short account of how his draft was amended, afterwards recopying that first draft to show what he originally had proposed. This memoir is found in the nine-volume collection The Writings of Thomas Jefferson, edited by H.A. Washington (New York: John C. Riker, 1853), which Congress authorized for publication. We have relied on that edition here, including Jefferson’s explanatory note, and underlining, as Jefferson did, the parts of the Declaration deleted by Congress. While Jefferson’s original draft relegated the parts inserted by Congress to the margin, we italicize them and place them within brackets in the body of the text. The full text of the Declaration of Independence is in Appendix D.

Congress proceeded the same day to consider the Declaration of Independence, which had been reported and lain on the table the Friday preceding, and on Monday referred to a committee of the whole. The pusillanimous idea that we had friends in England worth keeping terms with, still haunted the minds of many. For this reason, those passages which conveyed censures on the people of England were struck out, lest they should give them offence. The clause too, reprobating the enslaving the inhabitants of
Africa, was struck out in complaisance to\(^1\) South Carolina and Georgia, who had never attempted to restrain the importation of slaves, and who, on the contrary, still wished to continue it. Our northern brethren also, I believe, felt a little tender under those censures; for though their people have very few slaves themselves, yet they had been pretty considerable carriers of them to others. The debates, having taken up the greater parts of the 2d, 3d, and 4th days of July, were, in the evening of the last, closed; the Declaration was reported by the committee, agreed to by the House, and signed by every member present, except Mr. Dickinson.\(^2\) As the sentiments of men are known not only by what they receive, but what they reject also, I will state the form of the Declaration as originally reported. The parts struck out by Congress shall be distinguished by a black line drawn under them; and those inserted by them shall be placed in the margin or in a concurrent column(s).

**A Declaration by the Representatives of the United States of America, in General Congress assembled**

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self evident: that all men are created equal; that they are endowed by their creator with [certain] inherent and inalienable 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 to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and

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\(^1\) in order to respect the feelings of

\(^2\) John Dickinson, a delegate to the Continental Congress from Pennsylvania, refused to sign, in part because he still hoped to win a redress of grievances against Britain without resorting to war and in part because he thought the colonists should draft a governing document prior to declaring independence. He would go on to write the first draft of the Articles of Confederation.
transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, begun at a distinguished period and pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter expunge their former systems of government. The history of the present king of Great Britain is a history of repeated unremitting injuries and usurpations, among which appears no solitary fact to contradict the uniform tenor of the rest but all have all having in direct object the establishment of an absolute tyranny over these states. To prove this let facts be submitted to a candid world for the truth of which we pledge a faith yet unsullied by falsehood…

He has waged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere or to incur miserable death in their transportation thither. This piratical warfare, the opprobrium of INFIDEL powers, is the warfare of the CHRISTIAN king of Great Britain. Determined to keep open a market where MEN should be bought and sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce. And that this assemblage of horrors might want no fact of distinguished die, he is now exciting those very people to rise in arms among us, and to purchase that liberty of which he has deprived them, by murdering the people on whom he also obtruded them: thus paying off former crimes committed against the LIBERTIES of one people, with crimes which he urges them to commit against the LIVES of another…

[Note: The two final paragraphs, in their original and amended forms, were placed next to each other in H. A. Washington’s edition: the original draft appeared in a left-hand column, and the amended version was placed in a right-hand column.]

¹ The stamp used to certify documents as authentic pronouncements of the governing authority is sometimes called a “die.” By “want no fact of distinguished die,” Jefferson may mean “not be lacking an official stamp.”
[Jefferson’s original draft:]

We, therefore, the representatives of the United States of America in General Congress assembled, do in the name, and by the authority of the good people of these states reject and renounce all allegiance and subjection to the kings of Great Britain and all others who may hereafter claim by, through or under them; we utterly dissolve all political connection which may heretofore have subsisted between us and the people or parliament of Great Britain: and finally we do assert and declare these colonies to be free and independent states, and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do.

And for the support of this declaration, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

[Amended and final version:]

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; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce and to do all other acts and things which independent states may of right do.

And for the support of this declaration, with a firm reliance on the protection of divine providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.
The Preamble to the Massachusetts Constitution of 1780, like the Declaration of Independence, confirmed the “right of the people to set up what government they believe will secure their safety, prosperity, and happiness.” The provisions dealing with search and seizure, self-incrimination, confrontation of witnesses, cruel and unusual punishments, freedom of the press, the right to petition, and the affirmation that no one shall be deprived of “life, liberty, or estate, but by the judgment of his peers, or the law of the land,” were common among all the states that adopted a Bill of Rights. Massachusetts also included specific political rights of the people: the right to no ex post facto laws, to frequent elections, to an independent judiciary, and to a strict separation of governmental powers “to the end that [the government] may be a government of laws and not of men.” As was the case in Virginia and Pennsylvania, the need for “piety, justice, moderation, temperance, industry, and frugality” was listed in the Bill of Rights.

What is distinctive about Massachusetts is that the virtue of the people was to be secured by established religion (Article III). This article declared that citizens had a right to support, financially, the establishment of Protestantism as the public religion. To be sure, no one particular sect was given preference over another; all were “equally under the protection of the law,” and the “free exercise” of religion was protected.


Preamble

The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals, who compose it, with the power of enjoying, in safety and tranquility, their natural rights, and the blessings of life: and whenever
these great objects are not obtained, the people have a right to alter the
government, and to take measures, necessary for their safety, prosperity, and
happiness.

The body politic is formed by a voluntary association of individuals. It is a
social compact, by which the whole people covenants with each citizen, and
each citizen with the whole people, that all shall be governed by certain laws
for the common good. It is the duty of the people, therefore, in framing a
Constitution of Government, to provide for an equitable mode of making laws,
as well as for an impartial interpretation, and a faithful execution of them; that
every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful
hearts, the goodness of the Great Legislator of the Universe, in affording us, in
the course of his providence, an opportunity, deliberately and peaceably,
without fraud, violence or surprise, of entering into an original, explicit, and
solemn compact with each other; and of forming a new Constitution of Civil
Government, for ourselves and posterity; and devoutly imploring His direction
in so interesting a design, do agree upon, ordain, and establish, the following
Declaration of Rights, and Frame of Government, as the Constitution of the
Commonwealth of Massachusetts.

Part the First: A Declaration of the Rights of the Inhabitants of the
Commonwealth of Massachusetts.

Article I. All men are born free and equal, and have certain natural,
essential, and unalienable rights; among which may be reckoned the right of
enjoying and defending their lives and liberties; that of acquiring, possessing,
and protecting property; in fine, that of seeking and obtaining their safety and
happiness.

II. It is the right, as well as the duty of all men in society, publicly, and at
stated seasons, to worship the Supreme Being, the great Creator and Preserver
of the Universe. And no subject shall be hurt, molested, or restrained, in his
person, liberty, or estate, for worshipping God, in the manner and season, most
agreeable to the dictates of his own conscience; or for his religious profession
or sentiments; provided he doth not disturb the public peace, or obstruct
others in their religious worship.

III. As the happiness of a people, and the good order and preservation of
civil government, essentially depend upon piety, religion, and morality; and as
these cannot be generally diffused through a community, but by the institution
of the public worship of God, and of public instructions in piety, religion, and
morality: Therefore, to promote their happiness, and to secure the good order
and preservation of their government, the people of this Commonwealth have a right to invest their Legislature with power to authorize and require, and the Legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision at their own expense, for the institution of the public worship of God, and for the support and maintenance of public protestant teachers of piety, religion, and morality, in all cases, where such provision shall not be made voluntarily.

And the people of this Commonwealth have also a right to, and do, invest their Legislature with authority, to enjoin, upon all the subjects, an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any, on whose instructions they can conscientiously, and conveniently attend.

Provided, notwithstanding, that the several towns, parishes, precincts, and other bodies politic, or religious societies, shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them, for their support and maintenance.

And all monies, paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers, of his own religious sect or denomination, provided there be any, on whose instructions he attends; otherwise it may be paid towards the support of the teacher or teachers, of the parish, or precinct, in which the said monies are raised.

And every denomination of Christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law: and no subordination of any one sect or denomination, to another, shall ever be established by law.

IV. The people of this Commonwealth have the sole and exclusive right of governing themselves, as a Free, Sovereign, and Independent State; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter be, by them expressly delegated to the United States of America, in Congress assembled.

V. All power residing originally in the people, and being derived from them, the several magistrates, and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

VI. No man, or corporation, or association of men, have any other title, to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered
to the public. And this title being in nature, neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man born a magistrate, lawgiver, or judge, is absurd and unnatural.

VII. Government is instituted for the common good; for the protection, safety, prosperity, and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore, the people alone have an incontestable, unalienable, and indefeasible right, to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness, require it.

VIII. In order to prevent those, who are vested with authority, from becoming oppressors, the people have a right, at such periods, and in such manner, as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

IX. All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications, as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

X. Each individual of the society has a right to be protected by it, in the enjoyment of his life, liberty, and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary. But no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this Commonwealth are not controllable by any other laws, than those to which their constitutional representative body have given their consent. And whenever the public exigencies require, that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefore.

XI. Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs, which he may receive, in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

XII. No subject shall be held to answer for any crimes or offense, until the same is fully and Plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs that may be favorable to him; to meet the witnesses against him, face to face; and to be fully heard in his defense, by
himself, or his council, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

And the legislature shall not make any law, that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

XIII. In criminal prosecutions, the verification of facts, in the vicinity where they happen, is one of the greatest securities of the life, liberty and property of the citizen.

XIV. Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation, and if the order, in the warrant, to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued, but in cases, and with the formalities, prescribed by the laws.

XV. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherwise used and practiced, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners’ wages, the Legislature shall hereafter find it necessary to alter it.

XVI. The liberty of the press is essential to the security of freedom in a State; it ought not, therefore, to be restrained in this Commonwealth.

XVII. The people have a right to keep and to bear arms for the common defense. And as, in time of peace, armies are dangerous to liberty, they ought not to be maintained, without the consent of the Legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

XVIII. A frequent recurrence to the fundamental principles of the Constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary, to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives: and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in
the formation and execution of the laws, necessary for the good administration of the Commonwealth.

XIX. The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

XX. The power of suspending the laws, or the execution of the laws, ought never to be exercised, but by the legislature or, by authority derived from it, to be exercised in such particular cases only, as the legislature shall expressly provide for.

XXI. The freedom of deliberation, speech, and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation, or prosecution, action, or complaint, in any other court or place whatsoever.

XXII. The Legislature ought frequently to assemble, for the redress of grievances, for correcting, strengthening, and confirming the laws, and for making new laws, as the common good may require.

XXIII. No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the Legislature.

XXIV. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

XXV. No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the Legislature.

XXVI. No magistrate, or court of law, shall demand excessive bail, or sureties, impose excessive fines, or inflict cruel or unusual punishments.

XXVII. In time of peace, no soldier ought to be quartered in any house, without the consent of the owner; and in time of war, such quarters ought not to be made, but by the civil magistrate, in a manner ordained by the Legislature.

XXVIII. No person can, in any case, be subjected to law martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia, in actual service, but by authority of the Legislature.

XXIX. It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of
the laws, and administration of justice. It is the right of every citizen, to be tried by judges, as free, impartial, and independent, as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the Supreme Judicial Court should hold their offices as long as they behave themselves well; and that they should have honorable salaries, ascertained and established by standing laws.

XXX. In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end, it may be a government of laws, and not of men.
The Second Continental Congress not only issued a directive to the colonial legislatures to create new state constitutions; its members also initiated the adoption of the first governmental system for the United States: the Articles of Confederation. The Articles created an “assemblage” of preexisting states, as opposed to a government over, of, and by individuals. The states received equal representation in the confederation regardless of the size of population. The Articles created a single Congress exercising legislative, executive, and judicial powers, and the powers of this Continental Congress were limited to those expressly enumerated in the Articles. To act, Congress required a supermajority of the 13 states. Only amendments could endow the confederation with powers not expressly granted, and amendments required the approval of all 13 state legislatures. Because of territorial disputes between two states, the Articles did not come into operation until March 1781.

Representatives Samuel Adams of Massachusetts, John Dickinson of Delaware, Richard Henry Lee of Virginia, and Roger Sherman of Connecticut helped draft the Articles of Confederation. Signers of the Articles included Daniel Carroll of Maryland, John Dickinson, Gouverneur Morris and Robert Morris, both of Pennsylvania, and Roger Sherman, all of whom would later sign the Constitution.


Articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts-bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

**Article I.** The style of this Confederacy shall be “The United States of America.”
Article II. 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.

Article III. The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

Article V. For the most convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislatures of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No State shall be represented in Congress by less than two, nor more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States in Congress assembled, each State shall have one vote.

Article VI. No State, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King, Prince or State; nor shall any person holding any office of profit or trust under the United States, or any of them, accept any present, emolument, office or title of any kind whatever from any King, Prince or foreign State; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No vessel of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defense of such State, or its trade; nor shall any body of
forces be kept up by any State in time of peace, except such number only, as in
the judgment of the United States in Congress assembled, shall be deemed
requisite to garrison the forts necessary for the defense of such State; but every
State shall always keep up a well-regulated and disciplined militia, sufficiently
armed and accoutered,¹ and shall provide and constantly have ready for use, in
public stores, a due number of field pieces and tents, and a proper quantity of
arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States
in Congress assembled, unless such State be actually invaded by enemies.

Article VIII. All charges of war, and all other expenses that shall be
incurred for the common defense or general welfare, and allowed by the
United States in Congress assembled, shall be defrayed out of a common
treasury, which shall be supplied by the several States in proportion to the
value of all land within each State, granted or surveyed for any person, as such
land and the buildings and improvements thereon shall be estimated according
to such mode as the United States in Congress assembled, shall from time to
time direct and appoint.

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.

Article IX. The United States, in Congress assembled, shall have the sole
and exclusive right and power of determining on peace and war, except in the
cases mentioned in the sixth article – of sending and receiving ambassadors –
entering into treaties and alliances.

The United States, in Congress assembled, shall have authority to…
ascertain the necessary sums of money to be raised for the service of the
United States, and to appropriate and apply the same for defraying the public
expenses – to borrow money, or emit bills on the credit of the United States,
transmitting every half-year to the respective States an account of the sums of
money so borrowed or emitted – to build and equip a navy – to agree upon the
number of land forces, and to make requisitions from each State for its quota,
in proportion to the number of white inhabitants in such State; which
requisition shall be binding, and thereupon the legislature of each State shall
appoint the regimental officers, raise the men and clothe, arm and equip them
in a solid-like manner, at the expense of the United States.

¹ provided with the appropriate attire and equipment
The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque or reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of the majority of the United States in Congress assembled.

Article XIII. Every State shall abide by the determination of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

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2 license to capture the ships of another nation – that is, to commit piracy
Between 1781 and 1785, several attempts were made to amend the Articles of Confederation (Document 6). These efforts failed to secure the required unanimous consent of the state legislatures. Matters changed in 1786. Following James Madison’s suggestion, the Virginia Legislature invited all the states to Annapolis, Maryland, to discuss ways to reduce interstate conflicts. The “commissioners” in attendance that September discussed these particular concerns but concluded that the conversation had to be both deepened and widened. They endorsed a bold motion to be submitted to all the state legislatures for the appointment of commissioners to meet at Philadelphia on the second Monday in May 1787 to consider the situation of the United States and to devise ways to render the constitution of the federal government adequate to the exigencies of the Union.

To prepare for the meeting, Madison wrote this paper outlining what he saw as the problems of the Articles of Confederation. His analysis shifted the ground of the conversation over rights away from securing the rights of the people against the unrestrained conduct of monarchs and aristocrats to the then unfamiliar ground of securing the rights of minorities from omnipotent majorities. In the process, he questioned the efficacy of such traditional republican solutions as “a prudent regard” for the common good, “respect for character,” and the restraints provided by religion. Madison’s argument was that rights would not be secure until the constitutional protection the Articles gave to the state legislatures against federal intervention were removed. Madison felt the federal government needed this power to check factious or unjust laws. “A modification of the Sovereignty” was needed. The solution, said Madison, was to create an extended republic in which a multiplicity of opinions, passions, and interests “check each other.”

For the complete original version, including the location of Madison’s headings and inserts, see Hunt Gaillard, ed., The Writings of James Madison (New York: G. P. Putnam’s Sons, 1900–1910), 1:319–28. In the following text, we have followed Philip B. Kurland and Ralph Lerner, eds., The Founders’ Constitution (Chicago: University of Chicago Press, 1987), 1:166–69, and placed Madison’s section headings in the main body of the text rather than in the margin. We have,
1. FAILURE OF THE STATES TO COMPLY WITH THE CONSTITUTIONAL REQUISITIONS

This evil has been so fully experienced both during the war and since the peace, results so naturally from the number and independent authority of the States, and has been so uniformly exemplified in every similar Confederacy, that it may be considered as not less radically and permanently inherent in, than it is fatal to the object of, the present System.

2. ENCROACHMENTS BY THE STATES ON THE FEDERAL AUTHORITY

Examples of this are numerous and repetitions may be foreseen in almost every case where any favorite object of a State shall present a temptation. Among these examples are the wars and Treaties of Georgia with the Indians, the unlicensed compacts between Virginia and Maryland, and between Pennsylvania and New Jersey, the troops raised and to be kept up by Massachusetts.

3. VIOLATIONS OF THE LAW OF NATIONS AND OF TREATIES

From the number of Legislatures, the sphere of life from which most of their members are taken, and the circumstances under which their legislative business is carried on, irregularities of this kind must frequently happen. Accordingly, not a year has passed without instances of them in some one or other of the States. The Treaty of peace, the treaty with France, the treaty with Holland, have each been violated. The causes of these irregularities must necessarily produce frequent violations of the law of nations in other respects.

As yet foreign powers have not been rigorous in animadverting on us. This moderation, however, cannot be mistaken for a permanent partiality to

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1 Under the Articles of Confederation, Congress requested money from the states, which often failed to meet their obligations for the reasons Madison gives in his essay.
2 Madison refers, apparently, to the Treaty of Paris (1783) that ended the Revolutionary War, the Treaty of Alliance (1778) between the United States and France, and the Treaty of Amity and Commerce (1782) with the Dutch Republic.
3 taking notice of this and censuring us for it
our faults, or a permanent security against those disputes with other nations, which, being among the greatest of public calamities, it ought to be least in the power of any part of the community to bring on the whole.

4. TRESPASSES OF THE STATES ON THE RIGHTS OF EACH OTHER

These are alarming symptoms, and may be daily apprehended, as we are admonished by daily experience. See the law of Virginia restricting foreign vessels to certain ports; of Maryland in favor of vessels belonging to her own citizens; of New York in favor of the same.

Paper money, installments of debts, occlusion of courts, making property a legal tender, may likewise be deemed aggressions on the rights of other States. As the citizens of every State, aggregated to less or in the relation of creditors or debtors to the citizens of every other State, acts of the debtor State in favor of debtors affect the creditor State in the same manner, as they do its own citizens, who are, relatively, creditors towards other citizens. This remark may be extended to foreign nations. If the exclusive regulation of the value and alloy of coin was properly delegated to the federal authority, the policy of it equally requires a control on the States in the cases above mentioned. It must have been meant – (1) To preserve uniformity in the circulating medium throughout the nation. (2) To prevent those frauds on the citizens of other States, and the subjects of foreign powers, which might disturb the tranquility at home, or involve the Union in foreign contests.

The practice of many States in restricting the commercial intercourse with other States, and putting their productions and manufactures on the same footing with those of foreign nations, though not contrary to the federal articles, is certainly adverse to the spirit of the Union, and tends to beget retaliating regulations, not less expensive and vexatious in themselves than they are destructive of the general harmony.

5. WANT OF CONCERT IN MATTERS WHERE COMMON INTEREST REQUIRES IT

This defect is strongly illustrated in the state of our commercial affairs. How much has the national dignity, interest, and revenue, suffered from this cause? Instances of inferior moments are the want of uniformity in the laws concerning naturalization and literary property; of provision for national seminaries; for grants of incorporation for national purposes, for canals and

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4 closing courts to prevent legal proceedings to recover debts
5 schools
other works of general utility; which may at present be defeated by the perverseness of particular States whose concurrence is necessary.

6. WANT OF GUARANTY TO THE STATES OF THEIR CONSTITUTIONS AND LAWS AGAINST INTERNAL VIOLENCE

   The Confederation is silent on this point, and therefore by the second article the hands of the federal authority are tied. According to Republican Theory, Right and power being both vested in the majority, are held to be synonymous. According to fact and experience, a minority may, in an appeal to force, be an overmatch for the majority. (1) If the minority happen to include all such as possess the skill and habits of military life, and such as possess the great pecuniary resources, one-third only may conquer the remaining two-thirds. (2) One-third of those who participate in the choice of the rulers, may be rendered a majority by the accession of those whose poverty excludes them from a right of suffrage, and who for obvious reasons will be more likely to join the standard of sedition than that of the established Government. (3) Where slavery exists, the republican Theory becomes still more fallacious.

7. WANT OF SANCTION TO THE LAWS, AND OF COERCION IN THE GOVERNMENT OF THE CONFEDERACY

   A sanction is essential to the idea of law, as coercion is to that of Government. The federal system being destitute of both, wants the great vital principles of a Political Constitution. Under the form of such a Constitution, it is in fact nothing more than a treaty of amity, of commerce, and of alliance, between independent and Sovereign States. From what cause could so fatal an omission have happened in the articles of Confederation? From a mistaken confidence that the justice, the good faith, the honor, the sound policy of the several legislative assemblies would render superfluous any appeal to the ordinary motives by which the laws secure the obedience of individuals; a confidence which does honor to the enthusiastic virtue of the compilers, as much as the inexperience of the crisis apologizes for their errors. The time which has since elapsed has had the double effect of increasing the light and tempering the warmth with which the arduous work may be revised. It is no longer doubted that a unanimous and punctual obedience of 13 independent bodies to the acts of the federal Government ought not to be calculated on. Even during the war, when external danger supplied in some degree the defect of legal and coercive sanctions, how imperfectly did the States fulfill their

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6 consent
obligations to the Union? In time of peace we see already what is to be expected. How, indeed, could it be otherwise? In the first place, every general act of the Union must necessarily bear unequally hard on some particular member or members of it; secondly, the partiality of the members to their own interests and rights, a partiality which will be fostered by the courtiers of popularity, will naturally exaggerate the inequality where it exists, and even suspect it where it has no existence; thirdly, a distrust of the voluntary compliance of each other may prevent the compliance of any, although it should be the latent disposition of all. Here are causes and pretexts which will never fail to render federal measures abortive. If the laws of the States were merely recommendatory to their citizens, or if they were to be rejudged by county authorities, what security, what probability would exist that they would be carried into execution? Is the security or probability greater in favor of the acts of Congress, which, depending for their execution on the will of the State legislatures, which are though nominally authoritative, in fact recommendatory only?

8. WANT OF RATIFICATION BY THE PEOPLE OF THE ARTICLES OF CONFEDERATION

In some of the States the Confederation is recognized by and forms a part of the Constitution. In others, however, it has received no other sanction than that of the Legislative authority. From this defect two evils result: (1) Whenever a law of a State happens to be repugnant to an act of Congress, particularly when the latter is of posterior date to the former, it will be at least questionable whether the latter must not prevail; and as the question must be decided by the Tribunals of the State, they will be most likely to lean on the side of the State. (2) As far as the Union of the States is to be regarded as a league of sovereign powers, and not as a political Constitution, by virtue of which they are become one sovereign power, so far it seems to follow from the doctrine of compacts, that a breach of any of the articles of the confederation by any of the parties to it absolves the other parties from their respective obligations, and gives them a right if they choose to exert it, of dissolving the Union altogether.

9. MULTIPLICITY OF LAWS IN THE SEVERAL STATES

In developing the evils which vitiate the political system of the United States, it is proper to include those which are found within the States individually, as well as those which directly affect the States collectively, since the former class have an indirect influence on the general malady, and must not
be overlooked in forming a complete remedy. Among the evils, then, of our situation, may well be ranked the multiplicity of laws, from which no State is exempt. As far as laws are necessary to mark with precision the duties of those who are to obey them, and to take from those who are to administer them a discretion which might be abused, their number is the price of liberty. As far as the laws exceed this limit they are a nuisance; a nuisance of the most pestilent kind. Try the Codes of the several States by this test, and what a luxuriancy of legislation do they present. The short period of independency has filled as many pages as the century which preceded it. Every year, almost every session, adds a new volume. This may be the effect in part, but it can only be in part, of the situation in which the revolution has placed us. A review of the several Codes will show that every necessary and useful part of the least voluminous of them might be compressed into one-tenth of the compass, and at the same time be rendered tenfold as perspicuous.

10. MUTABILITY OF THE LAWS OF THE STATES

This evil is intimately connected with the former, yet deserves a distinct notice, as it emphatically denotes a vicious legislation. We daily see laws repealed or superseded before any trial can have been made of their merit, and even before a knowledge of them can have reached the remoter districts within which they were to operate. In the regulations of trade this instability becomes a snare not only to our citizens but to foreigners also.

11. INJUSTICE OF THE LAWS OF STATES

If the multiplicity and mutability of laws prove a want of wisdom, their injustice betrays a defect still more alarming; more alarming, not merely because it is a greater evil in itself, but because it brings more into question the fundamental principle of republican Government, that the majority who rule in such Governments are the safest guardians both of public good and of private rights. To what causes is this evil to be ascribed?

These causes lie – (1) in the Representative bodies. (2) in the people themselves.

1. Representative appointments are sought from three motives: (1) Ambition (2) Personal interest. (3) Public good.

Unhappily, the two first are proved by experience to be most prevalent. Hence, the candidates who feel them, particularly, the second, are most...
industrious, and most successful in pursuing their object; and forming often a
majority in the legislative Councils, with interested views, contrary to the
interest and views of their constituents, join in a perfidious sacrifice of the
latter to the former. A succeeding election, it might be supposed, would
displace the offenders, and repair the mischief. But how easily are base and
selfish measures masked by pretexts of public good and apparent expediency?
How frequently will a repetition of the same arts and industry which succeeded
in the first instance again prevail on the unwary to misplace their confidence?

How frequently, too, will the honest but unenlightened representative be
the dupe of a favorite leader, veiling his selfish views under the professions
of public good, and varnishing his sophistical arguments with the glowing colors
of popular eloquence?

2. A still more fatal, if not more frequent cause, lies among the people
themselves. All civilized societies are divided into different interests and
factions, as they happen to be creditors or debtors, rich or poor, husbandmen,
merchants, or manufacturers, members of different religious sects, followers
of different political leaders, inhabitants of different districts, owners of different
kinds of property etc., etc. In republican Government, the majority, however
composed, ultimately give the law. Whenever, therefore, an apparent interest
or common passion unites a majority, what is to restrain them from unjust
violations of the rights and interests of the minority, or of individuals? Three
motives only: (1) A prudent regard to their own good, as involved in the
general and permanent good of the community. This consideration, although
of decisive weight in itself, is found by experience to be too often unheeded. It
is too often forgotten, by nations as well as by individuals, that honesty is the
best policy. (2) Respect for character. However strong this motive may be in
individuals, it is considered as very insufficient to restrain the
motive from injustice. In a multitude its efficacy is diminished in proportion to the number which is
to share the praise or the blame. Besides, as it has reference to public opinion,
which within a particular society, is the opinion of the majority, the standard is
fixed by those whose conduct is to be measured by it. The public opinion
without the society will be little respected by the people at large of any
Country. Individuals of extended views and of national pride may bring the
public proceedings to this standard, but the example will never be followed by
the multitude. Is it to be imagined that an ordinary citizen or even an
Assemblyman of R[hode] Island, in estimating the policy of paper money, ever
considered or cared in what light the measure would be viewed in France or
Holland; or even in Massachusetts or Connecticut? It was a sufficient
temptation to both that it was for their interest; it was a sufficient sanction to
the latter that it was popular in the State; to the former that it was so in the neighborhood. (3) Will Religion, the only remaining motive be a sufficient restraint? It is not pretended to be such, on men individually considered. Will its effect be greater on them considered in an aggregate view? Quite the reverse. The conduct of every popular assembly acting on oath, the strongest of religious ties, proves that individuals join without remorse in acts against which their consciences would revolt if proposed to them under the like sanction, separately, in their closets. When, indeed, Religion is kindled into enthusiasm, its force, like that of other passions, is increased by the sympathy of a multitude. But enthusiasm is only a temporary state of religion, and, while it lasts, will hardly be seen with pleasure at the helm of Government. Besides, as religion in its coolest state, is not infallible, it may become a motive to oppression as well as a restraint from injustice. Place three individuals in a situation wherein the interest of each depends on the voice of the others, and give to two of them an interest opposed to the rights of the third: Will the latter be secure? The prudence of every man would shun the danger. The rules and forms of justice suppose and guard against it. Will two thousand in a like situation be less likely to encroach on the rights of one thousand? The contrary is witnessed by the notorious factions and oppressions which take place in corporate towns, limited as the opportunities are, and in little republics, when uncontrolled by apprehensions of external danger. If an enlargement of the sphere is found to lessen the insecurity of private rights, it is not because the impulse of a common interest or passion is less predominant in this case with the majority; but because a common interest or passion is less apt to be felt, and the requisite combinations less easy to be formed, by a great than by a small number. The society becomes broken into a greater variety of interests and pursuits of passions, which check each other, whilst those who may feel a common sentiment have less opportunity of communication and concert. It may be inferred that the inconveniences of popular States contrary to the prevailing Theory, are in proportion not to the extent, but to the narrowness of their limits.

The great desideratum⁹ in Government is such a modification of the sovereignty as will render it sufficiently neutral between the different interests and factions to control one part of the Society from invading the rights of another, and, at the same time, sufficiently controlled itself from setting up an interest adverse to that of the whole society. In absolute Monarchies the prince is sufficiently neutral towards his subjects, but frequently sacrifices their

⁹ thing that is desired
happiness to his ambition or his avarice. In small Republics, the sovereign will is sufficiently controlled from such a Sacrifice of the entire Society, but is not sufficiently neutral towards the parts composing it. As a limited monarchy tempers the evils of an absolute one, so an extensive Republic meliorates the administration of a small Republic.

An auxiliary desideratum for the melioration of the Republican form is such a process of elections as will most certainly extract from the mass of the society the purest and noblest characters which it contains; such as will at once feel most strongly the proper motives to pursue the end of their appointment, and be most capable to devise the proper means of attaining it.
The Two Authorizations of the Constitutional Convention

September 1786 and February 1787

Between November 1786 and February 1787, five states (New Jersey, Pennsylvania, North Carolina, Delaware, and Georgia) joined Virginia in choosing delegates for the proposed meeting in Philadelphia in May 1787 to consider revising the Articles of Confederation (Document 6). Other state legislatures were reluctant to endorse the Annapolis recommendation for a convention without a formal authorization by the Confederation Congress and ground rules limiting the scope of the convention. The Confederation Congress considered the report of the Annapolis commissioners in February 1787. On February 21, the Congress agreed to become the official authorizing agent and limited the scope of the convention to “revising” the Articles. New York was the first state to act after the congressional endorsement. Four states followed New York’s lead – South Carolina, Massachusetts, Connecticut, and Maryland. New Hampshire’s delegates arrived at the Convention only on July 23. Rhode Island, the thirteenth state, declined to send delegates.


Annapolis Convention Authorization

To the Honorable, the Legislatures of Virginia, Delaware, Pennsylvania, New Jersey, and New York, the commissioners from the said states respectively, assembled at Annapolis, humbly beg leave to report –

That, pursuant to their several appointments, they met at Annapolis in the State of Maryland on the eleventh day of September instant, and having proceeded to a communication of their powers; they found that the States of New York, Pennsylvania, and Virginia, had, in substance, and nearly in the same terms, authorized their respective Commissions “to meet such other Commissioners as were, or might be, appointed by the other States in the Union, at such time and place as should be agreed upon by the said Commissions to take into consideration the trade and commerce of the United States, to consider how far a uniform system in their commercial intercourse and regulations might be necessary to their common interest and permanent harmony, and to report to the several States such an Act, relative to this great object, as when unanimously by them would enable the United States in Congress assembled effectually to provide for the same.”

That the State of New Jersey had enlarged the object of their appointment, empowering their Commissioners, “to consider how far a uniform system in their commercial regulations and other important matters, might be necessary to the common interest and permanent harmony of the several States,” and to report such an Act on the subject, as when ratified by them, “would enable the United States in Congress assembled, effectually to provide for the exigencies of the Union.”

That appointments of Commissioners have also been made by the States of New Hampshire, Massachusetts, Rhode Island, and North Carolina, none of whom, however, have attended; but that no information has been received by your Commissioners, of any appointment having been made by the States of Connecticut, Maryland, South Carolina or Georgia.

That the express terms of the powers of your Commissioners supposing a deputation from all the States, and having for object the Trade and Commerce of the United States, Your Commissioners did not conceive it advisable to proceed on the business of their mission, under the Circumstances of so partial and defective a representation.

Deeply impressed, however, with the magnitude and importance of the object confided to them on this occasion, your Commissioners cannot forbear to indulge an expression of their earnest and unanimous wish, that speedy measures be taken, to effect a general meeting, of the States, in a future Convention, for the same, and such other purposes, as the situation of public affairs may be found to require.
If in expressing this wish, or in intimating any other sentiment, your Commissioners should seem to exceed the strict bounds of their appointment, they entertain a full confidence, that a conduct, dictated by an anxiety for the welfare of the United States, will not fail to receive an indulgent construction.

In this persuasion, your Commissioners submit an opinion, that the Idea of extending the powers of their Deputies, to other objects, than those of Commerce, which has been adopted by the State of New Jersey, was an improvement on the original plan, and will deserve to be incorporated into that of a future Convention; they are the more naturally led to this conclusion, as in the course of their reflections on the subject, they have been induced to think, that the power of regulating trade is of such comprehensive extent, and will enter so far into the general System of the federal government, that to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits, may require a correspondent adjustment of other parts of the Federal System.

That there are important defects in the system of the Federal Government is acknowledged by the Acts of all those States, which have concurred in the present Meeting; That the defects, upon a closer examination, may be found greater and more numerous, than even these acts imply, is at least so far probably, from the embarrassments which characterize the present State of our national affairs, foreign and domestic, as may reasonably be supposed to merit a deliberate and candid discussion, in some mode, which will unite the Sentiments and Councils of all the States. In the choice of the mode, your Commissioners are of opinion, that a Convention of Deputies from the different States, for the special and sole purpose of entering into this investigation, and digesting a plan for supplying such defects as may be discovered to exist, will be entitled to a preference from considerations, which will occur without being particularized.

Your Commissioners decline an enumeration of those national circumstances on which their opinion respecting the propriety of a future Convention, with more enlarged powers, is founded; as it would be a useless intrusion of facts and observations, most of which have been frequently the subject of public discussion, and none of which can have escaped the penetration of those to whom they would in this instance be addressed. They are, however, of a nature so serious, as, in the view of your Commissioners, to render the situation of the United States delicate and critical, calling for an exertion of the united virtue and wisdom of all the members of the Confederacy.
Under this impression, Your Commissioners, with the most respectful
dference, beg leave to suggest their unanimous conviction that it may
essentially tend to advance the interests of the union if the States, by whom
they have been respectively delegated, would themselves concur, and use their
endeavors to procure the concurrence of the other States, in the appointment
of Commissioners, to meet at Philadelphia on the second Monday in May
next, to take into consideration the situation of the United States, to devise
such further provisions as shall appear to them necessary to render the
constitution of the Federal Government adequate to the exigencies of the
Union; and to report such an Act for that purpose to the United States in
Congress assembled, as when agreed to, by them, and afterwards confirmed by
the Legislatures of every State, will effectually provide for the same.

Though your Commissioners could not with propriety address these
observations and sentiments to any but the States they have the honor to
represent, they have nevertheless concluded from motives of respect, to
transmit copies of the Report to the United States in Congress assembled, and
to the executives of the other States.

The Confederation Congress Authorization
February 21, 1787

The report of a grand committee consisting of Mr. Dane, Mr. Varnum,¹
Mr. S. M. Mitchell, Mr. Smith, Mr. Cadwallader, Mr. Irwine, Mr. N. Mitchell,
Mr. Forrest, Mr. Grayson, Mr. Blount, Mr. Bull, and Mr. Few, to whom was
referred a letter of 14 September 1786 from J. Dickinson² written at the
request of Commissioners from the States of Virginia, Delaware, Pennsylvania,
New Jersey and New York assembled at the City of Annapolis together with a
copy of the report of the said commissioners to the legislatures of the States by
whom they were appointed, being an order of the day was called up and which
is contained in the following resolution viz.

"Congress having had under consideration the letter of John Dickinson,
esquire chairman of the Commissioners who assembled at Annapolis during
the last year also the proceedings of the said commissioners and entirely
coinciding with them as to the inefficiency of the federal government and the
necessity of devising such farther provisions as shall render the same adequate
to the exigencies of the Union do strongly recommend to the different

¹ James Varnum, Rhode Island. The table in the document identifies the other
members of the grand committee.
² John Dickinson, Delaware
legislatures to send forward delegates to meet the proposed convention on the second Monday in May next at the city of Philadelphia.”

The delegates for the state of New York thereupon laid before Congress Instructions which they had received from their constituents, and in pursuance of the said instructions moved to postpone the farther consideration of the report in order to take up the following proposition to wit

“That it be recommended to the States composing the Union that a convention of representatives from the said States respectively be held at —— on —— 3 for the purpose of revising the Articles of Confederation and perpetual Union between the United States of America and reporting to the United States in Congress assembled and to the States respectively such alterations and amendments of the said Articles of Confederation as the representatives met in such convention shall judge proper and necessary to render them adequate to the preservation and support of the Union.”

On the question to postpone for the purpose above mentioned the yeas and nays being required by the delegates for New York.

<table>
<thead>
<tr>
<th>State</th>
<th>Delegate</th>
<th>Vote</th>
<th>Decision</th>
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<tbody>
<tr>
<td>Massachusetts</td>
<td>Mr. King</td>
<td>ay</td>
<td>aye</td>
</tr>
<tr>
<td></td>
<td>Mr. Dane</td>
<td>ay</td>
<td>aye</td>
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<tr>
<td>Connecticut</td>
<td>Mr. Johnson</td>
<td>ay</td>
<td>divided</td>
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<td></td>
<td>Mr. S. M. Mitchell</td>
<td>no</td>
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<tr>
<td>New York</td>
<td>Mr. Smith</td>
<td>ay</td>
<td>aye</td>
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<td></td>
<td>Mr. Benson</td>
<td>ay</td>
<td>aye</td>
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<tr>
<td>New Jersey</td>
<td>Mr. Cadwallader</td>
<td>ay</td>
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<td></td>
<td>Mr. Clarke</td>
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<td></td>
<td>Mr. Schurman</td>
<td>no</td>
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<tr>
<td>Pensylvania</td>
<td>Mr. Irvine</td>
<td>no</td>
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<td></td>
<td>Mr. Meredith</td>
<td>ay</td>
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<td></td>
<td>Mr. Gingham</td>
<td>no</td>
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<tr>
<td>Delaware</td>
<td>Mr. N. Mitchell</td>
<td>no</td>
<td>x4</td>
</tr>
<tr>
<td>Maryland</td>
<td>Mr. Forest</td>
<td>no</td>
<td>x</td>
</tr>
</tbody>
</table>

3 as in original
4 Under the voting rules of the Articles of Confederation, each state had to have a minimum of 2 delegates present in order to cast a vote. A single delegate present could express an opinion but not officially vote. Hence the x here and in the line below indicates that these two states did not cast an official vote.
So the question was lost.

A motion was then made by the delegates for Massachusetts to postpone the farther consideration of the report in order to take into consideration a motion which they read in their place, this being agreed to, the motion of the delegates for Massachusetts as taken up and being amended was agreed to as follows:

Whereas there is provision in the Articles of Confederation and perpetual Union for making alterations therein by the assent of a Congress of the United States and of the legislatures of the several States; And whereas experience hath evinced that there are defects in the present Confederation, as a mean to remedy which several of the States and particularly the State of New York by express instructions to their delegates in Congress have suggested a convention for the purposes expressed in the following resolution and such convention appearing to be the most probable mean of establishing in these states a firm national government.

Resolved that in the opinion of Congress it is expedient that on the second Monday in May next a Convention of delegates who shall have been appointed by the several states be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the states render the federal constitution adequate to the exigencies of Government and the preservation of the Union.
Monday May 14 was the day chosen by the Annapolis convention and confirmed by the Confederation Congress for the beginning of the Grand Convention. But only eight delegates were present on May 14 – four from Pennsylvania and four from Virginia. On May 25, seven of the states met their internal quorum requirement and so a majority (seven) of the thirteen states were represented at the Constitutional Convention. The deliberations could finally begin.

The rules adopted reinforced an irony: a convention called to reconsider the efficacy of the Articles of Confederation began by adopting, without argument, five voting rules of the Articles: (1) a quorum required a majority of states, (2) each state was allotted one vote, (3) the voting was to be by states and not by individuals, (4) each state set its own internal quorum requirements, and (5) each state could send up to seven delegates. (The Convention, without argument, accepted Benjamin Franklin as an eighth Pennsylvania delegate.)

Among the most important of the rules adopted at the Convention was closing the curtains over the windows and adopting what unsympathetic historians over the decades have called the “secrecy rule.” The merits and demerits of the secrecy rule have been a subject of considerable debate throughout American history. Jefferson disapproved of the rule: “I am sorry they began their deliberations,” he wrote to John Adams, “by so abominable a precedent as that of tying up the tongues of their members. Nothing can justify this example but the innocence of their intentions, and ignorance of the value of public discussions.” Madison, however, supported the rule of secrecy. To James Monroe he wrote, “I think the rule was a prudent one not only as it will effectually secure the requisite freedom of discussion, but as it will save both the Convention and the Community from a thousand erroneous and perhaps mischievous reports.”

Monday, May 28

. . . Mr. Wythe\(^1\) from the Committee for preparing rules, made a report, which employed the deliberations of this day.

Mr. King\(^2\) objected to one of the rules in the report authorizing any member to call for the Yeas and Nays and have them entered on the minutes. He urged that, as the acts of the Convention were not to bind the constituents, it was unnecessary to exhibit this evidence of the votes; and improper, as changes of opinion would be frequent in the course of the business, and would fill the minutes with contradictions.

Colonel Mason\(^3\) seconded the objection, adding, that such a record of the opinions of members would be an obstacle to a change of them on conviction; and in case of its being hereafter promulgated, must furnish handles to the adversaries of the result of the meeting.

The proposed rule was rejected, \textit{nem. con.}\(^4\) The standing rules agreed to were as follows:

**RULES**

“A House to do business shall consist of the Deputies of not less than seven States; and all questions shall be decided by the greater number of these which shall be fully represented. But a less number than seven may adjourn from day to day.

“Immediately after the President shall have taken the Chair, and the members their seats, the minutes of the preceding day shall be read by the Secretary.

“Every member, rising to speak, shall address the President; and, while he shall be speaking, none shall pass between them, or hold discourse with another, or read a book, pamphlet, or paper, printed or manuscript. And of two members rising to speak at the same time, the President shall name him who shall be first heard.

“A member shall not speak oftener than twice, without special leave, upon the same question; and not the second time, before every other who had been silent shall have been heard, if he choose to speak upon the subject.

“A motion, made and seconded, shall be repeated, and, if written, as it shall be when any member shall so require, read aloud, by the Secretary, before it

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\(^1\) George Wythe, Virginia  
\(^2\) Rufus King, Massachusetts  
\(^3\) George Mason, Virginia  
\(^4\) with no one dissenting
shall be debated; and may be withdrawn at any time before the vote upon it shall have been declared.

"Orders of the day shall be read next after the minutes; and either discussed or postponed, before any other business shall be introduced.

"When a debate shall arise upon a question, no motion, other than to amend the question, to commit it, or to postpone the debate, shall be received.

"A question which is complicated shall, at the request of any member, be divided, and put separately upon the propositions of which it is compounded.

"The determination of a question, although fully debated, shall be postponed, if the Deputies of any State desire it, until the next day.

"A writing which contains any matter brought on to be considered shall be read once throughout, for information; then by paragraphs, to be debated; and again, with the amendments, if any, made on the second reading; and afterwards the question shall be put upon the whole, amended, or approved in its original form, as the case shall be.

"Committees shall be appointed by ballot; and the members who have the greatest number of ballots, although not a majority of the votes present, shall be the Committee. When two or more members have an equal number of votes, the member standing first on the list, in the order of taking down the ballots, shall be preferred.

"A member may be called to order by any other member, as well as by the President; and may be allowed to explain his conduct, or expressions, supposed to be reprehensible. And all questions of order shall be decided by the President, without appeal or debate.

"Upon a question to adjourn, for the day, which may be made at any time, if it be seconded, the question shall be put without a debate.

"When the House shall adjourn, every member shall stand in his place until the President pass him." ...
consideration of the Committee appointed to draw up the standing rules, and that the Committee make report thereon.

Adjourned till tomorrow, at ten o’clock.

* [Madison footnote]

Previous to the arrival of a majority of the States, the rule by which they ought to vote in the Convention had been made a subject of conversation among the members present. It was pressed by Gouverneur Morris, and favored by Robert Morris and others from Pennsylvania, that the large States should unite in firmly refusing to the small States an equal vote, as unreasonable, and as enabling the small states to negative every good system of government, which must, in the nature of things, be founded on a violation of that equality. The members from Virginia, conceiving that such an attempt might beget fatal altercations between the large and small States; and that it would be easier to prevail on the latter, in the course of the deliberations, to give up their equality for the sake of an effective government, than, on taking the field of discussion, to disarm themselves of the right, and thereby throw themselves on the mercy of the larger States, discountenanced and stifled the project.

May 29

... The following rules were added, on the Report of Mr. Wythe from the Committee –

“That no member be absent from the House, so as to interrupt the representation of the State, without leave.

“That Committees do not sit whilst the House shall be, or ought to be, sitting.

“That no copy be taken of any entry on the Journal, during the sitting of the House, without leave of the House.

“That members only be permitted to inspect the Journal.

“That nothing spoken in the House be printed, or otherwise published, or communicated, without leave.

“That a motion to reconsider a matter which has been determined by a majority, may be made, with leave, unanimously given, on the same day on which the vote passed; but otherwise, not without one day’s previous notice; in

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7 Gouverneur Morris, Pennsylvania
8 Robert Morris, Pennsylvania
which last case, if the House agree to the reconsideration, some future day shall be assigned for that purpose.”
Edmund Randolph introduced the Virginia Plan as an answer to five specific defects of the Articles of Confederation (Document 6) that he enumerated near the beginning of his speech. Randolph proposed a remedy that, he said, conformed to “the republican principle.” Five provisions for the Legislative branch distinguish the Virginia Plan from the Articles of Confederation: (1) the people of each state ought to elect the First Branch of the National Legislature; (2) the Second Branch of the National Legislature ought to be elected by the first, out of a pool of candidates nominated by the state legislatures, and (3) states would send representatives to Congress according to some rule of proportion rather than each state having an equal number of representatives; (4) the National Legislature would have power “to legislate in all cases to which the separate States are incompetent”; (5) it would also have power “to negative all laws passed by the States, contravening, in the opinion of the National Legislature, the articles of Union.”

Our best source for the Virginia Plan is that provided by James Madison, who throughout the convention took notes which he nightly elaborated in a journal. These notes were first published in 1840, in an edition edited by Henry Gilpin. The version of the Virginia Plan reprinted here is taken from Gordon Lloyd, ed., Debates in the Federal Convention of 1787 by James Madison, a Member (Ashland, OH: Ashbrook Center, 2014), 6–10.

Mr. Randolph expressed his regret, that it should fall to him, rather than those who were of longer standing in life and political experience, to open the great subject of their mission. But as the Convention had originated from Virginia, and his colleagues supposed that some proposition was expected from them, they had imposed this task on him.

He then commented on the difficulty of the crisis, and the necessity of preventing the fulfillment of the prophecies of the American downfall.

He observed, that, in revising the federal system we ought to inquire, first, into the properties which such a government ought to possess; secondly, the
defects of the Confederation; thirdly, the danger of our situation; and fourthly, the remedy.

1. The character of such a government ought to secure, first, against foreign invasion; secondly, against dissensions between members of the Union, or seditions in particular States; thirdly, to procure to the several States various blessings of which an isolated situation was incapable; fourthly, it should be able to defend itself against encroachment; and fifthly, to be paramount to the State Constitutions.

2. In speaking of the defects of the Confederation, he professed a high respect for its authors, and considered them as having done all that patriots could do, in the then infancy of the science of constitutions, and of confederacies; when the inefficiency of requisitions was unknown – no commercial discord had arisen among any States – no rebellion had appeared, as in Massachusetts – foreign debts had not become urgent – the havoc of paper-money had not been foreseen – treaties had not been violated – and perhaps nothing better could be obtained, from the jealousy of the States with regard to their sovereignty.

He then proceeded to enumerate the defects:

First, that the Confederation produced no security against foreign invasion; Congress not being permitted to prevent a war, nor to support it by their own authority. Of this he cited many examples; most of which tended to show, that they could not cause infractions of treaties, or of the law of nations, to be punished; that particular States might by their conduct provoke war without control; and that, neither militia nor drafts being fit for defense on such occasions, enlistments only could be successful, and these could not be executed without money.

Secondly, that the Federal Government could not check the quarrel between States, nor a rebellion in any, not having constitutional power nor means to interpose according to the exigency.

Thirdly, that there were many advantages which the United States might acquire, which were not attainable under the Confederation – such as a productive impost – counteraction of the commercial regulations of other nations – pushing of commerce ad libitum, etc., etc.

Fourthly, that the Federal Government could not defend itself against encroachments from the States.

Fifthly, that it was not even paramount to the State Constitutions, ratified as it was in many of the States.

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1 according to Congress's own will
3. He next reviewed the danger of our situation; and appealed to the sense of the best friends of the United States – to the prospect of anarchy from the laxity of government everywhere – and to other considerations.

4. He then proceeded to the remedy; the basis of which he said must be the republican principle.

He proposed, as conformable to his ideas, the following resolutions, which he explained one by one.

"1. Resolved, that the Articles of Confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution; namely, "common defense, security of liberty, and general welfare."

"2. Resolved, therefore, that the rights of suffrage in the National Legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

"3. Resolved, that the National Legislature ought to consist of two branches.

"4. Resolved, that the members of the first branch of the National Legislature ought to be elected by the people of the several States every — — — for the term of — — —; to be of the age of — — years at least; to receive liberal stipends by which they may be compensated for the devotion of their time to the public service; to be ineligible to any office established by a particular State, or under the authority of the United States, except those peculiarly belonging to the functions of the first branch, during the term of service, and for the space of — — — after its expiration; to be incapable of reelection for the space of — — — after the expiration of their term of service, and to be subject to recall.

"5. Resolved, that the members of the second branch of the National Legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual Legislatures, to be of the age of — years at least; to hold their offices for a term sufficient to insure their independency; to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service; and to be ineligible to any office established by a particular State, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service, and for the space of — — — after the expiration thereof.

"6. Resolved, that each branch ought to possess the right of originating acts; that the National Legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation, and moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of
individual legislation; to negative all laws passed by the several States contravening, in the opinion of the National Legislature, the Articles of Union, or any treaty subsisting under the authority of the Union; and to call forth the force of the Union against any member of the Union failing to fulfill its duty under the Articles thereof.

“7. Resolved, that a National Executive be instituted; to be chosen by the National Legislature for the term of ——; to receive punctually, at stated times, a fixed compensation for the services rendered, in which no increase nor diminution shall be made, so as to affect the magistracy existing at the time of increase or diminution; and to be ineligible a second time; and that, besides a general authority to execute the national laws, it ought to enjoy the executive rights vested in Congress by the Confederation.

“8. Resolved, that the Executive, and a convenient number of the national Judiciary, ought to compose a Council of Revision, with authority to examine every act of the National Legislature, before it shall operate, and every act of a particular Legislature before a negative thereon shall be final; and that the dissent of the said council shall amount to a rejection, unless the act of the National Legislature be again passed, or that of a particular Legislature be again negatived by —— of the members of each branch.

“9. Resolved, that a National Judiciary be established; to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature; to hold their offices during good behavior, and to receive punctually, at stated times, fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution. That the jurisdiction of the inferior tribunals shall be to hear and determine, in the first instance, and of the supreme tribunal to hear and determine, in the dernier\(^2\) resort, all piracies and felonies on the high seas; captures from an enemy; cases in which foreigners, or citizens of other States, applying to such jurisdictions, may be interested; or which respect the collection of the national revenue; impeachments of any national officers, and questions which may involve the national peace and harmony.

“10. Resolved, that provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the National Legislature less than the whole.

\(^2\) last
“11. Resolved, that a republican government, and the territory of each State, except in the instance of a voluntary junction of government and territory, ought to be guaranteed by the United States to each State.

“12. Resolved, that provision ought to be made for the continuance of Congress and their authorities and privileges, until a given day after the reform of the Articles of Union shall be adopted, and for the completion of all their engagements.

“13. Resolved, that provision ought to be made for the amendment of the Articles of Union, whenever it shall seem necessary; and that the assent of the National Legislature ought not to be required thereto.

“14. Resolved, that the legislative, executive, and judiciary powers, within the several States ought to be bound by oath to support the Articles of Union.

“15. Resolved, that the amendments which shall be offered to the Confederation, by the Convention, ought, at a proper time or times, after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several Legislatures, to be expressly chosen by the people to consider and decide thereon.”

He concluded with an exhortation, not to suffer the present opportunity of establishing general peace, harmony, happiness and liberty in the United States to pass away unimproved.

It was then resolved, that the House will tomorrow resolve itself into a Committee of the Whole House, to consider of the state of the American Union; and that the propositions moved by Mr. Randolph be referred to the said committee. . . .
On May 30, the delegates voted 6–1–1 in favor of altering the Virginia Plan to read that the “national” government ought to consist of a “supreme Legislative, Executive and Judiciary.” On May 31, the delegates agreed 6–2–2 on the election of the first branch by the people. They also voted 7–3 against the provision of the Virginia Plan, which Madison supported, that “the members of the second branch . . . be elected by those of the first.” Roger Sherman favored, instead, “an election of one member by each of the State Legislatures.” He thus set down the key issue for the next month.

On June 6, the delegates turned to the issue of representation in the first house, on the motion of Charles Pinckney, who proposed that the state legislatures elect members of this house. This motion occasioned an exchange between James Madison and Roger Sherman over whether or not people are “more happy in small than large States.” This exchange took place in the context of the decision that the first branch was to be elected by the people and in the shadow of the defeat of the proposal in the Virginia Plan that the second branch be elected by the first branch. Sherman saw the states to be the American version of the “small republics” described by the celebrated eighteenth-century French political philosopher Montesquieu. Their importance in the new constitutional order and the happiness of their inhabitants, in Sherman’s view, was protected by the one-state-one-vote scheme of representation in the unicameral legislature of the Articles of Confederation. In contrast, Madison saw the states as the main source of majority faction and also as an impediment to enacting a continent-wide version of the principle of the revolution: legitimate government is vested in the consent of the governed – namely, the people of America.

June 6

...Mr. PINCKNEY... moved “that the first branch of the National Legislature be elected by the State Legislatures, and not by the people”; contending that the people were less fit judges in such a case, and that the Legislatures would be less likely to promote the adoption of the new government if they were to be excluded from all share in it.

Mr. RUTLEDGE seconded the motion.

Mr. GERRY. Much depends on the mode of election. In England the people will probably lose their liberty from the smallness of the proportion having a right of suffrage. Our danger arises from the opposite extreme. Hence in Massachusetts the worst men get into the Legislature. Several members of that body had lately been convicted of infamous crimes. Men of indigence, ignorance, and baseness, spare no pains, however dirty, to carry their point against men who are superior to the artifices practiced. He was not disposed to run into extremes. He was as much principled as ever against aristocracy and monarchy. It was necessary, on the one hand, that the people should appoint one branch of the government, in order to inspire them with the necessary confidence; but he wished the election, on the other, to be so modified as to secure more effectually a just preference of merit. His idea was, that the people should nominate certain persons, in certain districts, out of whom the State Legislatures should make the appointment.

Mr. WILSON. He wished for vigor in the government, but he wished that vigorous authority to flow immediately from the legitimate source of all authority. The government ought to possess, not only, first, the force, but second, the mind or sense, of the people at large. The Legislature ought to be the most exact transcript of the whole society. Representation is made necessary only because it is impossible for the people to act collectively. The opposition was to be expected, he said, from the governments, not from the citizens of the States. The latter had parted, as was observed by Mr. KING, with all the necessary powers; and it was immaterial to them by whom they were exercised, if well exercised. The State officers were to be the losers of power. The people, he supposed, would be rather more attached to the National Government than to the State Governments, as being more important in itself,

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1 Charles Pinckney, South Carolina
2 John Rutledge, South Carolina
3 Elbridge Gerry, Massachusetts
4 James Wilson, Pennsylvania
5 Rufus King, Massachusetts
and more flattering to their pride. There is no danger of improper elections, if made by large districts. Bad elections proceed from the smallness of the districts, which give an opportunity to bad men to intrigue themselves into office.

Mr. SHERMAN.⁶ If it were in view to abolish the State Governments, the elections ought to be by the people. If the State Governments are to be continued, it is necessary, in order to preserve harmony between the National and State Governments, that the elections to the former should be made by the latter. The right of participating in the National Government would be sufficiently secured to the people by their election of the State Legislatures. The objects of the Union, he thought were few, – first, defense against foreign danger; secondly, against internal disputes, and a resort to force; thirdly, treaties with foreign nations; fourthly, regulating foreign commerce, and drawing revenue from it. These, and perhaps a few lesser objects, alone rendered a confederation of the States necessary. All other matters, civil and criminal, would be much better in the hands of the States. The people are more happy in small than in large States. States may, indeed, be too small, as Rhode Island, and thereby be too subject to faction. Some others were, perhaps, too large, the powers of government not being able to pervade them. He was for giving the General Government power to legislate and execute within a defined province.

Col. MASON.⁷ Under the existing Confederacy, Congress represent the States, and not the people of the States; their acts operate on the States, not on the individuals. The case will be changed in the new plan of government. The people will be represented; they ought therefore to choose the Representatives. The requisites in actual representation are that the representatives should sympathize with their constituents; should think as they think, and feel as they feel; and that for these purposes they should be residents among them. Much, he said, had been alleged against democratic elections. He admitted that much might be said; but it was to be considered that no government was free from imperfections and evils; and that improper elections in many instances were inseparable from republican governments. But compare these with the advantage of this form, in favor of the rights of the people, in favor of human nature! He was persuaded there was a better chance for proper elections by the people, if divided into large districts, than by the State Legislatures. Paper money had been issued by the latter, when the former

⁶ Roger Sherman, Connecticut
⁷ George Mason, Virginia
were against it. Was it to be supposed, that the State Legislatures, then, would not send to the National Legislature patrons of such projects, if the choice depended on them?

Mr. MADISON\(^8\) considered an election of one branch, at least, of the Legislature by the people immediately, as a clear principle of free government; and that this mode, under proper regulations, had the additional advantage of securing better representatives, as well as of avoiding too great an agency of the State Governments in the general one. He differed from the member from Connecticut (Mr. SHERMAN), in thinking the objects mentioned to be all the principal ones that required a national government.

Those were certainly important and necessary objects; but he combined with them the necessity of providing more effectually for the security of private rights, and the steady dispensation of justice. Interferences with these were evils which had, more perhaps than anything else, produced this Convention. Was it to be supposed, that republican liberty could long exist under the abuses of it practiced in some of the States? The gentleman (Mr. SHERMAN) had admitted, that in a very small State faction and oppression would prevail. It was to be inferred, then, that wherever these prevailed the State was too small. Had they not prevailed in the largest as well as the smallest, though less than in the smallest?

And were we not thence admonished to enlarge the sphere as far as the nature of the government would admit? This was the only defense against the inconveniences of democracy, consistent with the democratic form of government. All civilized societies would be divided into different sects, factions, and interests, as they happened to consist of rich and poor, debtors and creditors, the landed, the manufacturing, the commercial interests, the inhabitants of this district or that district, the followers of this political leader or that political leader, the disciples of this religious sect or that religious sect.

In all cases where a majority are united by a common interest or passion, the rights of the minority are in danger. What motives are to restrain them? A prudent regard to the maxim, that honesty is the best policy, is found by experience to be as little regarded by bodies of men as by individuals. Respect for character is always diminished in proportion to the number among whom the blame or praise is to be divided. Conscience, the only remaining tie, is known to be inadequate in individuals; in large numbers, little is to be expected from it. Besides, religion itself may become a motive to persecution and oppression.

\(^{8}\) James Madison, Virginia
These observations are verified by the histories of every country, ancient and modern. In Greece and Rome the rich and poor, the creditors and debtors, as well as the patricians and plebeians, alternately oppressed each other with equal unmercifulness. What a source of oppression was the relation between the parent cities of Rome, Athens, and Carthage, and their respective provinces; the former possessing the power, and the latter being sufficiently distinguished to be separate objects of it? Why was America so justly apprehensive of parliamentary injustice? Because Great Britain had a separate interest, real or supposed, and, if her authority had been admitted, could have pursued that interest at our expense.

We have seen the mere distinction of color made, in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man. What has been the source of those unjust laws complained of among ourselves? Has it not been the real or supposed interest of the major number? Debtors have defrauded their creditors. The landed interest has borne hard on the mercantile interest. The holders of one species of property have thrown a disproportion of taxes on the holders of another species. The lesson we are to draw from the whole is, that where a majority are united by a common sentiment, and have an opportunity, the rights of the minor party become insecure. In a republican government, the majority, if united, have always an opportunity.

The only remedy is, to enlarge the sphere, and thereby divide the community into so great a number of interests and parties, that, in the first place, a majority will not be likely, at the same moment, to have a common interest separate from that of the whole, or of the minority; and, in the second place, that in case they should have such an interest, they may not be so apt to unite in the pursuit of it. It was incumbent on us, then, to try this remedy, and, with that view, to frame a republican system on such a scale, and in such a form, as will control all the evils which have been experienced.

Mr. DICKINSON⁹ considered it essential, that one branch of the Legislature should be drawn immediately from the people; and expedient, that the other should be chosen by the Legislatures of the States. This combination of the State Governments with the National Government was as politic as it was unavoidable. In the formation of the Senate, we ought to carry it through such a refining process as will assimilate it, as nearly as may be, to the House of Lords in England. He repeated his warm eulogiums on the British Constitution. He was for a strong National Government; but for leaving the

⁹ John Dickinson, Delaware
States a considerable agency in the system. The objection against making the former dependent on the latter might be obviated by giving to the Senate an authority permanent, and irrevocable for three, five or seven years. Being thus independent, they will check and decide with uncommon freedom.

Mr. READ.\textsuperscript{10} Too much attachment is betrayed to the State Governments. We must look beyond their continuance. A National Government must soon of necessity swallow them all up. They will soon be reduced to the mere office of electing the National Senate. He was against patching up the old Federal system: he hoped the idea would be dismissed. It would be like putting new cloth on an old garment. The Confederation was founded on temporary principles. It cannot last: it cannot be amended. If we do not establish a good government on new principles, we must either go to ruin, or have the work to do over again. The people at large are wrongly suspected of being averse to a General Government. The aversion lies among interested men who possess their confidence.

Mr. PIERCE\textsuperscript{11} was for an election by the people as to the first branch, and by the States as to the second branch; by which means the citizens of the States would be represented both individually and collectively.

General PINCKNEY\textsuperscript{12} wished to have a good National Government, and at the same time to leave a considerable share of power in the States. An election of either branch by the people, scattered as they are in many States, particularly in South Carolina, was totally impracticable. He differed from gentlemen who thought that a choice by the people would be a better guard against bad measures, than by the Legislatures. A majority of the people in South Carolina were notoriously for paper-money, as a legal tender; the Legislature had refused to make it a legal tender. The reason was, that the latter had some sense of character, and were restrained by that consideration. The State Legislatures, also, he said, would be more jealous, and more ready to thwart the National Government, if excluded from a participation in it. The idea of abolishing these Legislatures would never go down.

Mr. WILSON would not have spoken again, but for what had fallen from Mr. READ; namely that the idea of preserving the State Governments ought to be abandoned. He saw no incompatibility between the National and State Governments, provided the latter were restrained to certain local purposes; nor any probability of their being devoured by the former. In all confederated

\textsuperscript{10} George Read, Delaware
\textsuperscript{11} William L. Pierce, Georgia
\textsuperscript{12} Charles Cotesworth Pinckney, South Carolina
systems, ancient and modern, the reverse had happened; the generality being
destroyed gradually by the usurpations of the parts composing it.

On the question for electing the first branch by the State Legislatures as
moved by Mr. PINCKNEY, it was negatived, – Connecticut, New Jersey,
South Carolina, aye – 3; Massachusetts, New York, Pennsylvania, Delaware,
Maryland, Virginia, North Carolina, Georgia, no – 8...
The June 6 vote on representation in the first branch (Document 11) was 8–3 in favor of the Virginia Plan’s provision that the people elect the members of this branch. (Connecticut, New Jersey, and South Carolina voted “no.”) On June 7, the delegates turned to the question created by the defeat of the Virginia Plan’s provision to have the second branch elected by the first branch. Instead, the delegates voted 11–0 that “the second branch of the national legislature [should] be elected by the individual legislatures.” But a state-based election of the second branch was only one part of the equation. Roger Sherman of Connecticut also wanted equal representation for each state in the second branch, in return for accepting popular representation in the first branch, which Connecticut had originally voted against.

So on June 11, Sherman presented the delegates with a compromise: popular representation in the first branch in exchange for equal representation of the states in the second branch. But the delegates from South Carolina introduced a third dimension to the discussion over representation. “Money was power,” said Butler. And, therefore, should wealth not be represented as well as people and states? This wealth included property in slaves. The result was the introduction of a clause stating that those counted in the population to be represented should include free whites, even those bound in servitude, and “three-fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each State.” The Three-Fifths Clause was included in the first branch on a 9–2 vote, but the vote to include it in the second branch barely passed, by a 6–5 vote. Connecticut, New York, and Maryland were willing to accept popular representation plus three-fifths in the first branch but, along with New Jersey and Delaware, insisted on equal representation for the states in the second branch.

Mr. SHERMAN proposed, that the proportion of suffrage in the first branch should be according to the respective numbers of free inhabitants; and that in the second branch, or Senate, each State should have one vote and no more. He said, as the States would remain possessed of certain individual rights, each State ought to be able to protect itself; otherwise, a few large States will rule the rest. The House of Lords in England, he observed, had certain particular rights under the Constitution, and hence they have an equal vote with the House of Commons, that they may be able to defend their rights.

Mr. RUTLEDGE proposed, that the proportion of suffrage in the first branch should be according to the quotas of contribution. The justice of this rule, he said, could not be contested. Mr. BUTLER urged the same idea; adding, that money was power; and that the States ought to have weight in the government in proportion to their wealth.

Mr. KING and Mr. WILSON, in order to bring the question to a point, moved, “that the right of suffrage in the first branch of the National Legislature ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation.” The clause, so far as it related to suffrage in the first branch, was postponed, in order to consider this motion.

Mr. DICKINSON contended for the actual contributions of the States, as the rule of their representation and suffrage in the first branch. By thus connecting the interests of the States with their duty, the latter would be sure to be performed.

Mr. KING remarked, that it was uncertain what mode might be used in levying a national revenue; but that it was probable, imposts would be one source of it. If the actual contributions were to be the rule, the non-importing States, as Connecticut and New Jersey, would be in a bad situation, indeed. It might so happen that they would have no representation. This situation of particular States had been always one powerful argument in favor of the five per cent. impost.

On the question for agreeing to Mr. KING’S and Mr. WILSON’S motion, it passed in the affirmative, – Massachusetts, Connecticut, Pennsylvania,

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1 Roger Sherman, Connecticut
2 John Rutledge, South Carolina
3 Pierce Butler, South Carolina
4 Rufus King, Massachusetts
5 James Wilson, Pennsylvania
6 John Dickinson, Delaware
Virginia, North Carolina, South Carolina, Georgia, aye – 7; New York, New Jersey, Delaware, no – 3; Maryland, divided.

It was then moved by Mr. RUTLEDGE, seconded by Mr. BUTLER, to add to the words, “equitable ratio of representation,” at the end of the motion just agreed to, the words “according to the quotas of contribution.”

On motion of Mr. WILSON, seconded by Mr. PINCKNEY, this was postponed; in order to add, after the words, “equitable ratio of representation,” the words following: “in proportion to the whole number of white and other free citizens and inhabitants of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each State” – this being the rule in the act of Congress, agreed to by eleven States, for apportioning quotas of revenue on the States, and requiring a census only every five, seven, or ten years.

Mr. GERRY thought property not the rule of representation. Why, then, should the blacks, who were property in the South, be in the rule of representation more than the cattle and horses of the North?


Mr. SHERMAN moved, that a question be taken, whether each State shall have one vote in the second branch. Every thing, he said, depended on this. The smaller States would never agree to the plan on any other principle than an equality of suffrage in this branch. Mr. ELLSWORTH seconded the motion.

On the question for allowing each State one vote in the second branch, – Connecticut, New York, New Jersey, Delaware, Maryland, aye – 5; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no – 6.

Mr. WILSON and Mr. HAMILTON moved, that the right of suffrage in the second branch ought to be according to the same rule as in the first branch.

On this question for making the ratio of representation, the same in the second as in the first branch, it passed in the affirmative, – Massachusetts,

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7 Charles Pinckney, South Carolina
8 Elbridge Gerry, Massachusetts
9 Oliver Ellsworth, Connecticut
10 Alexander Hamilton, New York
Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye – 6; Connecticut, New York, New Jersey, Delaware, Maryland, no – 5.
On June 13, the delegates completed their second discussion of the Virginia Plan. The 19 resolutions of the amended Virginia Plan preserved the new institutional structure proposed by the original plan. On June 15, however, William Patterson presented the alternative New Jersey Plan. It restored the structure of the Articles of Confederation but also increased the powers of Congress. Why, after two weeks of negotiation concerning the representation of people, states, and wealth, would the New Jersey coalition be willing to start all over again? Madison provided an answer in the footnote (reproduced below) he added to his account of the debate on June 15. For different reasons, a coalition of states had formed opposed to a national government as proposed in the Virginia Plan.


The Revised Virginia Plan
June 13

... Mr. GORHAM\(^1\) made a report, which was postponed till to-morrow, to give an opportunity for other plans to be proposed – the Report was in the words following:

1. Resolved, that it is the opinion of this Committee, that a national Government ought to be established, consisting of a supreme Legislative, Executive and Judiciary.

2. Resolved, that the National Legislature ought to consist of two branches.

3. Resolved, that the members of the first branch of the National Legislature ought to be elected by the people of the several States for the term of three years; to receive fixed stipends by which they may be compensated for the devotion of their time to the public service, to be paid out of the National Treasury; to be ineligible to any office established by a particular State, or

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\(^1\) Nathaniel Gorham, Massachusetts
under the authority of the United States (except those peculiarly belonging to the functions of the first branch) during the term of service, and under the national Government for the space of one year after its expiration.

4. Resolved, that the members of the second branch of the National Legislature ought to be chosen by the individual Legislatures; to be of the age of thirty years at least; to hold their offices for a term sufficient to insure their independence, namely, seven years; to receive fixed stipends by which they may be compensated for the devotion of their time to the public service, to be paid out of the National Treasury; to be ineligible to any office established by a particular State, or under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term of service, and under the national Government, for the space of one year after its expiration.

5. Resolved, that each branch ought to possess the right of originating acts.

6. Resolved, that the National Legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation; and moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several States contravening, in the opinion of the National Legislature, the Articles of Union, or any treaties subsisting under the authority of the Union.

7. Resolved, that the rights of suffrage in the first branch of the National Legislature, ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation, namely, in proportion to the whole number of white and other free citizens and inhabitants, of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons, not comprehended in the foregoing description, except Indians not paying taxes, in each State.

8. Resolved, that the right of suffrage in the second branch of the National Legislature, ought to be according to the rule established for the first.

9. Resolved, that a National Executive be instituted, to consist of a single person; to be chosen by the National Legislature, for the term of seven years; with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for; to be ineligible a second time; and to be removable on impeachment and conviction of malpractices or neglect of duty; to receive a fixed stipend by which he may be compensated for the devotion of his time to the public service, to be paid out of the National Treasury.
10. Resolved, that the national Executive shall have a right to negative any legislative act which shall not be afterwards passed by two-thirds of each branch of the national Legislature.

11. Resolved, that a national Judiciary be established, to consist of one supreme tribunal, the Judges of which shall be appointed by the second branch of the national Legislature, to hold their offices during good behavior, and to receive punctually, at stated times, a fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution.

12. Resolved, that the national Legislature be empowered to appoint inferior tribunals.

13. Resolved, that the jurisdiction of the national Judiciary shall extend to all cases which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony.

14. Resolved, that provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national Legislature less than the whole.

15. Resolved, that provision ought to be made for the continuance of Congress and their authorities and privileges, until a given day, after the reform of the Articles of Union shall be adopted, and for the completion of all their engagements.

16. Resolved, that a republican constitution, and its existing laws, ought to be guaranteed to each State, by the United States.

17. Resolved, that provision ought to be made for the amendment of the Articles of Union, whensoever it shall seem necessary.

18. Resolved, that the Legislative, Executive and Judiciary powers within the several States, ought to be bound by oath to support the Articles of Union.

19. Resolved, that the amendments which shall be offered to the Confederation by the Convention ought, at a proper time or times after the approbation of Congress, to be submitted to an assembly or assemblies recommended by the several Legislatures, to be expressly chosen by the people to consider and decide thereon.
The Revised Virginia Plan and the New Jersey Plan

June 15

In Convention, – Mr. PATTERSON laid before the Convention the plan which he said several of the Deputations wished to be substituted in place of that proposed by Mr. RANDOLPH [the Virginia Plan]. After some little discussion of the most proper mode of giving it a fair deliberation, it was agreed, that it should be referred to a Committee of the Whole; and that, in order to place the two plans in due comparison, the other should be recommitted. At the earnest request of Mr. LANSING and some other gentleman, it was also agreed that the Convention should not go into Committee of the Whole on the subject till to-morrow; by which delay the friends of the plan proposed by Mr. PATTERSON would be better prepared to explain and support it, and all would have an opportunity of taking copies.*

The propositions from New Jersey, moved by Mr. PATTERSON, were in the words following:

1. Resolved, that the Articles of Confederation ought to be so revised, corrected, and enlarged, as to render the Federal Constitution adequate to the exigencies of government, and the preservation of the Union.

2. Resolved, that, in addition to the powers vested in the United States in Congress, by the present existing Articles of Confederation, they be authorized to pass acts for raising a revenue, by levying a duty or duties on all goods or merchandizes of foreign growth or manufacture, imported into any part of the United States; by stamps on paper, vellum or parchment; and by a postage on all letters or packages passing through the general post-office; to be applied to such Federal purposes as they shall deem proper and expedient; to make rules and regulations for the collection thereof; and the same, from time to time, to alter and amend in such manner as they shall think proper; to pass acts for the regulation of trade and commerce, as well with foreign nations as with each other; provided that all punishments, fines, forfeitures and penalties, to be incurred for contravening such acts, rules and regulations, shall be adjudged by the common law Judiciaries of the State in which any offence contrary to the true intent and meaning of such acts, rules, and regulations, shall have been committed or perpetrated, with liberty of commencing in the first instance all suits and prosecutions for that purpose in the Superior common law Judiciary in such State; subject, nevertheless, for the correction of all errors, both in law

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2 William Patterson, New Jersey
3 Edmund Randolph, Virginia
4 John Lansing Jr., New York
and fact, in rendering judgment, to an appeal to the Judiciary of the United States.

3. Resolved, that whenever requisitions shall be necessary, instead of the rule for making requisitions mentioned in the Articles of Confederation, the United States in Congress be authorized to make such requisitions in proportion to the whole number of white and other free citizens and inhabitants, of every age, sex, and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes; that, if such requisitions be not complied with, in the time specified therein, to direct the collection thereof in the non-complying States; and for that purpose to devise and pass acts directing and authorizing the same; provided, that none of the powers hereby vested in the United States in Congress, shall be exercised without the consent of at least – States; and in that proportion, if the number of confederated States should hereafter be increased or diminished.

4. Resolved, that the United States in Congress be authorized to elect a Federal Executive, to consist of — — persons, to continue in office for the term of — years; to receive punctually, at stated times, a fixed compensation for their services, in which no increase nor diminution shall be made so as to affect the persons composing the Executive at the time of such increase or diminution; to be paid out of the Federal treasury; to be incapable of holding any other office or appointment during their time of service, and for — — years thereafter: to be ineligible a second time, and removable by Congress, on application by a majority of the Executives of the several States; that the Executive, besides their general authority to execute the Federal acts, ought to appoint all Federal officers not otherwise provided for, and to direct all military operations; provided, that none of the persons composing the Federal Executive shall, on any occasion, take command of any troops, so as personally to conduct any military enterprise, as General, or in any other capacity.

5. Resolved, that a Federal Judiciary be established, to consist of a supreme tribunal, the Judges of which to be appointed by the Executive, and to hold their offices during good behavior; to receive punctually, at stated times, a fixed compensation for their services, in which no increase nor diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution. That the Judiciary so established shall have authority to hear and determine, in the first instance, on all impeachments of Federal officers; and, by way of appeal, in the dernier resort, in all cases touching the rights of ambassadors; in all cases of captures from an enemy; in all cases of piracies and felonies on the high seas; in all cases in which foreigners may be
interested; in the construction of any treaty or treaties, or which may arise on any of the acts for the regulation of trade, or the collection of the Federal revenue: that none of the Judiciary shall, during the time they remain in office, be capable of receiving or holding any other office or appointment during their term of service, or for – thereafter.

6. Resolved, that all acts of the United States in Congress, made by virtue and in pursuance of the powers hereby, and by the Articles of Confederation, vested in them, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective States, so far forth as those acts or treaties shall relate to the said States or their citizens; and that the Judiciary of the several States shall be bound thereby in their decisions, any thing in the respective laws of the individual States to the contrary notwithstanding: and that if any State, or any body of men in any State, shall oppose or prevent the carrying into execution such acts or treaties, the Federal Executive shall be authorized to call forth the power of the confederated States, or so much thereof as may be necessary, to enforce and compel an obedience to such acts, or an observance of such treaties.

7. Resolved, that provision be made for the admission of new States into the Union.

8. Resolved, that the rule for naturalization ought to be the same in every State.

9. Resolved, that a citizen of one State committing an offence in another State of the Union, shall be deemed guilty of the same offence as if it had been committed by a citizen of the State in which the offence was committed.

* [Madison's footnote]

This plan had been concerted among the Deputations, or members thereof, from Connecticut, New York, New Jersey, Delaware, and perhaps Mr. Martin, from Maryland, who made with them a common cause, though on different principles. Connecticut and New York were against a departure from the principle of the Confederation, wishing rather to add a few new powers to Congress than to substitute a National Government. The States of New Jersey and Delaware were opposed to a National Government, because its patrons considered a proportional representation of the States as the basis of it. The eagerness displayed by the members opposed to a National Government, from these different motives, began now to produce serious anxiety for the result of the Convention. Mr. Dickinson said to Mr. Madison, “You see the consequence of pushing things too far. Some of the members from the small States wish for two branches in the General Legislature, and are friends to a
good National Government; but we would sooner submit to a foreign power, than submit to be deprived, in both branches of the legislature, of an equality of suffrage, and thereby be thrown under the domination of the larger States.”
The delegates debated the merits and demerits of the revised Virginia Plan and the New Jersey Plan (Document 13). John Lansing of New York defended the New Jersey Plan as consistent with the authorization of the Constitutional Convention by the Confederation Congress (Document 8) and the sentiments of the people. He relied on a strict or narrow interpretation of the Confederation mandate. Edmund Randolph, who had introduced the original Virginia Plan, in effect invoked the authority of the Annapolis Convention, as well as a vision of a new republic. Lansing’s remarks explain why New York joined in the coalition opposed to a national government (Document 13).


In Committee of the Whole, on the Resolutions proposed by Mr. PATTERSON\(^1\) and Mr. RANDOLPH\(^2\). Mr. LANSING\(^3\) called for the reading of the first Resolution of each plan, which he considered as involving principles directly in contrast. That of Mr. PATTERSON [the New Jersey Plan], says he, sustains the sovereignty of the respective States, that of Mr. RANDOLPH destroys it. The latter requires a negative on all the laws of the particular States, the former only certain general power for the general good. The plan of Mr. RANDOLPH in short absorbs all power, except what may be exercised in the little local matters of the States which are not objects worthy of the supreme cognizance. He grounded his preference of Mr. PATTERSON’S plan, chiefly, on two objections to that of Mr. RANDOLPH, – first, want of power in the Convention to discuss and propose it; secondly, the improbability of its being adopted.

\(^1\) William Patterson, New Jersey  
\(^2\) Edmund J. Randolph, Virginia  
\(^3\) John Lansing Jr., New York
1. He was decidedly of opinion that the power of the Convention was restrained to amendments of a Federal nature, and having for their basis the Confederacy in being. The acts of Congress, the tenor of the acts of the States, the commissions produced by the several Deputations, all proved this. And this limitation of the power to an amendment of the Confederacy marked the opinion of the States, that it was unnecessary and improper to go farther. He was sure that this was the case with his State. New York would never have concurred in sending Deputies to the Convention, if she had supposed the deliberations were to turn on a consolidation of the States, and a National Government.

2. Was it probable that the States would adopt and ratify a scheme which they had never authorized us to propose, and which so far exceeded what they regarded as sufficient? We see by their several acts, particularly in relation to the plan of revenue proposed by Congress in 1783, not authorized by the Articles of Confederation, what were the ideas they then entertained. Can so great a change be supposed to have already taken place? To rely on any change which is hereafter to take place in the sentiments of the people, would be trusting to too great an uncertainty. We know only what their present sentiments are. And it is in vain to propose what will not accord with these. The States will never feel a sufficient confidence in a General Government, to give it a negative on their laws. The scheme is itself totally novel. There is no parallel to it to be found. The authority of Congress is familiar to the people, and an augmentation of the powers of Congress will be readily approved by them.

Mr. PATTERSON said, as he had on a former occasion given his sentiments on the plan proposed by Mr. RANDOLPH, he would now, avoiding repetition as much as possible, give his reasons in favor of that proposed by himself. He preferred it because it accorded, first, with the powers of the Convention; secondly, with the sentiments of the people.

If the Confederacy was radically wrong, let us return to our States, and obtain larger powers, not assume them ourselves. I came here not to speak my own sentiments, but the sentiments of those who sent me. Our object is not such a government as may be best in itself, but such a one as our constituents have authorized us to prepare, and as they will approve. If we argue the matter on the supposition that no confederacy at present exists, it cannot be denied that all the States stand on the footing of equal sovereignty. All, therefore, must
concur before any can be bound. If a proportional representation\(^4\) be right, why do we not vote so here? If we argue on the fact that a Federal compact actually exists, and consult the articles of it, we still find an equal sovereignty to be the basis of it.

He reads the fifth Article of the Confederation, giving each State a vote; and the thirteenth, declaring that no alteration shall be made without unanimous consent. This is the nature of all treaties. What is unanimously done, must be unanimously undone. It was observed (by Mr. WILSON\(^5\)) that the larger States gave up the point, not because it was right, but because the circumstances of the moment urged the concession. Be it so. Are they for that reason at liberty to take it back? Can the donor resume his gift without the consent of the donee? This doctrine may be convenient, but it is a doctrine that will sacrifice the lesser States. The larger States acceded readily to the Confederacy. It was the small ones that came in reluctantly and slowly. New Jersey and Maryland were the two last;\(^6\) the former objecting to the want of power in Congress over trade; both of them to the want of power to appropriate the vacant territory to the benefit of the whole.

If the sovereignty of the States is to be maintained, the representatives must be drawn immediately from the States, not from the people; and we have no power to vary the idea of equal sovereignty. The only expedient that will cure the difficulty is that of throwing the States into hotchpot.\(^7\)

To say that this is impracticable, will not make it so. Let it be tried, and we shall see whether the citizens of Massachusetts, Pennsylvania, and Virginia accede to it. It will be objected, that coercion will be impracticable. But will it be more so in one plan than the other? Its efficacy will depend on the quantum of power collected, not on its being drawn from the States, or from the individuals; and according to his plan it may be exerted on individuals as well as according to that of Mr. RANDOLPH.

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\(^4\) The aim of “proportional representation” is that the numerical size of each political district should be roughly equal or “proportional” to the number of residents. Although representation of the people did take place in England, it was more in the form of “rotten boroughs” where there were huge disparities in the number of people contained in each district.

\(^5\) James Wilson, Pennsylvania

\(^6\) These two states and Delaware and Connecticut, all small states, joined with New York in opposing the Virginia Plan. See Madison’s note in Document 12.

\(^7\) legal term referring to the process of combining the property of different individuals so it can be divided equally
A distinct Executive and Judiciary also were equally provided by his plan. It is urged, that two branches in the Legislature are necessary. Why? For the purpose of a check. But the reason for the precaution is not applicable to this case. Within a particular State, where party heats prevail, such a check may be necessary. In such a body as Congress, it is less necessary; and, besides, the Delegations of the different States are checks on each other.

Do the people at large complain of Congress? No. What they wish is, that Congress may have more power. If the power now proposed be not enough, the people hereafter will make additions to it. With proper powers Congress will act with more energy and wisdom than the proposed National Legislature; being fewer in number, and more secreted and refined by the mode of election.

The plan of Mr. RANDOLPH will also be enormously expensive. Allowing Georgia and Delaware two representatives each in the popular branch, the aggregate number of that branch will be one hundred and eighty. Add to it half as many for the other branch, and you have two hundred and seventy members, coming once at least a year, from the most distant as well as the most central parts of the Republic. In the present deranged state of our finances, can so expensive a system be seriously thought of? By enlarging the powers of Congress, the greatest part of this expense will be saved, and all purposes will be answered. At least a trial ought to be made.

Mr. WILSON entered into a contrast of the principal points of the two plans, so far, he said, as there had been time to examine the one last proposed. These points were:

1. In the Virginia plan there are two, and in some degree three, branches in the Legislature; in the plan from New Jersey there is to be a single Legislature only.

2. Representation of the people at large is the basis of one; the State Legislatures the pillars of the other.

3. Proportional representation prevails in one, equality of suffrage in the other.

4. A single Executive Magistrate is at the head of the one; a plurality is held out in the other.

5. In the one, a majority of the people of the United States must prevail; in the other, a minority may prevail.

6. The National Legislature is to make laws in all cases to which the separate States are incompetent, etc.; in place of this, Congress are to have additional power in a few cases only.

7. A negative on the laws of the States; in place of this, coercion to be substituted.
8. The Executive to be removable on impeachment and conviction, in one plan; in the other, to be removable at the instance of a majority of the Executives of the States.

9. Revision of the laws provided for, in one; no such check in the other.

10. Inferior national tribunals, in one; none such in the other.

11. In the one, jurisdiction of national tribunals to extend, etc.; an appellate jurisdiction only allowed in the other.

12. Here, the jurisdiction is to extend to all cases affecting the national peace and harmony; there, a few cases only are marked out.

13. Finally, the ratification is, in this, to be by the people themselves; in that, by the legislative authorities, according to the thirteenth Article of the Confederation.

With regard to the power of the Convention, he conceived himself authorized to conclude nothing, but to be at liberty to propose any thing. In this particular, he felt himself perfectly indifferent to the two plans.

With regard to the sentiments of the people, he conceived it difficult to know precisely what they are. Those of the particular circle in which one moved were commonly mistaken for the general voice. He could not persuade himself that the State Governments and sovereignties were so much the idols of the people, nor a National Government so obnoxious to them, as some supposed. Why should a National Government be unpopular? Has it less dignity? Will each citizen enjoy under it less liberty or protection? Will a citizen of Delaware be degraded by becoming a citizen of the United States? Where do the people look at present for relief from the evils of which they complain? Is it from an internal reform of their governments? No, sir. It is from the national councils that relief is expected. For these reasons, he did not fear that the people would not follow us into a National Government; and it will be a further recommendation of Mr. RANDOLPH’S plan, that it is to be submitted to them, and not to the Legislatures, for ratification.

Proceeding now to the first point on which he had contrasted the two plans, he observed, that, anxious as he was for some augmentation of the Federal powers, it would be with extreme reluctance, indeed, that he could ever consent to give powers to Congress. He had two reasons, either of which was sufficient, – first, Congress, as a legislative body, does not stand on the people; secondly, it is a single body.

1. He would not repeat the remarks he had formerly made on the principles of representation. He would only say, that an inequality in it has ever been a poison contaminating every branch of government. In Great Britain, where this poison has had a full operation, the security of private rights is
owing entirely to the purity of her tribunals of justice, the judges of which are
neither appointed nor paid by a venal parliament. The political liberty of that
country, owing to the inequality of representation, is at the mercy of its rulers.
He means not to insinuate that there is any parallel between the situation of
that country and ours, at present... .

2. Congress is a single Legislature. Despotism comes on mankind in different
shapes, sometimes in an Executive, sometimes in a military one. Is there no
danger of a Legislative despotism? Theory and practice both proclaim it. If the
Legislative authority be not restrained, there can be neither liberty nor
stability; and it can only be restrained by dividing it within itself, into distinct
and independent branches. In a single House there is no check, but the
inadequate one, of the virtue and good sense of those who compose it.

On another great point, the contrast was equally favorable to the plan
reported by the Committee of the Whole. It vested the Executive powers in a
single magistrate. The plan of New Jersey, vested them in a plurality. In order
to control the Legislative authority, you must divide it. In order to control the
Executive you must unite it. One man will be more responsible than three.
Three will contend among themselves, till one becomes the master of his
colleague... .

Mr. PINCKNEY. The whole comes to this, as he conceived. Give New
Jersey an equal vote, and she will dismiss her scruples, and concur in the
National system. He thought the Convention authorized to go any length, in
recommending, which they found necessary to remedy the evils which
produced this Convention.

Mr. ELLSWORTH proposed, as a more distinctive form of collecting the
mind of the Committee on the subject, “that the Legislative power of the
United States should remain in Congress.” This was not seconded, though it
seemed better calculated for the purpose than the first proposition of Mr.
PATTERSON, in place of which Mr. ELLSWORTH wished to substitute it.

Mr. RANDOLPH was not scrupulous on the point of power. When the
salvation of the Republic was at stake, it would be treason to our trust, not to
propose what we found necessary. He painted in strong colors the imbecility of
the existing Confederacy, and the danger of delaying a substantial reform.

In answer to the objection drawn from the sense of our constituents, as
denoted by their acts relating to the Convention and the objects of their
deliberation, he observed, that, as each State acted separately in the case, it

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8 Charles Pinckney, South Carolina
9 Oliver Ellsworth, Connecticut
would have been indecent for it to have charged the existing Constitution, with all the vices which it might have perceived in it. The first State that set on foot this experiment would not have been justified in going so far, ignorant as it was of the opinion of others, and sensible as it must have been of the uncertainty of a successful issue to the experiment. There are reasons certainly of a peculiar nature, where the ordinary cautions must be dispensed with; and this is certainly one of them. He would not, as far as depended on him, leave any thing that seemed necessary, undone. The present moment is favorable, and is probably the last that will offer.

The true question is, whether we shall adhere to the Federal plan, or introduce the National plan. The insufficiency of the former has been fully displayed by the trial already made. There are but two modes by which the end of a General Government can be attained: the first, by coercion, as proposed by Mr. PATTERSON’S plan; the second, by real legislation, as proposed by the other plan.

Coercion he pronounced to be *impracticable, expensive, cruel to individuals*. It tended, also, to habituate the instruments of it to shed the blood, and riot in the spoils of their fellow citizens, and consequently train them up for the service of ambition. We must resort therefore to a *national legislation over individuals*; for which Congress are unfit. To vest such power in them would be blending the Legislative with the Executive, contrary to the received maxim on this subject. If the union of these powers, heretofore, in Congress has been safe, it has been owing to the general impotency of that body. Congress are, moreover, not elected by the people, but by the Legislatures, who retain even a power of recall. They have therefore no will of their own; they are a mere diplomatic body, and are always obsequious to the views of the States, who are always encroaching on the authority of the United States. A provision for harmony among the States, as in trade, naturalization, etc.; for crushing rebellion, whenever it may rear its crest, and for certain other general benefits, must be made.

The powers for these purposes can never be given to a body inadequate as Congress are in point of representation, elected in the mode in which they are, and possessing no more confidence than they do: for, notwithstanding what has been said to the contrary, his own experience satisfied him that a rooted distrust of Congress pretty generally prevailed. A National Government alone, properly constituted, will answer the purpose; and he begged it to be considered that the present is the last moment for establishing one. After this select experiment, the people will yield to despair.

The Committee rose and the House adjourned.
On June 18, Alexander Hamilton of New York expressed his displeasure with both the revised Virginia Plan and the New Jersey Plan (Document 13). Then he proposed a plan of his own that did not, at the time, make much of an impact on the other delegates. They were interested in settling the issue of who or what should be represented in the new government. Hamilton thought the debate over sovereignty, whether the people or the states should be represented in the legislature, missed the critical issue: the problem of ensuring what elsewhere he called “good government.” He articulated what we might call national rather than federal principles. More than the balance of powers between the states, what interested Hamilton was the location of powers between the branches of a new national government. He contended that “we ought to go as far, in order to attain stability and permanency, as republican principles will admit.” This required Hamilton to challenge the traditional understanding of republicanism that where annual elections end, tyranny begins. He maintained that good government requires long terms in office. But would long terms not put republican principles in danger? No, argued Hamilton, as long as the representatives were chosen by and removable by the people. These ideas presented in the Hamilton Plan played a greater part in the August conversation than they did in June.

his efforts for the public safety and happiness. He was obliged, therefore, to declare himself unfriendly to both plans.

He was particularly opposed to that from New Jersey, being fully convinced, that no amendment of the Confederation, leaving the States in possession of their sovereignty, could possibly answer the purpose. On the other hand, he confessed he was much discouraged by the amazing extent of the country, in expecting the desired blessings from any general sovereignty that could be substituted.

As to the powers of the Convention, he thought the doubts started on that subject had arisen from distinctions and reasonings too subtle. A federal government he conceived to mean an association of independent communities into one. Different confederacies have different powers, and exercise them in different ways. In some instances, the powers are exercised over collective bodies, in others, over individuals, as in the German Diet; and among ourselves, in cases of piracy. Great latitude, therefore, must be given to the signification of the term.

The plan last proposed\(^1\) departs, itself, from the federal idea, as understood by some, since it is to operate eventually on individuals. He agreed, moreover, with the Honorable gentleman from Virginia (Mr. RANDOLPH\(^2\)), that he owed it to our country, to do, on this emergency, whatever we should deem essential to its happiness. The States sent us here to provide for the exigencies of the Union. To rely on and propose any plan not adequate to these exigencies, merely because it was not clearly within our powers, would be to sacrifice the means to the end. It may be said, that the States cannot ratify a plan not within the purview of the Article of the Confederation providing for alterations and amendments. But may not the States themselves, in which no constitutional authority equal to this purpose exists in the Legislatures, have had in view a reference to the people at large? . . .

The great question is what provision shall we make for the happiness of our country? He would first make a comparative examination of the two plans – prove that there were essential defects in both – and point out such changes as might render a national one efficacious.

The great and essential principles necessary for the support of government are:

1. An active and constant interest in supporting it. This principle does not exist in the States, in favor of the Federal Government. They have evidently in

\(^{1}\) the New Jersey Plan

\(^{2}\) Edmund Randolph, Virginia
a high degree, the *esprit de corps*.\(^3\) They constantly pursue internal interests adverse to those of the whole. They have their particular debts, their particular plans of finance, etc. All these, when opposed to, invariably prevail over, the requisitions and plans of Congress.

2. The love of power. Men love power. The same remarks are applicable to this principle. The States have constantly shown a disposition rather to regain the powers delegated by them, than to part with more, or to give effect to what they had parted with. The ambition of their demagogues is known to hate the control of the General Government. It may be remarked, too, that the citizens have not that anxiety to prevent a dissolution of the General Government as of the particular governments. A dissolution of the latter would be fatal; of the former, would still leave the purposes of government attainable to a considerable degree. Consider what such a State as Virginia will be in a few years, a few compared with the life of nations. How strongly will it feel its importance and self-sufficiency!

3. An habitual attachment of the people. The whole force of this tie is on the side of the State Government. Its sovereignty is immediately before the eyes of the people; its protection is immediately enjoyed by them. From its hand distributive justice, and all those acts which familiarize and endear a government to a people, are dispensed to them.

4. Force, by which may be understood a coercion of laws, or coercion of arms. Congress have not the former, except in few cases. In particular States, this coercion is nearly sufficient; though he held it, in most cases, not entirely so. A certain portion of military force is absolutely necessary in large communities. Massachusetts is now feeling this necessity, and making provision for it. But how can this force be exerted on the States collectively? It is impossible. It amounts to a war between the parties. Foreign powers also will not be idle spectators. They will interpose; the confusion will increase; and a dissolution of the Union will ensue.

5. Influence, – he did not mean corruption, but a dispensation of those regular honors and emoluments which produce an attachment to the government. Almost all the weight of these is on the side of the States; and must continue so as long as the States continue to exist. All the passions, then, we see, of avarice, ambition, interest, which govern most individuals, and all public bodies, fall into the current of the States, and do not flow into the stream of the General Government. The former, therefore, will generally be an

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\(^3\) a feeling of camaraderie within a group
overmatch for the General Government, and render any confederacy in its very nature precarious.

Theory is in this case fully confirmed by experience. . . . How then are all these evils to be avoided? Only by such a complete sovereignty in the General Government as will turn all the strong principles and passions above-mentioned on its side.

Does the scheme of New Jersey produce this effect? Does it afford any substantial remedy whatever? On the contrary, it labors under great defects, and the defect of some of its provisions will destroy the efficacy of others. It gives a direct revenue to Congress, but this will not be sufficient. The balance can only be supplied by requisitions; which experience proves cannot be relied on. If States are to deliberate on the mode, they will also deliberate on the object, of the supplies; and will grant or not grant, as they approve or disapprove of it. The delinquency of one will invite and countenance it in others. Quotas too, must, in the nature of things, be so unequal, as to produce the same evil. To what standard will you resort?

Land is a fallacious one. Compare Holland with Russia; France, or England, with other countries of Europe; Pennsylvania with North Carolina, – will the relative pecuniary abilities, in those instances, correspond with the relative value of land? Take numbers of inhabitants for the rule, and make like comparison of different countries, and you will find it to be equally unjust. The different degrees of industry and improvement in different countries render the first object a precarious measure of wealth. Much depends, too, on situation. Connecticut, New Jersey, and North Carolina, not being commercial States, and contributing to the wealth of the commercial ones, can never bear quotas assessed by the ordinary rules of proportion. They will, and must, fail in their duty. Their example will be followed, – and the union itself be dissolved. Whence, then, is the national revenue to be drawn? From commerce; even from exports, which, notwithstanding the common opinion, are fit objects of moderate taxation; from excise, etc., etc. – These, though not equal, are less unequal than quotas.

Another destructive ingredient in the plan is that equality of suffrage which is so much desired by the small States. It is not in human nature that Virginia and the large States should consent to it; or, if they did, that they should long abide by it. It shocks too much all ideas of justice, and every human feeling. Bad principles in a government, though slow, are sure in their operation, and will gradually destroy it. A doubt has been raised whether Congress at present have a right to keep ships or troops in time of peace. He leans to the negative.
Mr. PATTERTON’S\(^4\) plan provides no remedy. If the powers proposed were adequate, the organization of Congress is such, that they could never be properly and effectually exercised. The members of Congress, being chosen by the States and subject to recall, represent all the local prejudices. Should the powers be found effectual, they will from time to time be heaped on them, till a tyrannic sway shall be established. The General power, whatever be its form, if it preserves itself, must swallow up the state powers. Otherwise, it will be swallowed up by them. It is against all the principles of a good government, to vest the requisite powers in such a body as Congress. Two sovereignties cannot co-exist within the same limits. Giving powers to Congress must eventuate in a bad government, or in no government. The plan of New Jersey, therefore, will not do.

What, then, is to be done? Here he was embarrassed. The extent of the country to be governed discouraged him. The expense of a General Government was also formidable; unless there were such a diminution of expense on the side of the State Governments, as the case would admit. If they were extinguished, he was persuaded that great economy might be obtained by substituting a General Government. He did not mean, however, to shock the public opinion by proposing such a measure.

On the other hand, he saw no other necessity for declining it. They are not necessary for any of the great purposes of commerce, revenue, or agriculture. Subordinate authorities, he was aware, would be necessary. There must be district tribunals; corporations for local purposes. But \(cui bono\)^5 the vast and expensive apparatus now appertaining to the States?

The only difficulty of a serious nature which occurred to him, was that of drawing representatives from the extremes to the center of the community. What inducements can be offered that will suffice? The moderate wages for the first branch could only be a bait to little demagogues. Three dollars, or thereabouts, he supposed, would be the utmost. The Senate, he feared, from a similar cause, would be filled by certain undertakers, who wish for particular offices under the government. This view of the subject almost led him to despair that a republican government could be established over so great an extent.

He was sensible, at the same time, that it would be unwise to propose one of any other form. In his private opinion, he had no scruple in declaring, supported as he was by the opinion of so many of the wise and good, that the

\(^{4}\) William Patterson, New Jersey

\(^{5}\) who benefits from
British Government was the best in the world: and that he doubted much whether any thing short of it would do in America.

He hoped gentlemen of different opinions would bear with him in this, and begged them to recollect the change of opinion on this subject which had taken place, and was still going on. It was once thought, that the power of Congress was amply sufficient to secure the end of their institution. The error was now seen by every one. The members most tenacious of republicanism, he observed, were as loud as any in declaring against the vices of democracy. This progress of the public mind led him to anticipate the time, when others as well as himself, would join in the praise bestowed by Mr. NECKAR on the British Constitution, namely, that it is the only government in the world “which unites public strength with individual security.”

In every community where industry is encouraged, there will be a division of it into the few and the many. Hence, separate interests will arise. There will be debtors and creditors, etc. Give all power to the many, they will oppress the few. Give all power to the few, they will oppress the many. Both, therefore, ought to have the power, that each may defend itself against the other. To the want of this check we owe our paper-money, instalment laws, etc. To the proper adjustment of it the British owe the excellence of their constitution. Their House of Lords is a most noble institution. Having nothing to hope for by a change, and a sufficient interest, by means of their property, in being faithful to the national interest, they form a permanent barrier against every pernicious innovation, whether attempted on the part of the Crown or of the Commons. No temporary Senate will have firmness enough to answer the purpose.

The Senate of Maryland which seems to be so much appealed to, has not yet been sufficiently tried. Had the people been unanimous and eager in the late appeal to them on the subject of a paper emission, they would have yielded to the torrent. Their acquiescing in such an appeal is a proof of it. Gentlemen differ in their opinions concerning the necessary checks, from the different estimates they form of the human passions. They suppose seven years a sufficient period to give the Senate an adequate firmness, from not duly

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6 Hamilton means that it was thought that the power of Congress under the Articles of Confederation would secure the purpose of the Congress.
7 Jacques Necker, a Geneva banker, and finance minister under Louis XVI
8 laws that frustrated the collection of debts by allowing repayment in distant future instalments
9 issuing paper money
considering the amazing violence and turbulence of the democratic spirit. When a great object of government is pursued, which seizes the popular passions, they spread like wild-fire and become irresistible. He appealed to the gentlemen from the New England States, whether experience had not there verified the remark.

As to the Executive, it seemed to be admitted that no good one could be established on republican principles. Was not this giving up the merits of the question; for can there be a good government without a good Executive? The English model was the only good one on this subject. The hereditary interest of the King was so interwoven with that of the nation, and his personal emolument so great, that he was placed above the danger of being corrupted from abroad; and at the same time was both sufficiently independent and sufficiently controlled, to answer the purpose of the institution at home. One of the weak sides of republics was their being liable to foreign influence and corruption. Men of little character, acquiring great power, become easily the tools of intermeddling neighbors. Sweden was a striking instance. The French and English had each their parties during the late revolution, which was effected by the predominant influence of the former.

What is the inference from all these observations? That we ought to go as far, in order to attain stability and permanency, as republican principles will admit. Let one branch of the Legislature hold their places for life, or at least during good behavior. Let the Executive also, be for life. He appealed to the feelings of the members present, whether a term of seven years would induce the sacrifices of private affairs which an acceptance of public trust would require, so as to insure the services of the best citizens. On this plan, we should have in the Senate a permanent will, a weighty interest, which would answer essential purposes. But is this a republican government, it will be asked. Yes, if all the magistrates are appointed and vacancies are filled by the people, or a process of election originating with the people.

He was sensible that an Executive, constituted as he proposed, would have in fact but little of the power and independence that might be necessary. On the other plan, of appointing him for seven years, he thought the Executive ought to have but little power. He would be ambitious, with the means of making creatures; and as the object of his ambition would be to prolong his power, it is probable that, in case of war he would avail himself of the emergency, to evade or refuse a degradation from his place. An Executive for life has not this motive for forgetting his fidelity, and will therefore be a safer depository of power.
It will be objected, probably, that such an Executive will be an *elective monarch*, and will give birth to the tumults which characterize that form of government. He would reply, that *monarch* is an indefinite term. It marks not either the degree or duration of power. If this Executive magistrate would be a monarch for life, the other proposed by the Report from the Committee of the Whole would be a monarch for seven years. The circumstance of being elective was also applicable to both.

It had been observed, by judicious writers, that elective monarchies would be the best if they could be guarded against the tumults excited by the ambition and intrigues of competitors. He was not sure that *tumults* were an inseparable evil. He thought this character of elective monarchies had been taken rather from particular cases, than from general principles. The election of Roman Emperors was made by the *army*. In *Poland* the election is made by great rival *princes*, with independent power, and ample means of raising commotions. In the German Empire, the appointment is made by the Electors and Princes, who have equal motives and means for exciting cabals and parties. Might not such a mode of election be devised among ourselves, as will defend the community against these effects in any dangerous degree?

Having made these observations, he would read to the Committee a sketch of a plan which he should prefer to either of those under consideration. He was aware that it went beyond the ideas of most members. But will such a plan be adopted out of doors? In return he would ask, will the people adopt the other plan? At present they will adopt neither. But he sees the Union dissolving, or already dissolved – he sees evils operating in the States which must soon cure the people of their fondness for democracies – he sees that a great progress has been already made, and is still going on, in the public mind. He thinks, therefore, that the people will in time be unshackled from their prejudices; and whenever that happens, they will themselves not be satisfied at stopping where the plan of Mr. RANDOLPH would place them, but be ready to go as far at least as he proposes. He did not mean to offer the paper he had sketched as a proposition to that Committee. It was meant only to give a more correct view of his ideas, and to suggest the amendments which he should probably propose to the plan of Mr. RANDOLPH, in the proper stages of its future discussion. He reads his sketch in the words following: to wit.

“I. The supreme Legislative power of the United States of America to be vested in two different bodies of men; the one to be called the Assembly, the other the Senate; who together shall form the Legislature of the United States,

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10 outside the Convention
with power to pass all laws whatsoever, subject to the negative hereafter mentioned.

"II. The Assembly to consist of persons elected by the people to serve for three years.

"III. The Senate to consist of persons elected to serve during good behavior; their election to be made by electors chosen for that purpose by the people. In order to this, the States to be divided into election districts. On the death, removal or resignation of any Senator, his place to be filled out of the district from which he came.

"IV. The supreme Executive authority of the United States to be vested in a Governor, to be elected to serve during good behavior; the election to be made by Electors chosen by the people in the Election Districts aforesaid. The authorities and functions of the Executive to be as follows: to have a negative on all laws about to be passed, and the execution of all laws passed; to have the direction of war when authorized or begun; to have, with the advice and approbation of the Senate, the power of making all treaties; to have the sole appointment of the heads or chief officers of the Departments of Finance, War, and Foreign Affairs; to have the nomination of all other officers (ambassadors to foreign nations included), subject to the approbation or rejection of the Senate; to have the power of pardoning all offences except treason, which he shall not pardon without the approbation of the Senate.

"V. On the death, resignation, or removal of the Governor, his authorities to be exercised by the President of the Senate till a successor be appointed.

"VI. The Senate to have the sole power of declaring war; the power of advising and approving all treaties; the power of approving or rejecting all appointments of officers, except the heads or chiefs of the Departments of Finance, War, and Foreign Affairs.

"VII. The supreme Judicial authority to be vested in Judges, to hold their offices during good behavior, with adequate and permanent salaries. This court to have original jurisdiction in all causes of capture, and an appellate jurisdiction in all causes in which the revenues of the General Government, or the citizens of foreign nations, are concerned.

"VIII. The Legislature of the United States to have power to institute courts in each State for the determination of all matters of general concern.

"IX. The Governor, Senators, and all officers of the United States, to be liable to impeachment for mal- and corrupt conduct; and upon conviction to be removed from office, and disqualified for holding any place of trust or profit: all impeachments to be tried by a Court to consist of the Chief –,
Judge of the Superior Court of Law of each State, provided such Judge shall hold his place during good behavior and have a permanent salary.

"X. All laws of the particular States contrary to the Constitution or laws of the United States to be utterly void; and the better to prevent such laws being passed, the Governor or President of each State shall be appointed by the General Government, and shall have a negative upon the laws about to be passed in the State of which he is the Governor or President.

"XI. No State to have any forces land or naval; and the militia of all the States to be under the sole and exclusive direction of the United States, the officers of which to be appointed and commissioned by them."

On these several articles he entered into explanatory observations corresponding with the principles of his introductory reasoning. The Committee rose, and the House adjourned.
On June 29, the delegates approved (6 in favor, 4 opposed, and 1 state divided) proportional representation in the House. The delegates then turned to Resolution 8 of the revised Virginia Plan on representation in the second branch [Document 13]. Oliver Ellsworth introduced the Connecticut Compromise: equal representation of states in the second branch in exchange for proportional representation of population in the first branch.

As early as June 6, John Dickinson of Delaware had expressed a willingness to entertain popular election of the first branch of government as long as the states elected the second branch. On June 11, Roger Sherman of Connecticut bluntly stated that each state should have equal representation in the Senate “to protect itself; otherwise, a few large States will rule the rest.” This evoked a rare but gently worded protest from Pennsylvania delegate Benjamin Franklin, who offered a careful demonstration that “it is equally in the power of the lesser States to swallow up the greater.” A combination of senators from smaller states could easily thwart the proposals of the three largest states.

Sherman replied to these arguments on June 28, noting that equal representation in the second branch would protect the rights of the minority. “The question is, not what rights naturally belong to man, but how they may be most equally and effectually guarded in society. And if some give up more than others, in order to obtain this end, there can be no room for complaint. To do otherwise, to require an equal concession from all, if it would create danger to the rights of some, would be sacrificing the end to the means.” Yet Madison “entreated the gentlemen representing the small States to renounce a principle which was confessedly unjust, which could never be admitted, and if admitted must infuse mortality into a Constitution which we wished to last forever.”

Division over the issue of representation brought the Convention to “a full stop” by the end of June. The impatient Alexander Hamilton went back to New York on June 29, not to return until early September. Yet this day also saw the restoration of the New Jersey coalition. It would vote with Connecticut, New York, Delaware, and Luther Martin from Maryland in yet another effort to resist proportional representation in both branches. Oliver Ellsworth of Connecticut claimed that a
Partly National, Partly Federal

substantive principle and not a mere compromise was involved. He announced the
discovery of a new principle of dual representation: “We were partly national; partly federal.”

The “great division” in America, responded Madison on June 30, is not “between the large and small States; it lay between the Northern and Southern” over “their having or not having slaves.” Accordingly, if the delegates were interested in the balance of interests doctrine, they should be talking about balancing North and South rather than large and small states in the Senate.

On June 30, William Davie of North Carolina threw his weight behind Ellsworth’s newly discovered partly national, partly federal concept. He would lead the North Carolina delegation from the wholly national position it held in early June to a strong partly national, partly federal position by July 16. Benjamin Franklin’s papers indicate that on June 30 he, too, was attracted to the notion.

Loose talk of division and disunion came from Gunning Bedford of Delaware, who remained unconvinced that there was a third or middle way “between a perfect consolidation and a mere confederacy of the States.” He thought the attempt to compromise on the structure of the federal government was an illusion. He held out for adding powers to the government and leaving its structure alone. Nevertheless, Bedford was elected on Monday July 2 to the Gerry Committee to work out the very compromise that he had found so objectionable on Saturday. He accepted the committee assignment.


June 29

In Convention. – Doctor JOHNSON,¹ The controversy must be endless whilst gentlemen differ in the grounds of their arguments; those on one side considering the States as districts of people composing one political society: those on the other, considering them as so many political societies. The fact is, that the States do exist as political societies, and a government is to be formed for them in their political capacity, as well as for the individuals composing them. . . .

Mr. MADISON agreed with Doctor JOHNSON, that the mixed nature of the Government ought to be kept in view; but thought too much stress was laid on the rank of the States as political societies. There was a gradation, he

¹ William Samuel Johnson, Connecticut
observed, from the smallest corporation, with the most limited powers, to the
largest empire, with the most perfect sovereignty.

He entreated the gentlemen representing the small States to renounce a
principle which was confessedly unjust; which could never be admitted; and
which, if admitted, must infuse mortality into a Constitution which we wished
to last forever. He prayed them to ponder well the consequences of suffering
the Confederacy to go to pieces.

Mr. ELLSWORTH moved, "that the rule of suffrage in the second branch
be the same with that established by the Articles of Confederation." [Representation was by states, rather than by population.] He was not sorry, on
the whole, he said, that the vote just passed [representation in the first branch,
which became the House of Representatives, would not be representation by states]
had determined against this rule in the first branch. He hoped it would become
a ground of compromise with regard to the second branch. We were partly
national, partly federal. The proportional representation in the first branch was
conformable to the national principle, and would secure the large States
against the small. An equality of voices [among the states] was conformable to
the federal principle, and was necessary to secure the small States against the
large. He trusted that on this middle ground a compromise would take place.
He did not see that it could on any other, and if no compromise should take
place, our meeting would not only be in vain, but worse than in vain. To the
eastward, he was sure Massachusetts was the only State that would listen to a
proposition for excluding the States, as equal political societies, from an equal
voice in both branches. The others would risk every consequence rather than
part with so dear a right. An attempt to deprive them of it was at once cutting
the body of America in two. The large States he conceived would,
notwithstanding the equality of votes, have an influence that would maintain
their superiority. Holland, as had been admitted (by Mr. MADISON), had,
notwithstanding a like equality in the Dutch confederacy, a prevailing
influence in the public measures. The power of self-defense was essential to the
small States. Nature had given it to the smallest insect of the creation. He could
never admit that there was no danger of combinations among the large States.
They will like individuals find out and avail themselves of the advantage to be
gained by it. It was true the danger would be greater if they were contiguous,
and had a more immediate and common interest. A defensive combination of
the small States was rendered more difficult by their greater number. He would
mention another consideration of great weight. The existing Confederation
was founded on the equality of the States in the article of suffrage, – was it
meant to pay no regard to this antecedent plighted faith? Let a strong
Executive, a Judiciary, and Legislative power, be created, but let not too much be attempted, by which all may be lost. He was not in general a half-way man, yet he preferred doing half the good we could, rather than do nothing at all. The other half may be added when the necessity shall be more fully experienced.

Mr. BALDWIN could have wished that the powers of the general Legislature had been defined, before the mode of constituting it had been agitated. He should vote against the motion of Mr. ELLSWORTH, though he did not like the Resolution as it stood in the Report of the Committee of the Whole. He thought the second branch ought to be the representation of property, and that, in forming it, therefore, some reference ought to be had to the relative wealth of their constituents, and to the principles on which the Senate of Massachusetts was constituted. He concurred with those who thought it would be impossible for the General Legislature to extend its cares to the local matters of the States.

June 30

Mr. WILSON did not expect such a motion after the establishment of the contrary principle in the first branch; and considering the reasons which would oppose it, even if an equal vote had been allowed in the first branch. The gentleman from Connecticut (Mr. ELLSWORTH) had pronounced, that if the motion should not be acceded to, of all the States north of Pennsylvania one only would agree to any General Government. He entertained more favorable hopes of Connecticut and of the other Northern States. He hoped the alarms exceeded their cause, and that they would not abandon a country to which they were bound by so many strong and endearing ties. But should the deplored event happen, it would neither stagger his sentiments nor his duty. If the minority of the people of America refuse to coalesce with the majority on just and proper principles; if a separation must take place, it could never happen on better grounds. The votes of yesterday against the just principle of representation, were as twenty-two to ninety of the people of America. Taking the opinions to be the same on this point – and he was sure, if there was any room for change, it could not be on the side of the majority – the question will be, shall less than one-fourth of the United States withdraw themselves from the Union, or shall more than three-fourths renounce the inherent, indisputable and unalienable rights of men, in favor of the artificial system of

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2 Abraham Baldwin, Georgia
3 James Wilson, Pennsylvania
States? If issue must be joined, it was on this point he would choose to join it. The gentleman from Connecticut, in supposing that the preponderance secured to the majority in the first branch had removed the objections to an equality of votes among the states in the second branch for the security of the minority, narrowed the case extremely. Such an equality will enable the minority to control, in all cases whatsoever, the sentiments and interests of the majority. Seven States will control six: seven States, according to the estimates that had been used, composed twenty-four ninetieths of the whole people. It would be in the power, then, of less than one-third to overrule two-thirds, whenever a question should happen to divide the States in that manner. Can we forget for whom we are forming a Government? Is it for men, or for the imaginary beings called States? Will our honest constituents be satisfied with metaphysical distinctions? Will they, ought they to, be satisfied with being told, that the one third compose the greater number of States? The rule of suffrage ought on every principle to be the same in the second as in the first branch. If the Government be not laid on this foundation, it can be neither solid nor lasting. Any other principle will be local, confined and temporary. . . . We talk of States, till we forget what they are composed of. Is a real and fair majority the natural hot-bed of aristocracy? It is a part of the definition of this species of government, or rather of tyranny, that the smaller number governs the greater. It is true that a majority of States in the second branch cannot carry a law against a majority of the people in the first. But this removes half only of the objection. Bad governments are of two sorts, — first, that which does too little; secondly, that which does too much; that which fails through weakness, and that which destroys through oppression. Under which of these evils do the United States at present groan? Under the weakness and inefficiency of its government. To remedy this weakness we have been sent to this Convention. If the motion should be agreed to, we shall leave the United States fettered precisely as heretofore; with the additional mortification of seeing the good purpose of the fair representation of the people in the first branch, defeated in the second. Twenty-four will still control sixty-six. He lamented that such a disagreement should prevail on the point of representation; as he did not foresee that it would happen on the other point most contested, the boundary between the general and the local authorities. He thought the States necessary and valuable parts of a good system.

Mr. ELLSWORTH. The capital objection of Mr. WILSON, “that the minority will rule the majority,” is not true. The power is given to the few to save them from being destroyed by the many. If an equality of votes had been given to them in both branches, the objection might have had weight. Is it a
novel thing that the few should have a check on the many? Is it not the case in
the British Constitution, the wisdom of which so many gentlemen have united
in applauding? Have not the House of Lords, who form so small a proportion
of the nation, a negative on the laws, as a necessary defense of their peculiar
rights against the encroachments of the Commons? No instance of a
confederacy has existed in which an equality of voices has not been exercised
by the members of it. We are running from one extreme to another. We are
razing the foundations of the building, when we need only repair the roof. No
salutary measure has been lost for want of a majority of the States to favor it. If
security be all that the great States wish for, the first branch secures them. The
danger of combinations among them is not imaginary. Although no particular
abuses could be foreseen by him, the possibility of them would be sufficient to
alarm him. But he could easily conceive cases in which they might result from
such combinations. Suppose, that, in pursuance of some commercial treaty or
arrangement, three or four free ports and no more were to be established,
would not combinations be formed in favor of Boston, Philadelphia, and some
port of the Chesapeake? A like concert might be formed in the appointment of
the great offices. He appealed again to the obligations of the Federal pact,
which was still in force, and which had been entered into with so much
solemnity; persuading himself that some regard would still be paid to the
plighted faith under which each State, small as well as great, held an equal right
of suffrage in the general councils. His remarks were not the result of partial
or local views. The State he represented (Connecticut) held a middle rank.

Mr. MADISON. It was urged, he said, continually, that an equality of
votes in the second branch was not only necessary to secure the small, but
would be perfectly safe to the large ones; whose majority in the first branch was
an effectual bulwark. But notwithstanding this apparent defense, the majority
of States might still injure the majority of the people.... He admitted that
every peculiar interest, whether in any class of citizens, or any description of
States, ought to be secured as far as possible. Wherever there is danger of
attack, there ought to be given a constitutional power of defense. But he
contended that the States were divided into different interests, not by their
difference of size, but by other circumstances; the most material of which
resulted partly from climate, but principally from the effects of their having or
not having slaves. These two causes concurred in forming the great division of
interests in the United States. It did not lie between the large and small States.
It lay between the Northern and Southern; and if any defensive power were
necessary, it ought to be mutually given to these two interests....
Mr. DAVIE was much embarrassed, and wished for explanations. The Report of the Committee, allowing the Legislatures to choose the Senate, and establishing a proportional representation in it, seemed to be impracticable. There will, according to this rule, be ninety members in the outset, and the number will increase as new States are added. It was impossible that so numerous a body could possess the activity and other qualities required in it. Were he to vote on the comparative merits of the Report, as it stood, and the amendment, he should be constrained to prefer the latter. The appointment of the Senate by electors, chosen by the people for that purpose, was, he conceived, liable to an insuperable difficulty. The larger counties or districts, thrown into a general district, would certainly prevail over the smaller counties or districts, and merit in the latter would be excluded altogether. The Report, therefore, seemed to be right in referring the appointment to the Legislatures, whose agency in the general system did not appear to him objectionable, as it did to some others. The fact was, that the local prejudices and interests which could not be denied to exist, would find their way into the national councils, whether the Representatives should be chosen by the Legislatures, or by the people themselves. On the other hand, if a proportional representation was attended with insuperable difficulties, the making the Senate the representative of the States looked like bringing us back to Congress again, and shutting out all the advantages expected from it. Under this view of the subject, he could not vote for any plan for the Senate yet proposed. He thought that, in general, there were extremes on both sides. We were partly federal, partly national, in our union; and he did not see why the Government might not in some respects operate on the States, in others on the people.

Doctor FRANKLIN. The diversity of opinions turns on two points. If a proportional representation takes place, the small States contend that their liberties will be in danger. If an equality of votes is to be put in its place, the large States say their money will be in danger. When a broad table is to be made, and the edges of planks do not fit, the artist takes a little from both, and makes a good joint. In like manner, here, both sides must part with some of their demands, in order that they may join in some accommodating proposition.

Mr. KING observed, that... he was... filled with astonishment, that, if we were convinced that every man in America was secured in all his rights, we should be ready to sacrifice this substantial good to the phantom of State

\[4\] thrown into a state of confusion

\[5\] Rufus King, Massachusetts
sovereignty. That his feelings were more harrowed and his fears more agitated for his country than he could express; that he conceived this to be the last opportunity of providing for its liberty and happiness: that he could not, therefore, but repeat his amazement, that when a just government, founded on a fair representation of the people of America, was within our reach, we should renounce the blessing, from an attachment to the ideal freedom and importance of States. That should this wonderful illusion continue to prevail, his mind was prepared for every event, rather than sit down under a Government founded on a vicious principle of representation, and which must be as short-lived as it would be unjust. . . .

Mr. BEDFORD, 6 contended, that there was no middle way between a perfect consolidation, and a mere confederacy of the States. The first is out of the question; and in the latter they must continue, if not perfectly, yet equally, sovereign. If political societies possess ambition, avarice, and all the other passions which render them formidable to each other, ought we not to view them in this light here? Will not the same motives operate in America as elsewhere? If any gentleman doubts it, let him look at the votes. Have they not been dictated by interest, by ambition? Are not the large States evidently seeking to aggrandize themselves at the expense of the small? . . . The three large States have a common interest to bind them together in commerce. But whether a combination, as we supposed, or a competition, as others supposed, shall take place among them, in either case the small States must be ruined. We must, like Solon, 7 make such a government as the people will approve. Will the smaller States ever agree to the proposed degradation of them? It is not true that the people will not agree to enlarge the powers of the present Congress. The language of the people has been, that Congress ought to have the power of collecting an impost, and of coercing the States where it may be necessary. On the first point they have been explicit, and, in a manner, unanimous in their declarations. And must they not agree to this, and similar measures, if they ever mean to discharge their engagements? The little States are willing to observe their engagements, but will meet the large ones on no ground but that of the Confederation. We have been told, with a dictatorial air, that this is the last moment for a fair trial in favor of a good government. It will be the last, indeed, if the propositions reported from the Committee go forth to the people. He was under no apprehensions. The large States dare not dissolve the Confederation. If they do, the small ones will find some foreign ally, of more

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6 Gunning Bedford Jr., Delaware
7 ancient Athenian lawmaker and statesman
honor and good faith, who will take them by the hand, and do them justice. He did not mean, by this, to intimidate or alarm. It was a natural consequence, which ought to be avoided by enlarging the Federal powers, not annihilating the Federal system. This is what the people expect. All agree in the necessity of a more efficient government, and why not make such an one as they desire?

Mr. ELLSWORTH. Under a National Government, he should participate in the national security... but that was all. What he wanted was domestic happiness. The National Government could not descend to the local objects on which this depended. It could only embrace objects of a general nature. He turned his eyes, therefore, for the preservation of his rights, to the State Governments. From these alone he could derive the greatest happiness he expects in this life. His happiness depends on their existence, as much as a newborn infant on its mother for nourishment. If this reasoning was not satisfactory, he had nothing to add that could be so. . . .
On July 2, there was a tie vote, 5–5–1 on the motion of Connecticut delegate Oliver Ellsworth giving each state one vote in the second branch and proportional representation in the first branch. It was time to compromise and move forward or admit deadlock and go home. The vote was 10–1 to commit to a committee of one member from each state. Only Pennsylvania voted “no.” Madison, firmly committed to proportional representation in both houses and skeptical that a committee would resolve the dispute, could not persuade his home state to vote “no.”

Despite the intransigence of Madison and the decided opinions of certain others, the overall mood of the Convention had shifted. Some of the former advocates for proportional representation were now willing to refer the problem to committee. Each state delegation selected its committee member. The composition of the committee tilted towards the federal principle of equal state representation in the second branch. Six were supporters of it in at least the second branch throughout June: Elbridge Gerry, who was chosen from Massachusetts over Rufus King and Nathaniel Gorham; Oliver Ellsworth, who would represent Connecticut; Robert Yates, who was chosen from New York; William Patterson, representing New Jersey; and Gunning Bedford Jr., representing Delaware. Others on the committee had not yet declared a particular stance. The independent-minded Luther Martin was chosen over Daniel of St. Thomas Jennifer to represent Maryland, and Abraham Baldwin was chosen over William Houstoun for Georgia. The self-depreciating William Davie was chosen to represent North Carolina and the ever prudent Benjamin Franklin was chosen over Gouverneur Morris and James Wilson to represent Pennsylvania. John Rutledge was elected from South Carolina. And George Mason, rather than Madison or John Blair or Edmund Randolph, was elected to represent Virginia.

On July 5, the Gerry Committee presented its report, which offered a compromise: if the second branch of the legislature had representation by states, the other would be given sole authority to originate all bills “raising or appropriating money.” This provision also became a subject of debate.

July 2

In Convention, – On the question for allowing each State one vote in the second branch, as moved by Mr. ELLSWORTH, it was lost, by an equal division of votes, – Connecticut, New York, New Jersey, Delaware, Maryland, aye – 5; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, no – 5; Georgia, divided (Mr. Baldwin, aye; Mr. Houston, no),

Mr. PINCKNEY¹ thought an equality of votes in the second branch inadmissible. At the same time he was extremely anxious that something should be done, considering this as the last appeal to a regular experiment. Congress have failed in almost every effort for an amendment of the Federal system. Nothing has prevented a dissolution of it, but the appointment of this Convention; and he could not express his alarms for the consequence of such an event. He read his motion to form the States into classes, with an apportionment of Senators among them.

General PINCKNEY² was willing the motion might be considered. He did not entirely approve it. … Some compromise seemed to be necessary, the States being exactly divided on the question for an equality of votes in the second branch. He proposed that a Committee consisting of a member from each State should be appointed to devise and report some compromise.

Mr. L. MARTIN had no objection to a commitment, but no modifications whatever could reconcile the smaller States to the least diminution of their equal sovereignty.

Mr. SHERMAN.³ We are now at a full stop; and nobody, he supposed, meant that we should break up without doing something. A committee he thought most likely to hit on some expedient.

Mr. GOUVERNEUR MORRIS⁴ thought a Committee advisable, as the Convention had been equally divided. He had a stronger reason also. The mode of appointing the second branch tended, he was sure, to defeat the object of it. What is this object? To check the precipitation, changeableness, and excesses, of the first branch. … Every man of observation had seen in the democratic branches of the State Legislatures, precipitation – in Congress,

¹ Charles Pinckney, South Carolina
² Charles Cotesworth Pinckney, South Carolina, an elder second cousin of Charles Pinckney
³ Roger Sherman, Connecticut
⁴ Gouverneur Morris, Pennsylvania
changeableness – in every department, excesses against personal liberty, private property, and personal safety. What qualities are necessary to constitute a check in this case? Abilities and virtue are equally necessary in both branches. Something more, then, is now wanted. In the first place, the checking branch must have a personal interest in checking the other branch. One interest must be opposed to another interest. Vices, as they exist, must be turned against each other. . . .

Doctor WILLIAMSON. If we do not concede on both sides, our business must soon be at an end. He approved of the commitment, supposing that, as the Committee would be a smaller body, a compromise would be pursued with more coolness.

Mr. WILSON objected to the Committee, because it would decide according to that very rule of voting which was opposed on one side. Experience in Congress had also proved the inutility of Committees consisting of members from each State.

Mr. LANSING would not oppose the commitment, though expecting little advantage from it.

Mr. MADISON opposed the commitment. He had rarely seen any other effect than delay from such committees in Congress. Any scheme of compromise that could be proposed in the Committee might as easily be proposed in the House; and the report of the Committee, where it contained merely the opinion of the Committee, would neither shorten the discussion, nor influence the decision of the House.

Mr. GERRY was for the commitment. Something must be done, or we shall disappoint not only America, but the whole world. He suggested a consideration of the state we should be thrown into by the failure of the Union. We should be without an umpire to decide controversies, and must be at the mercy of events. What, too, is to become of our treaties – what of our foreign debts – what of our domestic? We must make concessions on both sides. Without these, the Constitutions of the several States would never have been formed.

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5 Hugh Williamson, North Carolina
6 James Wilson, Pennsylvania
7 by states
8 John Lansing Jr., New York
9 Elbridge Gerry, Massachusetts

On the question for committing it “to a member from each state,” – Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye – 10; Pennsylvania, no – 1.

The Committee, elected by ballot, were, Mr. GERRY, Mr. ELLSWORTH, Mr. YATES, Mr. PATTERSON, Dr. FRANKLIN, Mr. BEDFORD, Mr. MARTIN, Mr. MASON, Mr. DAVIE, Mr. RUTLEDGE, Mr. BALDWIN.

That time might be given to the Committee, and to such as choose to attend to the celebrations on the anniversary of Independence, the Convention adjourned till Thursday.

July 5

In Convention, – Mr. GERRY delivered in, from the Committee appointed on Monday last, the following Report:

“The Committee to whom was referred the eighth Resolution of the Report from the Committee of the Whole House, and so much of the seventh as has not been decided on, submit the following Report:

“That the subsequent propositions be recommended to the Convention on condition that both shall be generally adopted.

“1. That in the first branch of the Legislature each of the States now in the Union shall be allowed one member for every forty thousand inhabitants, of the description reported in the seventh Resolution of the Committee of the Whole House: that each State not containing that number shall be allowed one member: that all bills for raising or appropriating money, and for fixing the salaries of the officers of the Government of the United States, shall originate in the first branch of the Legislature, and shall not be altered or amended by the second branch; and that no money shall be drawn from the public Treasury but in pursuance of appropriations to be originated in the first branch.

“2. That in the second branch, each State shall have an equal vote.”

Mr. GORHAM\textsuperscript{10} observed, that, as the report consisted of propositions mutually conditional, he wished to hear some explanations touching the grounds on which the conditions were estimated.

\textsuperscript{10} Nathaniel Gorham, Massachusetts
Mr. GERRY.\textsuperscript{11} The Committee were of different opinions, as well as the Deputations from which the Committee were taken; and agreed to the Report merely in order that some ground of accommodation might be proposed. Those opposed to the equality of votes have only assented conditionally; and if the other side do not generally agree, will not be under any obligation to support the Report.

Mr. WILSON thought the Committee had exceeded their powers.

Mr. MARTIN was for taking the question on the whole Report.

Mr. WILSON was for a division of the question; otherwise it would be a leap in the dark.

Mr. MADISON could not regard the privilege of originating money bills as any concession on the side of the small States. Experience proved that it had no effect. If seven States in the upper branch wished a bill to be originated, they might surely find some member from some of the same States in the lower branch, who would originate it. The restriction as to amendments was of as little consequence. Amendments could be handed privately by the Senate to members in the other House. Bills could be negatived, that they might be sent up in the desired shape. If the Senate should yield to the obstinacy of the first branch, the use of that body, as a check, would be lost. If the first branch should yield to that of the Senate, the privilege would be nugatory. Experience had also shown, both in Great Britain, and the States having a similar regulation, that it was a source of frequent and obstinate altercations. These considerations had produced a rejection of a like motion on a former occasion, when judged by its own merits. It could not, therefore, be deemed any concession on the present, and left in force all the objections which had prevailed against allowing each State an equal voice. He conceived that the Convention was reduced to the alternative of either departing from justice in order to conciliate the smaller States, and the minority of the people of the United States, or of displeasing these, by justly gratifying the larger States and the majority of the people. He could not himself hesitate as to the option he ought to make. The Convention, with justice and a majority of the people on their side, had nothing to fear. With injustice and the minority on their side, they had every thing to fear. It was in vain to purchase concord in the Convention on terms which would perpetuate discord among their constituents. . . . Harmony in the Convention was, no doubt, much to be desired. Satisfaction to all the States, in the first instance, still more so. But if the principal States comprehending a majority of the people of the United

\textsuperscript{11} Elbridge Gerry, Massachusetts
States, should concur in a just and judicious plan, he had the firmest hopes that all the other States would by degrees accede to it.

Mr. BUTLER\textsuperscript{12} said he could not let down his idea of the people of America so far as to believe they would, from mere respect to the Convention, adopt a plan evidently unjust. He did not consider the privilege concerning money bills as of any consequence. He urged, that the second branch ought to represent the States according to their property.

Mr. GOVERNEUR MORRIS thought the form as well as the matter of the Report objectionable. It seemed, in the first place, to render amendment impracticable. In the next place, it seemed to involve a pledge to agree to the second part, if the first should be agreed to. He conceived the whole aspect of it to be wrong. He came here as a Representative of America; he flattered himself he came here in some degree as a Representative of the whole human race; for the whole human race will be affected by the proceedings of this Convention. He wished gentlemen to extend their views beyond the present moment of time; beyond the narrow limits of place from which they derive their political origin. If he were to believe some things which he had heard, he should suppose that we were assembled to truck and bargain for our particular States. He cannot descend to think that any gentlemen are really actuated by these views. We must look forward to the effects of what we do. These alone ought to guide us. Much has been said of the sentiments of the people. They were unknown. They could not be known. All that we can infer is, that, if the plan we recommend be reasonable and right, all who have reasonable minds and sound intentions will embrace it, notwithstanding what had been said by some gentlemen….\textsuperscript{2}

But returning to the Report, he could not think it in any respect calculated for the public good. As the second branch is now constituted, there will be constant disputes and appeals to the States, which will undermine the General Government, and control and annihilate the first branch…. He wished our ideas to be enlarged to the true interest of man, instead of being circumscribed within the narrow compass of a particular spot. And, after all, how little can be the motive yielded by selfishness for such a policy? Who can say, whether he himself, much less whether his children, will the next year be an inhabitant of this or that State?

Mr. BEDFORD…. The condition of the United States requires that something should be immediately done. It will be better that a defective plan should be adopted, than that none should be recommended. He saw no reason

\textsuperscript{12} Pierce Butler, South Carolina
why defects might not be supplied by meetings ten, fifteen or twenty years hence.

Mr. ELLSWORTH said, he had not attended the proceedings of the Committee, but was ready to accede to the compromise they had reported. Some compromise was necessary; and he saw none more convenient or reasonable.

Mr. WILLIAMSON hoped that the expressions of individuals would not be taken for the sense of their colleagues, much less of their States, which was not and could not be known. He hoped, also, that the meaning of those expressions would not be misconstrued or exaggerated. He did not conceive that (Mr. GOUVERNEUR MORRIS) meant that the sword ought to be drawn against the smaller States. He only pointed out the probable consequences of anarchy in the United States. A similar exposition ought to be given of the expressions of (Mr. GORHAM). He was ready to hear the Report discussed; but thought the propositions contained in it the most objectionable of any he had yet heard.

Mr. PATTERSON said that he had, when the report was agreed to in the Committee, reserved to himself the right of freely discussing it. He acknowledged that the warmth complained of was improper; but he thought the sword and the gallows little calculated to produce conviction. He complained of the manner in which Mr. MADISON and Mr. G. MORRIS had treated the small States.

Mr. GERRY. Though he had assented to the Report in the Committee, he had very material objections to it. We were, however, in a peculiar situation. We were neither the same nation, nor different nations. We ought not, therefore, to pursue the one or the other of these ideas too closely. If no compromise should take place, what will be the consequence? A secession he foresaw would take place; for some gentlemen seemed decided on it. Two different plans will be proposed, and the result no man could foresee. If we do not come to some agreement among ourselves, some foreign sword will probably do the work for us.

Mr. MASON. The Report was meant not as specific propositions to be adopted, but merely as a general ground of accommodation. There must be some accommodation on this point, or we shall make little further progress in

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13 According to a footnote Madison made to his notes on the debates of July 5, Roger Sherman attended the Gerry committee meetings in the place of Ellsworth, who “was kept away by indisposition,” that is, a slight illness.
the work. Accommodation was the object of the House in the appointment of
the Committee, and of the Committee in the Report they had made. . . .

The first proposition in the Report for fixing the representation in the first
branch, "one member for every forty thousand inhabitants," being taken up, –

Mr. GOUVERNEUR MORRIS objected to that scale of apportionment.
He thought property ought to be taken into the estimate as well as the number
of inhabitants. Life and liberty were generally said to be of more value than
property. An accurate view of the matter would, nevertheless, prove that
property was the main object of society. . . .

Mr. RUTLEDGE. The gentleman last up had spoken some of his
sentiments precisely. Property was certainly the principal object of society. If
numbers should be made the rule of representation, the Atlantic States would
be subjected to the Western.\footnote{14} He moved that the first proposition in the
Report be postponed, in order to take up the following, \textit{viz.}\footnote{15}: "That the
suffrages of the several States be regulated and proportioned according to the
sums to be paid towards the general revenue by the inhabitants of each State
respectively: that an apportionment of suffrages, according to the ratio
aforesaid shall be made and regulated at the end of —— years from the first
meeting of the Legislature of the United States, and at the end of every ——
years; but that for the present, and until the period above mentioned, the
suffrages shall be for New Hampshire – , for Massachusetts – , etc."

Col. MASON said, the case of new States was not unnoticed in the
Committee: but it was thought, and he was himself decidedly of opinion, that if
they made a part of the Union, they ought to be subject to no unfavorable
discriminations. Obvious considerations required it.

Mr. RANDOLPH concurred with Mr. MASON.

On the question on Mr. RUTLEDGE’S motion, – South Carolina, aye – 1;
Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware,
Maryland, Virginia, North Carolina, no – 9; Georgia, not on the floor.

\footnote{14} The western states that Rutledge is probably referring to are the states to be carved
out of the Northwest Territories ceded earlier primarily by Virginia. The Northwest
Ordinance had been debated in the existing Confederation Congress during the 1780s
and the debate was about to come to an end. The existing Congress passed the
Northwest Ordinance a few days after July 5, 1787. Rutledge did not explain why he
thought states arising in the then sparsely occupied western territory would subject the
existing states to their will.

\footnote{15} abbreviation of the Latin \textit{videlicet} (namely)
More than one argument over principle was at stake in the debates leading to the Connecticut Compromise. The Gerry Committee Report (Document 17) illuminated the opposing concerns of two parties: those who saw proportional representation in the legislative branch as required by justice, and those whose concern to protect state sovereignty caused them to insist on equal representation for each state. But during the final days of the discussion over representation, the difference between small and large states receded in comparison to the difference between states holding large populations of slaves and those in which the overwhelming majority of laborers were free. This issue had already arisen (see Document 12).

The North and South Carolina delegates reiterated their concern that wealth be represented, since the purpose of government, they held, was to protect property. Slaves were the specific property they had in mind, and the South Carolina delegates now contended that counting merely three-fifths of the slave population when determining a number of representatives proportional to population would not adequately protect that species of property. Other delegates remarked on the inconsistency in counting three-fifths of the slave population for purposes of taxation and the entire population for purposes of apportioning representation. Some wondered why slave property was to be counted but not other kinds of property. And still other delegates recoiled at the suggestion of counting slaves as “property” at all.

The delegates did seem to move towards consensus on one point: if population were to determine representation, a periodic census would need to be taken. Consideration of this point brought the delegates once again to disputing whether representation should be proportional to population or accorded equally to each state. While Madison insisted on the justice of proportional representation, Roger Sherman of Connecticut argued that equal representation of each state was important not as a principle of justice but rather to insure the survival of independent state governments.

Despite the differing positions, and the occasionally heated language, the long journey over representation that started in earnest on June 11 would come to an end.
on July 16. On that date, despite the “no” votes of Virginia, Pennsylvania, South Carolina, and Georgia, delegates approved what (because of the roles played by Roger Sherman and Oliver Ellsworth of Connecticut in bringing it about) came to be called the Connecticut Compromise. Five states voted to affirm it, and due to the division of the Massachusetts delegation and the absence of the New York delegation, the compromise passed, allowing the Convention to begin discussing the powers to be granted Congress.


July 11

Mr. WILLIAMSON\(^1\) ... moved ... “that in order to ascertain the alterations that may happen in the population and wealth of the several States, a census shall be taken of the free white inhabitants, and three-fifths of those of other descriptions on the first year after this government shall have been adopted, and every —— year thereafter; and that the representation be regulated accordingly.”

...Mr. BUTLER\(^2\) and General PINCKNEY\(^3\) insisted that blacks be included in the rule of representation equally with the whites; and for that purpose moved that the words “three-fifths” be struck out.

Mr. GERRY\(^4\) thought that three-fifths of them was, to say the least, the full proportion that could be admitted.

Mr. GORHAN.\(^5\) This ratio was fixed by Congress as a rule of taxation. Then it was urged, by the Delegates representing the States having slaves, that the blacks were still more inferior to freemen. At present, when the ratio of representation is to be established, we are assured that they are equal to freemen. The arguments on the former occasion had convinced him that three-fifths was pretty near the just proportion, and he should vote according to the same opinion now.

Mr. BUTLER insisted that the labor of a slave in South Carolina was as productive and valuable as that of a freeman in Massachusetts; that as wealth

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\(^1\) Hugh Williamson, North Carolina
\(^2\) Pierce Butler, South Carolina
\(^3\) Charles Cotesworth Pinckney, South Carolina
\(^4\) Elbridge Gerry, Massachusetts
\(^5\) Nathaniel Gorham, Massachusetts
was the great means of defense and utility to the nation, they were equally
valuable to it with freemen; and that consequently an equal representation
ought to be allowed for them in a government which was instituted principally,
for the protection of property, and was itself to be supported by property.

... Mr. WILLIAMSON reminded Mr. GORHAM that if the Southern
States contended for the inferiority of blacks to whites when taxation was in
view, the Eastern States, on the same occasion, contended for their equality.
He did not, however, either then or now, concur in either extreme, but
approved of the ratio of three-fifths.

On Mr. BUTLER’S motion, for considering blacks as equal to whites in
the apportionment of representation, – Delaware, South Carolina, Georgia,
aye – 3; Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland,
Virginia, North Carolina, no – 7; New York, not on the floor.

Mr. RUTLEDGE contended for the admission of wealth in the estimate
by which representation should be regulated. He moved that, “at the end of
— years after the first meeting of the Legislature, and of every —— years
thereafter, the Legislature shall proportion the representation according to the
principles of wealth and population.”

... Mr. GORHAM. If the Convention, who are comparatively so little
biased by local views, are so much perplexed, how can it be expected that the
Legislature hereafter, under the full bias of those views will be able to settle a
standard? He was convinced, by the arguments of others and his own
reflections, that the Convention ought to fix some standard or other.

Mr. GOUVERNEUR MORRIS. The arguments of others and his own
reflections had led him to a very different conclusion. If we cannot agree on a
rule that will be just at this time, how can we expect to find one that will be just
in all times to come? Surely those who come after us will judge better of things
present than we can of things future.

Mr. MADISON would admit that in no situation numbers of
inhabitants were an accurate measure of wealth. He contended, however, that
in the United States it was sufficiently so for the object in contemplation.
Although their climate varied considerably, yet as the governments, the laws,
and the manners of all, were nearly the same, and the intercourse between
different parts perfectly free, population, industry, arts, and the value of labor,
would constantly tend to equalize themselves. The value of labor might be
considered as the principal criterion of wealth and ability to support taxes; and
this would find its level in different places, where the intercourse should be

* John Rutledge, South Carolina
easy and free, with as much certainty as the value of money or any other thing. Wherever labor would yield most, people would resort; till the competition should destroy the inequality. Hence it is that the people are constantly swarming from the more to the less, populous places – from Europe to America – from the Northern and middle parts of the United States to the Southern and Western. They go where land is cheaper, because there labor is dearer. . . .

. . . On the question for postponing Mr. WILLIAMSON’S motion, in order to consider that of Mr. RUTLEDGE, it passed in the negative, – Massachusetts, Pennsylvania, Delaware, South Carolina, Georgia, aye – 5; Connecticut, New Jersey, Maryland, Virginia, North Carolina, no – 5.7

On the question on the first clause of Mr. WILLIAMSON’S motion, as to taking a census of the free inhabitants, it passed in the affirmative, – Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, aye – 6; Delaware, Maryland, South Carolina, Georgia, no – 4.

The next clause as to three-fifths of the negroes being considered, –

Mr. KING,8 being much opposed to fixing numbers as the rule of representation, was particularly so on account of the blacks. He thought the admission of them along with whites at all, would excite great discontents among the States having no slaves. He had never said, as to any particular point, that he would in no event acquiesce in and support it; but he would say that if in any case such a declaration was to be made by him, it would be in this. He remarked that in the temporary allotment of representatives made by the Committee, the Southern States had received more than the number of their white and three-fifths of their black inhabitants entitled them to.

. . . Mr. GORHAM . . . recollected that when the proposition of Congress for changing the eighth Article of the Confederation was before the Legislature of Massachusetts, the only difficulty then was, to satisfy them that the negroes ought not to have been counted equally with the whites, instead of being counted in the ratio of three-fifths only.

Mr. WILSON9 did not well see, on what principle the admission of blacks in the proportion of three-fifths, could be explained. Are they admitted as citizens – then why are they not admitted on an equality with white citizens? Are they admitted as property – then why is not other property admitted into

7 A tie vote on a proposition was not counted as an affirmative vote. Thus, the motion “passed in the negative,” or failed.
8 Rufus King, Massachusetts
9 James Wilson, Pennsylvania
the computation? These were difficulties, however, which he thought must be
overruled by the necessity of compromise. He had some apprehensions also,
from the tendency of the blending of the blacks with the whites, to give disgust
to the people of Pennsylvania. . . .

Mr. GOUVERNEUR MORRIS was compelled to declare himself reduced
to the dilemma of doing injustice to the Southern States, or to human nature;
and he must therefore do it to the former. For he could never agree to give
such encouragement to the slave trade, as would be given by allowing them a
representation for their negroes; and he did not believe those States would
ever confederate on terms that would deprive them of that trade.

On the question for agreeing to include three-fifths of the blacks, –
Connecticut, Virginia, North Carolina, Georgia, aye – 4; Massachusetts, New
Jersey, Pennsylvania, Delaware, Maryland, South Carolina, no – 6. . . .

July 12

Mr. GOUVERNEUR MORRIS moved to add to the clause empowering
the Legislature to vary the representation according to the principles of wealth
and numbers of inhabitants, a proviso, “that taxation shall be in proportion to
representation.”

Mr. BUTLER contended again, that representation should be according
to the full number of inhabitants including all the blacks.

Mr. MASON10 also admitted the justice of the principle, but was afraid
embarrassments might be occasioned to the Legislature by it. . . .

Mr. GOUVERNEUR MORRIS admitted that some objections lay against
his motion, but supposed they would be removed by restraining the rule to
direct taxation. . . .

General PINCKNEY liked the idea. . . . He was alarmed at what was said
yesterday, concerning the negroes. . . .

. . . Mr. DAVIE11 said it was high time now to speak out. He saw that it was
meant by some gentlemen to deprive the Southern States of any share of
representation for their blacks. He was sure that North Carolina would never
confederate on any terms that did not rate them at least as three-fifths. If the
Eastern States meant, therefore, to exclude them altogether, the business was
at an end.

10 George Mason, Virginia
11 William Davie, North Carolina
Doctor JOHNSON thought that wealth and population were the true, equitable rules of representation; but he conceived that these two principles resolved themselves into one, population being the best measure of wealth.

Mr. GOUVERNEUR MORRIS. It had been said that it is high time to speak out. As one member, he would candidly do so. He came here to form a compact for the good of America. He was ready to do so with all the States. He hoped and believed that all would enter into such a compact. If they would not, he was ready to join with any States that would. But as the compact was to be voluntary, it is in vain for the Eastern States to insist on what the Southern States will never agree to. It is equally vain for the latter to require what the other States can never admit; and he verily believed the people of Pennsylvania will never agree to a representation of negroes. What can be desired by these States more than has been already proposed – that the Legislature shall from time to time regulate representation according to population and wealth?

General PINCKNEY desired that the rule of wealth should be ascertained, and not left to the pleasure of the Legislature; and that property in slaves should not be exposed to danger, under a government instituted for the protection of property.

...Mr. ELLSWORTH moved to add to the last clause adopted by the House the words following, “and that the rule of contribution by direct taxation, for the support of the Government of the United States, shall be the number of white inhabitants and three-fifths of every other description in the several States, until some other rule that shall more accurately ascertain the wealth of the several States can be devised and adopted by the Legislature.”

Mr. BUTLER seconded the motion, in order that it might be committed.

Mr. RANDOLPH was not satisfied with the motion. He proposed, in lieu of Mr. ELLSWORTH’s motion, “that in order to ascertain the alterations in representation that may be required, from time to time, by changes in the relative circumstances of the States, a census shall be taken within two years from the first meeting of the General Legislature of the United States, and once within the term of every —— years afterwards, of all the inhabitants, in the manner and according to the ratio recommended by Congress in their Resolution of the eighteenth day of April, 1783 (rating the blacks at three-fifths of their number); and that the Legislature of the United States shall arrange the representation accordingly.” He urged strenuously that express security

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12 William Samuel Johnson, Connecticut
13 Oliver Ellsworth, Connecticut
14 Edmund Randolph, Virginia
ought to be provided for including slaves in the ratio of representation. He lamented that such a species of property existed. But as it did exist, the holders of it would require this security. It was perceived that the design was entertained by some of excluding slaves altogether; the Legislature therefore ought not to be left at liberty.

Mr. ELLSWORTH withdraws his motion, and seconds that of Mr. RANDOLPH.

Mr. WILSON observed that less umbrage would perhaps be taken against an admission of the slaves into the rule of representation, if it should be so expressed as to make them indirectly only an ingredient in the rule, by saying that they should enter into the rule of taxation; and as representation was to be according to taxation, the end would be equally attained. He accordingly moved, and was seconded, so to alter the last clause adopted by the House, that, together with the amendment proposed, the whole should read as follows: "provided always that the representation ought to be proportioned according to direct taxation; and in order to ascertain the alterations in the direct taxation which may be required from time to time by the changes in the relative circumstances of the States, Resolved, that a census be taken within two years from the first meeting of the legislature of the United States, and once within the term of every —— years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their Resolution of the eighteenth day of April, 1783; and that the Legislature of the United States shall proportion the direct taxation accordingly."

Mr. KING. Although this amendment varies the aspect somewhat, he had still two powerful objections against tying down the Legislature to the rule of numbers, — first, they were at this time an uncertain index of the relative wealth of the States; secondly, if they were a just index at this time, it cannot be

15 See Document 12 where, on June 11, Mr. Wilson, seconded by Mr. Pinckney, noted that the Three-Fifths Clause had its roots in the Confederation Congress for apportioning support of the general government. Three-fifths was the “rule in the act of Congress, agreed to by eleven States, for apportioning quotas of revenue on the States....” Under the Articles, representation was not the issue: each State had one vote. The issue was to find a formula to raise revenue. That is the origin the Three-Fifths Clause. At the Constitutional Convention, there was overwhelming support to bestow the power of taxation on Congress in order to raise the revenue necessary for running the government. The issue was how to settle the issue of representation. Wilson introduced a solution with which the delegates were familiar, if they had the sense to apply it to representation.
supposed always to continue so. He was far from wishing to retain any unjust advantage whatever in one part of the Republic. If justice was not the basis of the connection, it could not be of long duration. He must be short-sighted indeed who does not foresee, that, whenever the Southern States shall be more numerous than the Northern, they can and will hold a language that will awe them into justice. If they threaten to separate now in case injury shall be done them, will their threats be less urgent or effectual when force shall back their demands? Even in the intervening period there will be no point of time at which they will not be able to say, do us justice or we will separate. He urged the necessity of placing confidence, to a certain degree in every government, and did not conceive that the proposed confidence, as to a periodical re-adjustment of the representation, exceeded that degree.

Mr. PINCKNEY moved to amend Mr. RANDOLPH’S motion, so as to make “blacks equal to the whites in the ratio of representation.” This he urged, was nothing more than justice. The blacks are the laborers, the peasants, of the Southern States. They are as productive of pecuniary resources as those of the Northern States. They add equally to the wealth, and, considering money as the sinew of war, to the strength, of the nation. It will also be politic with regard to the Northern States, as taxation is to keep pace with representation.

... On Mr. PINCKNEY’S motion, for rating blacks as equal to whites, instead of as three-fifths, – South Carolina, Georgia, aye – 2; Massachusetts, Connecticut (Doctor JOHNSON, aye), New Jersey, Pennsylvania (three against two), Delaware, Maryland, Virginia, North Carolina, no – 8. ... On the question on the whole proposition, as proportioning representation to direct taxation, and both to the white and three-fifths of the black inhabitants, and requiring a census within six years, and within every ten years afterwards, – Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, Georgia, aye – 6; New Jersey, Delaware, no – 2; Massachusetts, South Carolina, divided.

July 13

On the motion of Mr. RANDOLPH, the vote of Monday last, authorizing the Legislature to adjust, from time to time, the representation upon the principles of wealth and numbers of inhabitants, was reconsidered by common consent, in order to strike out wealth and adjust the resolution to that requiring

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16 Mr. King seems to mean that the proposed census would not increase Southerners’ confidence in the government.

17 Charles Pinckney, South Carolina
periodical revisions according to the number of whites and three-fifths of the blacks.

The motion was in the words following: – "But as the present situation of the States may probably alter in the number of their inhabitants, that the Legislature of the United States be authorized, from time to time, to apportion the number of Representatives; and in case any of the States shall hereafter be divided, or any two or more States united, or new States created within the limits of the United States, the Legislature of the United States shall possess authority to regulate the number of Representatives in any of the foregoing cases, upon the principle of their number of inhabitants, according to the provisions hereafter mentioned."

Mr. GOUVERNEUR MORRIS opposed the alteration, as leaving still an incoherence. If negroes were to be viewed as inhabitants, and the revision was to proceed on the principle of numbers of inhabitants, they ought to be added in their entire number, and not in the proportion of three-fifths. If as property, the word wealth was right; and striking it out would produce the very inconsistency which it was meant to get rid of. The train of business, and the late turn which it had taken, had led him, he said, into deep meditation on it, and he would candidly state the result. A distinction had been set up, and urged, between the Northern and Southern States. He had hitherto considered this doctrine as heretical. He still thought the distinction groundless. He sees, however, that it is persisted in; and the Southern gentlemen will not be satisfied unless they see the way open to their gaining a majority in the public councils. The consequence of such a transfer of power from the maritime to the interior and landed interest, will, he foresees, be such an oppression to commerce, that he foresees, be such an oppression to commerce, that he shall be obliged to vote for the vicious principle of equality in the second branch, in order to provide some defense for the Northern States against it. But, to come more to the point, either this distinction is fictitious or real; if fictitious, let it be dismissed, and let us proceed with due confidence. If it be real, instead of attempting to blend incompatible things, let us at once take a friendly leave of each other. . . .

Mr. BUTLER. The security the Southern States want is, that their negroes may not be taken from them, which some gentlemen within or without doors have a very good mind to do. . . .

Mr. WILSON. If a general declaration would satisfy any gentleman, he had no indisposition to declare his sentiments. Conceiving that all men, wherever placed, have equal rights, and are equally entitled to confidence, he viewed without apprehension the period when a few States should contain the superior number of people. The majority of people, wherever found, ought in
all questions to govern the minority. If the interior country should acquire this majority, it will not only have the right, but will avail itself of it, whether we will or no . . .

On the question to strike out \emph{wealth}, and to make the change as moved by Mr. RANDOLPH, it passed in the affirmative, – Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye – 9; Delaware, divided.

Mr. READ\textsuperscript{18} moved to insert, after the word “divided,” “or enlarged by addition of territory;” which was agreed to, \emph{nem. con.}\textsuperscript{19}

July 14

Mr. L. MARTIN urged the question on the whole. He did not like many parts of it. He did not like having two branches, nor the inequality of votes in the first branch. He was willing, however, to make trial of the plan, rather than do nothing.

Mr. WILSON traced the progress of the report through its several stages; remarking, that when, on the question concerning an equality of votes the House was divided, our constituents, had they voted as their Representatives did, would have stood as two-thirds against the equality, and one-third only in favor of it. This fact would ere long be known, and it would appear that this fundamental point has been carried by one-third against two-thirds. What hopes will our constituents entertain, when they find that the essential principles of justice have been violated in the outset of the Government? . . .

The equality of votes was a point of such critical importance, that every opportunity ought to be allowed for discussing and collecting the mind of the Convention upon it.

Mr. L. MARTIN denies that there were two-thirds against the equality of votes. The States that please to call themselves large are the weakest in the Union. Look at Massachusetts – look at Virginia – are they efficient States? He was for letting a separation take place, if they desired it. He had rather there should be two confederacies, than one founded on any other principle than an equality of votes in the second branch at least.

Mr. WILSON was not surprised that those who say that a minority does more than a majority, should say the minority is stronger than the majority. He supposed the next assertion will be, that they are richer also; though he hardly

\textsuperscript{18} George Read, Delaware

\textsuperscript{19} an abbreviation of \emph{nemine contradicente}, Latin for “no one dissenting”
expected it would be persisted in, when the States shall be called on for taxes and troops.

Mr. GERRY... The Report was not altogether to his mind; but he would agree to it as it stood, rather than throw it out altogether.

The reconsideration being tacitly agreed to, —

Mr. PINCKNEY moved, that, instead of an equality of votes, the States should be represented in the second branch as follows: New Hampshire by two members; Massachusetts, four; Rhode Island, one; Connecticut, three; New York, three; New Jersey, two; Pennsylvania, four; Delaware, one; Maryland, three; Virginia, five; North Carolina, three; South Carolina, three; Georgia, two; making in the whole, thirty-six.

Mr. WILSON seconds the motion.

Mr. DAYTON.20 The smaller States can never give up their equality. For himself, he would in no event yield that security for their rights.

Mr. SHERMAN21 urged the equality of votes, not so much as a security for the small States, as for the State Governments, which could not be preserved unless they were represented, and had a negative in the General Government. He had no objection to the members in the second branch voting per capita,22 as had been suggested by (Mr. GERRY).

Mr. MADISON concurred in this motion of Mr. PINCKNEY, as a reasonable compromise.

Mr. GERRY said, he should like the motion, but could see no hope of success. An accommodation must take place, and it was apparent from what had been seen, that it could not do so on the ground of the motion. He was utterly against a partial confederacy, leaving other States to accede or not accede, as had been intimated.

Mr. KING said, it was always with regret that he differed from his colleagues, but it was his duty to differ from (Mr. GERRY) on this occasion. He considered the proposed Government as substantially and formally a General and National Government over the people of America. There never will be a case in which it will act as a Federal Government, on the States and not on the individual citizens. And is it not a clear principle, that in a free government, those who are to be the objects of a government, ought to influence the operations of it? What reason can be assigned, why the same rule of representation should not prevail in the second, as in the first, branch? He

20 Jonathan Dayton, New Jersey
21 Roger Sherman, Connecticut
22 as individuals
could conceive none. On the contrary, every view of the subject that presented itself seemed to require it. . . .

It was his firm belief that Massachusetts would never be prevailed on to yield to an equality of votes. In New York, (he was sorry to be obliged to say any thing relative to that State in the absence of its representatives, but the occasion required it), in New York he had seen that the most powerful argument used by the considerate opponents to the grant of the Impost to Congress was pointed against the vicious constitution of Congress with regard to representation and suffrage. He was sure that no government would last that was not founded on just principles. He preferred the doing of nothing, to an allowance of an equal vote to all the States. It would be better, he thought, to submit to a little more confusion and convulsion, than to submit to such an evil. It was difficult to say what the views of different gentlemen might be. Perhaps there might be some who thought no Government co-extensive with the United States could be established with a hope of its answering the purpose. Perhaps there might be other fixed opinions incompatible with the object we are pursuing. If there were, he thought it but candid, that gentlemen should speak out, that we might understand one another.

Mr. STRONG. 23 The Convention had been much divided in opinion. In order to avoid the consequences of it, an accommodation had been proposed. A committee had been appointed; and though some of the members of it were averse to an equality of votes, a report had been made in favor of it. It is agreed, on all hands, that Congress are nearly at an end. If no accommodation takes place, the Union itself must soon be dissolved. It has been suggested that if we cannot come to any general agreement, the principal States may form and recommend a scheme of government. But will the small States, in that case, ever accede to it? Is it probable that the large States themselves will, under such circumstances, embrace and ratify it? He thought the Small states had made a considerable concession, in the article of money bills, 24 and that they might naturally expect some concessions on the other side. From this view of the matter, he was compelled to give his vote for the Report taken altogether.

Mr. MADISON expressed his apprehensions that if the proper foundation of government was destroyed, by substituting an equality in place of a proportional representation, no proper superstructure would be raised. . . .

But it had been said that the Government would, in its operation, be partly federal, partly national; that although in the latter respect the representatives of

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23 Caleb Strong, Massachusetts
24 Strong refers to the decision that these bills originate in the first branch.
the people ought to be in proportion to the people, yet in the former, it ought to be according to the number of States. If there was any solidity in this distinction, he was ready to abide by it; if there was none, it ought to be abandoned. . . . He denied that there was any ground. . . .

. . . On the question for agreeing to Mr. PINCKNEY’S motion, for allowing New Hampshire two; Massachusetts, four, etc. it passed in the negative, – Pennsylvania, Maryland, Virginia, South Carolina, aye – 4; Massachusetts, (Mr. KING, aye, Mr. GORHAM absent), Connecticut, New Jersey, Delaware, North Carolina, Georgia, no – 6.

July 16

In Convention, – On the question for agreeing to the whole Report, as amended, and including the equality of votes in the second branch, it passed in the affirmative, – Connecticut, New Jersey, Delaware, Maryland, North Carolina (Mr. SPAIGHT no) aye – 5; Pennsylvania, Virginia, South Carolina, Georgia, no – 4; Massachusetts, divided (Mr. GERRY, Mr. STRONG, aye; Mr. KING, Mr. GORHAM, no). . . .
The Committee of Detail Report
July 23-24 and August 6, 1787

The first two months of the Convention were devoted mainly to discussing and settling the issue of representation of people, states, and wealth in the new government. By the end of this discussion, the doctrine of bicameralism had been firmly established, with each branch of the legislature having its own source of election and scheme of representation. But there were other issues that were deliberated but not completely settled during June and July. For example, should the powers of Congress be listed or unlisted? If listed, should they be interpreted as expressly listed – that is, as precluding any implied powers? It was also time to make progress on the creation of the Presidency and the Judiciary, as well as on how the document should be adopted and altered. Each of these issues was addressed by the five-member Committee on Detail. Also of considerable interest is the warning issued on July 23 by General Charles Cotesworth Pinckney of South Carolina just as the Convention was ready to pursue a course of reconciliation. By this point, the difference of interests between North and South, rather than between large and small states, was emerging as the critical obstacle the Convention had to overcome.

On July 24, the Convention chose a five-member Committee of Detail that issued its report on August 6. Nathaniel Gorham of Massachusetts, James Wilson of Pennsylvania, Oliver Ellsworth of Connecticut, Edmund Randolph of Virginia, and John Rutledge of South Carolina were selected to the committee.


July 23

General PINCKNEY reminded the Convention, that if the Committee should fail to insert some security to the Southern States against an emancipation of slaves, and taxes on exports, he should be bound by duty to his State to vote against their report.
The appointment of a Committee, as moved by Mr. GERRY, was agreed to, *nem. con.*

On the question, Shall the Committee consist of ten members, one from each State present? – all the States were no, except Delaware, aye.


The question being lost by an equal division of votes, it was agreed, *nem. con.*, that the Committee should consist of five members, to be appointed tomorrow.

**July 24**

On a ballot for a committee to report a Constitution conformable to the Resolutions passed by the Convention, the members chosen were: —

Mr. RUTLEDGE, Mr. RANDOLPH, Mr. GORHAM, Mr. ELLSWORTH, Mr. WILSON.

On motion to discharge the Committee of the Whole from the propositions submitted to the Convention by Mr. C. PINCKNEY as the basis of a Constitution, and to refer them to the Committee of Detail just appointed, it was agreed to, *nem. con.*

A like motion was then made and agreed to, *nem. con.*, with respect to the propositions of Mr. PATTERSON.

Adjourned.

**August 6**

Mr. RUTLEDGE delivered in the Report of the Committee of Detail, as follows – a printed copy being at the same time furnished to each member:

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1 an abbreviation of *nemine contradicente*, Latin for “no one dissenting”

2 Very rarely did the delegates choose a committee that included fewer than one member from each state present. The Committee on Detail is an important exception. One delegate came from each of the three most populous states: Massachusetts, Pennsylvania, and Virginia. One delegate was selected from Connecticut, probably to keep the Connecticut Compromise secure, and one delegate, Rutledge, from South Carolina was chosen to resist the apparently growing effort to involve the new government in the slavery question. Thus, special attention needs to be paid to the slavery provisions of the Committee on Detail Report and how the whole Convention responded to the slave trade resolutions.

3 Charles Pinckney, South Carolina

4 William Patterson, New Jersey
We the people of the States of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, do ordain, declare, and establish, the following Constitution for the government of ourselves and our posterity.

ARTICLE I
The style of the Government shall be, “The United States of America.”

ARTICLE II
The Government shall consist of supreme Legislative, Executive, and Judicial powers.

ARTICLE III
The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate; each of which shall in all cases have a negative on the other. The Legislature shall meet on the first Monday in December in every year.

ARTICLE IV
Sect. 1. The members of the House of Representatives shall be chosen every second year, by the people of the several States comprehended within this Union. The qualifications of the electors shall be the same from time to time, as those of the electors in the several States, of the most numerous branch of their own Legislatures.

Sect. 2. Every member of the House of Representatives shall be of the age of twenty-five years at least; shall have been a citizen in the United States for at least three years before his election; and shall be, at the time of his election, a resident of the State in which he shall be chosen.

Sect. 3. The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner hereinafter described, consist of sixty-five members, of whom three shall be chosen in New Hampshire, eight in Massachusetts, one in Rhode Island and Providence Plantations, five in Connecticut, six in New York, four in New Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North Carolina, five in South Carolina, and three in Georgia.

Sect. 4. As the proportions of numbers in different States will alter from time to time; as some of the States may hereafter be divided: as others may be enlarged by addition of territory; as two or more States may be united; as new
States will be erected within the limits of the United States, the legislature shall, in each of these cases, regulate the number of Representatives by the number of inhabitants, according to the provisions hereinafter made, at the rate of one for every forty thousand.

Sect. 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the public treasury, but in pursuance of appropriations that shall originate in the House of Representatives.

Sect. 6. The House of Representatives shall have the sole power of impeachment. It shall choose its speaker and other officers.

Sect. 7. Vacancies in the House of Representatives shall be supplied by writs of election from the Executive authority of the state in the representation from which they shall happen.

ARTICLE V

Sect. 1. The Senate of the United States shall be chosen by the Legislatures of the several States. Each Legislature shall choose two members. Vacancies may be supplied by the Executive until the next meeting of the Legislature. Each member shall have one vote.

Sect. 2. The Senators shall be chosen for six years; but immediately after the first election, they shall be divided, by lot, into three classes, as nearly as may be, numbered one, two, and three. The seats of the members of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; of the third class at the expiration of the sixth year; so that a third part of the members may be chosen every second year.

Sect. 3. Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen in the United States for at least four years before his election; and shall be, at the time of his election, a resident of the State for which he shall be chosen.

Sect. 4. The Senate shall choose its own President and other officers.

ARTICLE VI

Sect. 1. The times, and places, and manner of holding the elections of the members of each House, shall be prescribed by the Legislature of each State; but their provisions concerning them may at any time, be altered by the Legislature of the United States.
Sect. 2. The Legislature of the United States shall have authority to establish such uniform qualifications of the members of each House, with regard to property, as to the said Legislature shall seem expedient.

Sect. 3. In each House a majority of the members shall constitute a quorum to do business; but a smaller number may adjourn from day to day.

Sect. 4. Each House shall be the judge of the elections, returns, and qualifications, of its own members.

Sect. 5. Freedom of speech and debate in the Legislature shall not be impeached or questioned in any court or place out of the Legislature; and the members of each House shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at Congress, and in going to and returning from it.

Sect. 6. Each House may determine the rules of its proceedings; may punish its members for disorderly behavior; and may expel a member.

Sect. 7. The House of Representatives, and the Senate when it shall be acting in a legislative capacity, shall keep a journal of their proceedings; and shall, from time to time, publish them; and the yeas and nays of the members of each House, on any question, shall, at the desire of one-fifth part of the members present, be entered on the Journal.

Sect. 8. Neither House, without the consent of the other, shall adjourn for more than three days, nor to any other place than that at which the two Houses are sitting. But this regulation shall not extend to the Senate when it shall exercise the powers mentioned in the —— Article.

Sect. 9. The members of each House shall be ineligible to, and incapable of holding, any office under the authority of the United States, during the time for which they shall respectively be elected; and the members of the Senate shall be ineligible to, and incapable of holding, any such office for one year afterwards.

Sect. 10. The members of each House shall receive a compensation for their services to be ascertained and paid by the State in which they shall be chosen.

Sec. 11. The enacting style of the laws of the United States shall be, “Be it enacted, and it is hereby enacted, by the House of Representatives, and by the Senate of the United States, in Congress assembled.”

Sect. 12. Each House shall possess the right of originating bills, except in the cases before mentioned.

Sect. 13. Every bill, which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States for his revision. If, upon such revision, he approve of it, he
shall signify his approbation by signing it. But if, upon such revision, it shall appear to him improper for being passed into a law, he shall return it, together with his objections against it, to that House in which it shall have originated; who shall enter the objections at large on their Journal, and proceed to reconsider the bill. But if, after such reconsideration, two-thirds of that House shall, notwithstanding the objections of the President, agree to pass it, it shall, together with his objections, be sent to the other House, by which it shall likewise be re-considered, and if approved by two-thirds of the other House also, it shall become a law. But in all such cases the votes of both Houses shall be determined by Yeas and Nays; and the names of the persons voting for or against the bill, shall be entered on the Journal of each House respectively. If any bill shall not be returned by the President within seven days after it shall have been presented to him, it shall be a law, unless the Legislature, by their adjournment, prevent its return; in which case it shall not be a law.

ARTICLE VII

Sect. 1. The Legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises;

To regulate commerce with foreign nations, and among the several States;

To establish an uniform rule of naturalization throughout the United States;

To coin money;

To regulate the value of foreign coin;

To fix the standard of weights and measures;

To establish post-offices;

To borrow money, and emit bills on the credit of the United States;

To appoint a Treasurer by ballot;

To constitute tribunals inferior to the Supreme Court;

To make rules concerning captures on land and water;

To declare the law and punishment of piracies and felonies committed on the high seas, and the punishment of counterfeiting the coin of the United States, and of offences against the law of nations;

To subdue a rebellion in any State, on the application of its Legislature;

To make war;

To raise armies;

To build and equip fleets;

To call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions;
And to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or office thereof.

**Sect. 2.** Treason against the United States shall consist only in levying war against the United States, or any of them; and in adhering to the enemies of the United States, or any of them. The Legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason, unless on the testimony of two witnesses. No attainder of treason shall work corruption of blood, nor forfeiture, except during the life of the person attained.  

**Sect. 3.** The proportions of direct taxation shall be regulated by the whole number of white and other free citizens and inhabitants of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes); which number shall, within six years after the first meeting of the Legislature, and within the term of every ten years afterwards, be taken in such a manner as the said Legislature shall direct.

**Sect. 4.** No tax or duty shall be laid by the Legislature on articles exported from any State; nor on the migration or importation of such persons as the several States shall think proper to admit; nor shall such migration or importation be prohibited.

**Sect. 5.** No capitation tax  shall be laid, unless in proportion to the census hereinbefore directed to be taken.

**Sect. 6.** No navigation act shall be passed without the assent of two-thirds of the members present in each House.

**Sect. 7.** The United States shall not grant any title of nobility.

**ARTICLE VIII**

The acts of the Legislature of the United States made in pursuance of this Constitution, and all treaties made under the authority of the United States, shall be the supreme law of the several States, and of their citizens and inhabitants; and the Judges in the several States shall be bound thereby in their decisions, any thing in the constitutions or laws of the several States to the contrary notwithstanding.

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1 This clause means that the children of a person convicted of treason do not inherit his guilt.

2 A capitation tax, sometimes called a "poll tax," is levied on each inhabitant.
ARTICLE IX

Sect. 1. The Senate of the United States shall have power to make treaties, and to appoint ambassadors, and Judges of the Supreme Court.

Sect. 2. In all disputes and controversies now subsisting, or that may hereafter subsist, between two or more States, respecting jurisdiction or territory, the Senate shall possess the following powers: – Whenever the Legislature or the Executive authority, or lawful agent of any State, in controversy with another, shall, by memorial to the Senate, state the matter in question, and apply for a hearing, notice of such memorial and application shall be given, by order of the Senate, to the Legislature, or the Executive authority, of the other State in controversy. The Senate shall also assign a day for the appearance of the parties, by their agents, before that House. The agents shall be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question. But if the agents cannot agree, the Senate shall name three persons out of each of the several States; and from the list of such persons, each party shall alternately strike out one, until the number shall be reduced to thirteen; and from that number, not less than seven, nor more than nine, names, as the Senate shall direct, shall, in their presence, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy; provided a majority of the judges who shall hear the cause agree in the determination. If either party shall neglect to attend at the day assigned, without showing sufficient reasons for not attending, or being present shall refuse to strike, the Senate shall proceed to nominate three persons out of each State, and the Clerk of the Senate shall strike in behalf of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such court, or shall not appear to prosecute or defend their claim or cause, the court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the President of the Senate, and shall be lodged among the public records for the security of the parties concerned. Every commissioner shall, before he sit in judgment, take an oath to be administered by one of the Judges of the Supreme or Superior Court of the State where the cause shall be tried, “well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward.”

Sect. 3. All controversies concerning lands claimed under different grants of two or more States, whose jurisdictions, as they respect such lands, shall have been decided or adjusted subsequently to such grants, or any of them, shall, on application to the Senate, be finally determined, as near as may be, in
the same manner as is before prescribed for deciding controversies between different States.

**ARTICLE X**

**Sect. 1.** The Executive power of the United States shall be vested in a single person. His style shall be, "The President of the United States of America," and his title shall be, "His Excellency." He shall be elected by ballot by the Legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

**Sect. 2.** He shall, from time to time, give information to the Legislature, of the state of the Union. He may recommend to their consideration such measures as he shall judge necessary, and expedient. He may convene them on extraordinary occasions. In case of disagreement between the two Houses, with regard to the time of adjournment, he may adjourn them to such time as he thinks proper. He shall take care that the laws of the United States be duly and faithfully executed. He shall commission all the officers of the United States; and shall appoint officers in all cases not otherwise provided for by this Constitution. He shall receive Ambassadors, and may correspond with the supreme executives of the several States. He shall have power to grant reprieves and pardons, but his pardon shall not be pleadable in bar of an impeachment. He shall be Commander-in-chief of the army and navy of the United States, and of the militia of the several States. He shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during his continuance in office. Before he shall enter on the duties of his department, he shall take the following oath or affirmation, "I —— solemnly swear, (or affirm) that I will faithfully execute the office of President of the United States of America." He shall be removed from his office on impeachment by the House of Representatives, and conviction, in the Supreme Court, of treason, bribery or corruption. In case of his removal, as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the President of the Senate shall exercise those powers and duties until another President of the United States be chosen, or until the disability of the President be removed.

**ARTICLE XI**

**Sect. 1.** The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts, as shall, when necessary, from time to time, be constituted by the Legislature of the United States.
Sect. 2. The Judges of the Supreme Court, and of the inferior courts, shall hold their offices during good behavior. They shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Sect. 3. The jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the Legislature of the United States; to all cases affecting ambassadors, other public ministers and consuls; to the trial of impeachments of officers of the United States; to all cases of admiralty and maritime jurisdiction; to controversies between two or more States, (except such as shall regard territory or jurisdiction); between a state and citizens of another State; between citizens of different States; and between a state, or the citizens thereof, and foreign states, citizens or subjects. In cases of impeachment, cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, this jurisdiction shall be original. In all the other cases before mentioned, it shall be appellate, with such exceptions, and under such regulations, as the Legislature shall make. The Legislature may assign any part of the jurisdiction above mentioned (except the trial of the President of the United States) in the manner and under the limitations which it shall think proper, to such inferior courts as it shall constitute from time to time.

Sect. 4. The trial of all criminal offences (except in cases of impeachment) shall be in the State where they shall be committed; and shall be by jury.

Sect. 5. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of 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.

ARTICLE XII

No State shall coin money; nor grant letters of marque and reprisal; nor enter into any treaty, alliance or confederation; nor grant any title of nobility.

ARTICLE XIII

No State, without the consent of the Legislature of the United States, shall emit bills of credit, or make any thing but specie a tender in payment of debts;

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7 These are warrants authorizing private citizens to capture the merchant ships of another nation – actions that would normally be deemed piracy but, because of the warrant granted, implicitly become acts of war.
nor lay imposts or duties on imports; nor keep troops or ships of war in time of peace; nor enter into any agreement or compact with another state, or with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of a delay until the Legislature of the United States can be consulted.

ARTICLE XIV

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

ARTICLE XV

Any person charged with treason, felony or high misdemeanor in any State, who shall flee from justice, and shall be found in any other State, shall, on demand of the Executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of the offence.

ARTICLE XVI

Full faith shall be given in each State to the acts of the Legislatures, and to the records and judicial proceedings of the courts and magistrates, of every other State.

ARTICLE XVII

New States lawfully constituted or established within the limits of the United States may be admitted, by the Legislature, into this government; but to such admission the consent of two-thirds of the members present in each House shall be necessary. If a new State shall arise within the limits of any of the present States, the consent of the Legislatures of such States shall be also necessary to its admission. If the admission be consented to, the new States shall be admitted on the same terms with the original States. But the Legislature may make conditions with the new States concerning the public debt which shall be then subsisting.

ARTICLE XVIII

The United States shall guarantee to each State a republican form of government; and shall protect each State against foreign invasions, and, on the application of its Legislature, against domestic violence.
ARTICLE XIX
On the application of the Legislatures of two-thirds of the States in the Union, for an amendment of this Constitution, the Legislature of the United States shall call a convention for that purpose.

ARTICLE XX
The members of the Legislatures, and the Executive and Judicial officers of the United States, and of the several States, shall be bound by oath to support this Constitution.

ARTICLE XXI
The ratification of the conventions of —— States shall be sufficient for organizing this Constitution.

ARTICLE XXII
This Constitution shall be laid before the United States in Congress assembled, for their approbation; and it is the opinion of this Convention, that it should be afterwards submitted to a Convention chosen in each State, under the recommendation of its Legislature, in order to receive the ratification of such Convention.

ARTICLE XXIII
To introduce this government, it is the opinion of this Convention, that each assenting convention should notify its assent and ratification to the United States in Congress assembled; that Congress, after receiving the assent and ratification of the Conventions of —— States, should appoint and publish a day, as early as may be, and appoint a place, for commencing proceedings under this Constitution; that after such publication, the Legislatures of the several States should elect members of the Senate and direct the election of members of the House of Representatives; and that the members of the Legislature should meet at the time and place assigned by Congress, and should, as soon as may be after their meeting, choose the President of the United States, and proceed to execute this Constitution. . . .
The Slave Trade Clause

August 21, 22, 24, and 25, 1787

The Committee of Detail Report presented on August 6 listed, for the first time, 18 powers of Congress. Among those powers was the power to regulate international trade. And a vital part of international trade was the slave trade. Without a specific restriction, it would be constitutionally possible for Congress, under the Committee of Detail draft, to regulate the international slave trade. But those on the five-member committee, chaired by John Rutledge of South Carolina, were well aware of the warning issued by General Charles Cotesworth Pinckney of South Carolina on July 23 that South Carolina would not sign the Constitution if there were a move towards “the emancipation of slaves.” Both sides in the debate over slavery accepted the premise that slave trade policy would have a major impact on the future of slavery in the new nation.

Sections 4, 5, and 6 of Article VII of the Committee of Detail Report shaped the discussion in August over what Congress could and could not do with respect to the slave trade. There were three identifiable groups at the Convention with respect to the slave trade clause in the Committee of Detail Report.

In the first group, John Langdon of New Hampshire “was strenuous for giving the power to the general government” to control the slave trade. John Dickinson of Delaware, Luther Martin of Maryland, and James Madison wanted an end to the slave trade on principle. James Wilson and Gouverneur Morris of Pennsylvania were in agreement.

The second group included Charles Pinckney, from South Carolina, and Hugh Williamson, from North Carolina, They reminded the delegates of political reality: be careful not to drive the Deep South into bolting the union. Abraham Baldwin of Georgia was not interested in “an attempt to abridge [Georgia] one of her favorite prerogatives.”

The third perspective came from Roger Sherman of Connecticut, who asserted that “it was better to let the Southern States import slaves than to part with [those states], if they made that a sine qua non.” The Massachusetts delegates seemed accommodating, as well; Rufus King said that the whole “subject should be considered in a political light only.”
To deal with these differences, in late August the delegates established a Committee of 11 to alter the recommendation of the Committee of Detail so the entire convention could agree and move forward to other matters.


August 21

Mr. L. MARTIN proposed to vary Article 7, Section 4, so as to allow a prohibition or tax on the importation of slaves. In the first place, as five slaves are to be counted as three freemen, in the apportionment of Representatives, such a clause would leave an encouragement to this traffic. In the second place, slaves weakened one part of the Union, which the other parts were bound to protect; the privilege of importing them was therefore unreasonable. And in the third place, it was inconsistent with the principles of the Revolution, and dishonorable to the American character, to have such a feature in the Constitution.

Mr. RUTLEDGE\(^1\) did not see how the importation of slaves could be encouraged by this section. He was not apprehensive of insurrections, and would readily exempt the other States from the obligation to protect the Southern against them. Religion and humanity had nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is, whether the Southern States shall or shall not be parties to the Union. If the Northern States consult their interest, they will not oppose the increase of slaves, which will increase the commodities of which they will become the carriers.

Mr. ELLSWORTH\(^2\) was for leaving the clause as it stands. Let every State import what it pleases. The morality or wisdom of slavery are considerations belonging to the States themselves. What enriches a part enriches the whole, and the States are the best judges of their particular interest. The old Confederation had not meddled with this point; and he did not see any greater necessity for bringing it within the policy of the new one.

Mr. PINCKNEY. South Carolina can never receive the plan if it prohibits the slave trade. In every proposed extension of the powers of Congress, that State has expressly and watchfully excepted that of meddling with the

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\(^1\) John Rutledge, South Carolina

\(^2\) Oliver Ellsworth, Connecticut
importation of negroes. If the States be all left at liberty on this subject, South Carolina may perhaps, by degrees do of herself what is wished, as Virginia and Maryland already have done.\(^3\)

Adjourned.

**August 22**

*In Convention.*—Article 7, Section 4, was resumed.

Mr. SHERMAN was for leaving the clause as it stands. He disapproved of the slave trade; yet as the States were now possessed of the right to import slaves, as the public good did not require it to be taken from them, and as it was expedient to have as few objections as possible to the proposed scheme of government, he thought it best to leave the matter as we find it. He observed that the abolition of slavery seemed to be going on in the United States, and that the good sense of the several States would probably by degrees complete it. He urged on the Convention the necessity of dispatching its business.

Colonel MASON.\(^4\) This infernal traffic originated in the avarice of British merchants. The British Government constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing States alone, but the whole Union. The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves as it did by the Tories.\(^5\) He mentioned the dangerous insurrections of the slaves in Greece and Sicily; and the instructions given by Cromwell to the commissioners sent to Virginia, to arm the servants and slaves, in case other means of obtaining its submission should fail. Maryland and Virginia, he said, had already prohibited the importation of slaves expressly. North Carolina had done the same in substance. All this would be in vain, if South Carolina and Georgia be at liberty to import. The Western people are already calling out for slaves for their new lands; and will fill that country with slaves, if they can be got through South Carolina and Georgia. Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the emigration of whites, who really enrich and strengthen a country. They produce the most pernicious effect on

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\(^3\) See George Mason’s comments on the decision of Maryland and Virginia (August 22, below).

\(^4\) George Mason, Virginia

\(^5\) The British failed to make effective use of slaves to foment insurrections in the American states, as they also failed to do with Tories, or loyalists.
matters. Every master of slaves is born a petty tyrant. They bring the judgment of Heaven on a country. As nations cannot be rewarded or punished in the next world, they must be in this. By an inevitable chain of causes and effects, Providence punishes national sins by national calamities. He lamented that some of our Eastern brethren had, from a lust of gain, embarked in this nefarious traffic. As to the States being in possession of the right to import, this was the case with many other rights, now to be properly given up. He held it essential in every point of view, that the General Government should have power to prevent the increase of slavery.

Mr. ELLSWORTH, as he had never owned a slave, could not judge of the effects of slavery on character. He said, however, that if it was to be considered in a moral light, we ought to go further and free those already in the country. As slaves also multiply so fast in Virginia and Maryland that it is cheaper to raise than import them, while in the sickly rice swamps foreign supplies are necessary, if we go no further than is urged, we shall be unjust towards South Carolina and Georgia. Let us not intermeddle. As population increases, poor laborers will be so plenty as to render slaves useless. Slavery in time, will not be a speck in our country. Provision is already made in Connecticut for abolishing it. And the abolition has already taken place in Massachusetts. As to the danger of insurrections from foreign influence, that will become a motive to kind treatment of the slaves.

Mr. PINCKNEY. If slavery be wrong, it is justified by the example of all the world. He cited the case of Greece, Rome, and other ancient states; the sanction given by France, England, Holland, and other modern states. In all ages one-half of mankind have been slaves. If the Southern States were let alone, they will probably of themselves stop importations. He would himself, as a citizen of South Carolina, vote for it. An attempt to take away the right, as proposed, will produce serious objections to the Constitution, which he wished to see adopted.

General PINCKNEY\(^6\) declared it to be his firm opinion, that if himself and all his colleagues were to sign the Constitution, and use their personal influence, it would be of no avail towards obtaining the assent of their constituents. South Carolina and Georgia cannot do without slaves. As to Virginia, she will gain by stopping the importations. Her slaves will rise in value, and she has more than she wants. It would be unequal, to require South Carolina and Georgia to confederate on such unequal terms. He said the Royal

\(^6\) Charles Cotesworth Pinckney, the elder second cousin of Charles Pinckney; both were from South Carolina.
assent, before the Revolution, had never been refused to South Carolina, as to Virginia. He contended, that the importation of slaves would be for the interest of the whole Union. The more slaves, the more produce to employ the carrying trade; the more consumption also; and the more of this, the more revenue for the common treasury. He admitted it to be reasonable that slaves should be dutied like other imports; but should consider a rejection of the clause as an exclusion of South Carolina from the Union.

Mr. BALDWIN had conceived national objects alone to be before the Convention; not such as, like the present, were of a local nature. Georgia was decided on this point. That State has always hitherto supposed a General Government to be the pursuit of the central States, who wished to have a vortex for every thing; that her distance would preclude her from equal advantage; and that she could not prudently purchase it by yielding national powers. From this it might be understood, in what light she would view an attempt to abridge one of her favorite prerogatives. If left to herself, she may probably put a stop to the evil. As one ground for this conjecture, he took notice of the sect of ——; which he said was a respectable class of people, who carried their ethics beyond the mere equality of men, extending their humanity to the claims of the whole animal creation.

Mr. WILSON observed, that if South Carolina and Georgia were themselves disposed to get rid of the importation of slaves in a short time, as had been suggested, they would never refuse to unite because the importation might be prohibited. As the section now stands, all articles imported are to be taxed. Slaves alone are exempt. This is in fact a bounty on that article.

Mr. GERRY thought we had nothing to do with the conduct of the States as to slaves, but ought to be careful not to give any sanction to it.

Mr. DICKINSON considered it as inadmissible, on every principle of honor and safety, that the importation of slaves should be authorized to the States by the Constitution. The true question was, whether the national happiness would be promoted or impeded by the importation, and this question ought to be left to the National Government, not to the States particularly interested. If England and France permit slavery, slaves are, at the same time, excluded from both those kingdoms. Greece and Rome were made unhappy by their slaves. He could not believe that the Southern States would

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7 Baldwin seems to say that Georgia believes that the central states seek a way of drawing the entire country into an arrangement that would best suit the central states.
8 Elbridge Gerry, Massachusetts
refuse to confederate on the account apprehended; especially as the power was not likely to be immediately exercised by the General Government.

Mr. WILLIAMSON stated the law of North Carolina on the subject, to wit, that it did not directly prohibit the importation of slaves. It imposed a duty of £5 on each slave imported from Africa; £10 on each from elsewhere; and £50 on each from a State licensing manumission. He thought the Southern States could not be members of the Union, if the clause should be rejected; and that it was wrong to force anything down not absolutely necessary, and which any State must disagree to.

Mr. KING thought the subject should be considered in a political light only. If two States will not agree to the Constitution, as stated on one side, he could affirm with equal belief on the other, that great and equal opposition would be experienced from the other States. He remarked on the exemption of slaves from duty, whilst every other import was subjected to it, as an inequality that could not fail to strike the commercial sagacity of the Northern and Middle States.

Mr. LANGDON was strenuous for giving the power to the General Government. He could not, with a good conscience, leave it with the States, who could then go on with the traffic, without being restrained by the opinions here given, that they will themselves cease to import slaves.

General PINCKNEY thought himself bound to declare candidly, that he did not think South Carolina would stop her importations of slaves in any short time; but only stop them occasionally, as she now does. He moved to commit the clause, that slaves might be made liable to an equal tax with other imports; which he thought right, and which would remove one difficulty that had been started.

Mr. RUTLEDGE. If the Convention thinks that North Carolina, South Carolina, and Georgia, will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those States will never be such fools as to give up so important an interest. He was strenuous against striking out the section, and seconded the motion of General PINCKNEY for a commitment.

Mr. GOUVERNEUR MORRIS wished the whole subject to be committed, including the clauses relating to taxes on exports and to a

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9 allowing the freeing of slaves
10 That is, Morris wished that all these issues be referred to a committee, who would study them and make recommendations.
navigation act. These things may form a bargain among the Northern and Southern States.

Mr. BUTLER\textsuperscript{11} declared, that he never would agree to the power of taxing exports.

Mr. SHERMAN said it was better to let the Southern States import slaves than to part with them, if they made that a \textit{sine qua non}. He was opposed to a tax on slaves imported, as making the matter worse, because it implied they were \textit{property}. He acknowledged that if the power of prohibiting the importation should be given to the General Government, it would be exercised. He thought it would be its duty to exercise the power.

Mr. READ\textsuperscript{12} was for the commitment, provided the clause concerning taxes on exports should also be committed.

Mr. SHERMAN observed, that that clause had been agreed to, and therefore could not be committed.

Mr. RANDOLPH\textsuperscript{13} was for committing, in order that some middle ground might, if possible, be found. He could never agree to the clause as it stands. He would sooner risk the Constitution. He dwelt on the dilemma to which the Convention was exposed. By agreeing to the clause, it would revolt the Quakers, the Methodists, and many others in the States having no slaves. On the other hand, two States might be lost to the Union. Let us then, he said, try the chance of a commitment.

On the question for committing the remaining part of Sections 4 and 5 of Article 7, – Connecticut, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye, – 7; New Hampshire, Pennsylvania, Delaware, no, – 3; Massachusetts, absent.

Mr. PINCKNEY and Mr. LANGDON moved to commit Section 6, as to a navigation act by two thirds of each House.

Mr. GORHAM\textsuperscript{14} did not see the propriety of it. Is it meant to require a greater proportion of votes? He desired it to be remembered, that the Eastern States had no motive to union but a commercial one. They were able to protect themselves. They were not afraid of external danger, and did not need the aid of the Southern States.

Mr. WILSON wished for a commitment, in order to reduce the proportion of votes required.

\textsuperscript{11} Pierce Butler, South Carolina
\textsuperscript{12} George Read, Delaware
\textsuperscript{13} Edmund Randolph, Virginia
\textsuperscript{14} Nathaniel Gorham, Massachusetts
Mr. ELLSWORTH was for taking the plan as it is. This widening of opinions had a threatening aspect. If we do not agree on this middle and moderate ground, he was afraid we should lose two States, with such others as may be disposed to stand aloof; should fly into a variety of shapes and directions, and most probably into several confederations, – and not without bloodshed.

On the question for committing Section 6, as to a navigation act, to a member from each State, — New Hampshire, Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye, – 9; Connecticut, New Jersey no, – 2.

The Committee appointed were, Messrs. LANGDON, KING, JOHNSON,15 LIVINGSTON,16 CLYMER,17 DICKINSON, L. MARTIN, MADISON, WILLIAMSON, C. C. PINCKNEY, and BALDWIN.

To this committee were referred also the two clauses, above mentioned of the fourth and fifth Sections of Article 7.

August 24

In Convention, – Governor LIVINGSTON, from the Committee of eleven, to whom were referred the two remaining clauses of the fourth Section, and the fifth and sixth Sections of the seventh Article, delivered the following Report:

“Strike out so much of the fourth Section as was referred to the Committee, and insert, ‘The migration or importation of such persons as the several States, now existing, shall think proper to admit, shall not be prohibited by the Legislature prior to the year 1800; but a tax or duty may be imposed on such migration or importation, at a rate not exceeding the average of the duties laid on imports.’

“The fifth section to remain as in the Report.”

“The sixth Section to be stricken out. . . .”

August 25

The Report of the Committee of 11 being taken up, –

General PINCKNEY moved to strike out the words, “the year eighteen hundred,” as the year limiting the importation of slaves; and to insert the words “the year eighteen hundred and eight.”

15 William Samuel Johnson, Connecticut
16 William Livingston, New Jersey, then governor of the state
17 George Clymer, Pennsylvania
Mr. GORHAM seconded the motion.

Mr. MADISON. Twenty years will produce all the mischief that can be apprehended from the liberty to import slaves. So long a term will be more dishonorable to the American character than to say nothing about it in the Constitution.

On the motion, which passed in the affirmative, – New Hampshire, Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, Georgia, aye, – 7; New Jersey, Pennsylvania, Delaware, Virginia, no, – 4.

Mr. GOUVERNEUR MORRIS was for making the clause read at once, “the importation of slaves into North Carolina, South Carolina, and Georgia, shall not be prohibited, etc.” This he said would be most fair, and would avoid the ambiguity by which, under the power with regard to naturalization, the liberty reserved to the States might be defeated. He wished it to be known, also, that this part of the Constitution was a compliance with those States. If the change of language, however, should be objected to, by the members from those states, he should not urge it.

Colonel MASON was not against using the term “slaves,” but against naming North Carolina, South Carolina, and Georgia, lest it should give offence to the people of those States.

Mr. SHERMAN liked a description better than the terms proposed, which had been declined by the old Congress, and were not pleasing to some people.

Mr. CLYMER concurred with Mr. SHERMAN.

Mr. WILLIAMSON said, that both in opinion and practice he was against slavery; but thought it more in favor of humanity, from a view of all circumstances, to let in South Carolina and Georgia on those terms, than to exclude them from the Union.

Mr. GOUVERNEUR MORRIS withdrew his motion.

Mr. DICKINSON wished the clause to be confined to the States which had not themselves prohibited the importation of slaves; and for that purpose moved to amend the clause, so as to read: “The importation of slaves into such of the states as shall permit the same, shall not be prohibited by the legislature of the United States until the year 1808; which was disagreed to, nem. con.\(^{18}\)

The first part of the Report was then agreed to, amended as follows: “The migration or importation of such persons as the several states now existing shall think proper to admit, shall not be prohibited by the legislature prior to the year 1808,” —

\(^{18}\) an abbreviation of *nemine contradicente*, Latin for “no one dissenting”
New Hampshire, Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, Georgia, aye, – 7; New Jersey, Pennsylvania, Delaware, Virginia, no, – 4.

Mr. BALDWIN, in order to restrain and more explicitly define, “the average duty,” moved to strike out of the second part the words, “average of the duties laid on imports,” and insert “common impost on articles not enumerated”; which was agreed to, nem. con.

Mr. SHERMAN was against this second part, as acknowledging men to be property, by taxing them as such under the character of slaves.

Mr. KING and Mr. LANGDON considered this as the price of the first part.

General PINCKNEY admitted that it was so.

Colonel MASON. Not to tax, will be equivalent to a bounty on, the importation of slaves.

Mr. GORHAM thought that Mr. SHERMAN should consider the duty, not as implying that slaves are property, but as a discouragement to the importation of them.

Mr. GOUVERNEUR MORRIS remarked, that, as the clause now stands, it implies that the Legislature may tax freemen imported.

Mr. SHERMAN, in answer to Mr. GORHAM, observed, that the smallness of the duty showed revenue to be the object, not the discouragement of the importation.

Mr. MADISON thought it wrong to admit in the Constitution the idea that there could be property in men. The reason of duties did not hold, as slaves are not, like merchandise, consumed, &c.

Colonel MASON, in answer to Mr. GOUVERNEUR MORRIS. The provision, as it stands, was necessary for the case of convicts, in order to prevent the introduction of them.

It was finally agreed, nem. con., to make the clause read: “but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person”; and then the second part, as amended, was agreed to.

Article 7, Sect. 5, was agreed to, nem. con., as reported.

Article 7, Sect. 6, in the Report was postponed. ...
Document 21

The Judiciary

June 4; July 21; August 15 and 27, 1787

It is often remarked by judicial scholars that Article III of the Constitution makes no mention of judicial review, the power of a court to rule a law unconstitutional. This is true. So the presumption is that the Framers did not intend to establish judicial review; otherwise they would have put it in the Constitution. Thus the question: where and when did judicial review make its appearance in our constitutional heritage? The conventional answer is that John Marshall, in Marbury v. Madison (1803), established judicial review. But the phrase “judicial review” is not mentioned in that case.

On three separate occasions – June 4, July 21, and August 15 – the delegates considered and reconsidered the first clause of the eighth resolution of the original Virginia Plan (Document 10). That clause proposed that a Council of Revision – made up of the Executive and the Judiciary – be established to review congressional bills before they become law. Although this Madisonian idea of joint prior review was abandoned, the reasons for doing so are vital for understanding the Framers’ position on the role of the Judiciary. At the heart of the objection to giving the Judiciary joint prior or policy review with the Executive was the view that the Executive alone should have the power to review legislation before it became law and that the Judiciary should not possess the power of both prior and subsequent review. Prior review was a political function to be performed by the Executive alone. The following excerpts from the debates show that the Framers intended the Judiciary to have the power to review legislation after it had been passed by the Congress and signed by the president.


June 4

The first clause of the eighth Resolution, relating to a council of revision, was next taken into consideration.
Mr. GERRY doubts whether the Judiciary ought to form a part of it, as they will have a sufficient check against encroachments on their own department by their exposition of the laws, which involved a power of deciding on their constitutionality. In some States the judges had actually set aside laws, as being against the Constitution. This was done, too, with general approbation. It was quite foreign from the nature of their office to make them judges of the policy of public measures. He moves to postpone the clause, in order to propose, “that the National Executive shall have a right to negative any legislative act, which shall not be afterwards passed by —— parts of each branch of the National Legislature.”

Mr. KING seconded the motion, observing that the judges ought to be able to expound the law, as it should come before them, free from the bias of having participated in its formation.

Mr. WILSON thinks neither the original proposition nor the amendment goes far enough. If the Legislative, Executive, and Judiciary ought to be distinct and independent, the Executive ought to have an absolute negative. Without such a self-defense, the Legislature can at any moment sink it into non-existence. He was for varying the proposition, in such a manner as to give the Executive and Judiciary jointly an absolute negative.

On the question to postpone, in order to take Mr. GERRY’S proposition into consideration, it was agreed to, – Massachusetts, New York, Pennsylvania, North Carolina, South Carolina, Georgia, aye – 6; Connecticut, Delaware, Maryland, Virginia, no – 4.

July 21

Mr. WILSON moved . . . “that the Supreme National Judiciary should be associated with the Executive in the revisionary power.” This proposition had been before made and failed; but he was so confirmed by reflection in the opinion of its utility, that he thought it incumbent on him to make another effort. The Judiciary ought to have an opportunity of remonstrating against projected encroachments on the people as well as on themselves. It had been said, that the Judges, as expositors of the laws, would have an opportunity of defending their constitutional rights. There was weight in this observation; but this power of the Judges did not go far enough. Laws may be unjust, may be unwise, may be dangerous, may be destructive; and yet may not be so

1 Elbridge Gerry, Massachusetts
2 Rufus King, Massachusetts
3 James Wilson, Pennsylvania
unconstitutional as to justify the Judges in refusing to give them effect. Let them have a share in the revisionary power, and they will have an opportunity of taking notice of those characters of a law, and of counteracting, by the weight of their opinions, the improper views of the Legislature. – Mr. MADISON\(^4\) seconded the motion.

Mr. GORHAM\(^5\) did not see the advantage of employing the Judges in this way. As Judges they are not to be presumed to possess any peculiar knowledge of the mere policy of public measures . . .

Mr. ELLSWORTH\(^6\) approved heartily of the motion. The aid of the Judges will give more wisdom and firmness to the Executive. They will possess a systematic and accurate knowledge of the laws, which the Executive cannot be expected always to possess. The Law of Nations also will frequently come into question. Of this the Judges alone will have competent information.

Mr. MADISON considered the object of the motion as of great importance to the meditated Constitution. It would be useful to the Judiciary Department by giving it an additional opportunity of defending itself against Legislative encroachments. It would be useful to the Executive, by inspiring additional confidence and firmness in exerting the revisionary power. It would be useful to the Legislature, by the valuable assistance it would give in preserving a consistency, conciseness, perspicuity, and technical propriety in the laws, qualities peculiarly necessary, and yet shamefully wanting in our Republican codes. It would, moreover, be useful to the community at large, as an additional check against a pursuit of those unwise and unjust measures which constituted so great a portion of our calamities. If any solid objection could be urged against the motion, it must be on the supposition that it tended to give too much strength, either to the Executive, or Judiciary. He did not think there was the least ground for this apprehension. It was much more to be apprehended, that, notwithstanding this co-operation of the two departments, the Legislature would still be an overmatch for them. Experience in all the States had evinced a powerful tendency in the Legislature to absorb all power into its vortex. This was the real source of danger to the American Constitutions; and suggested the necessity of giving every defensive authority to the other departments that was consistent with republican principles . . .

Mr. GERRY did not expect to see this point, which had undergone full discussion, again revived. The object he conceived of the revisionary power

\(^4\) James Madison, Virginia  
\(^5\) Nathaniel Gorham, Massachusetts  
\(^6\) Oliver Ellsworth, Connecticut
was merely to secure the Executive department against legislative encroachment. The Executive, therefore, who will best know and be ready to defend his rights, ought alone to have the defense of them. The motion was liable to strong objections. It was combining and mixing together the Legislative and the other departments. It was establishing an improper coalition between the Executive and Judiciary departments. It was making statesmen of the Judges, and setting them up as the guardians of the rights of the people. He relied, for his part, on the Representatives of the people, as the guardians of their rights and interests. It was making the expositors of the laws the legislators, which ought never to be done. A better expedient for correcting the laws would be to appoint, as had been done in Pennsylvania, a person or persons of proper skill, to draw bills for the Legislature.

Mr. STRONG thought, with Mr. GERRY, that the power of making, ought to be kept distinct from that of expounding, the laws. No maxim was better established. The Judges in exercising the function of expositors might be influenced by the part they had taken in passing the laws . . . .

Mr. MADISON could not discover in the proposed association of the Judges with the Executive, in the revisionary check on the Legislature, any violation of the maxim which requires the great departments of power to be kept separate and distinct. On the contrary, he thought it an auxiliary precaution, in favor of the maxim. If a constitutional discrimination of the departments on paper were a sufficient security to each against encroachments of the others, all further provisions would indeed be superfluous. But experience had taught us a distrust of that security; and that it is necessary to introduce such a balance of powers and interests as will guarantee the provisions on paper. Instead, therefore, of contenting ourselves with laying down the theory in the Constitution, that each department ought to be separate and distinct, it was proposed to add a defensive power to each, which should maintain the theory in practice. In so doing, we did not blend the departments together. We erected effectual barriers for keeping them separate. The most regular example of this theory was in the British Constitution. Yet it was not only the practice there to admit the Judges to a seat in the Legislature, and in the Executive Councils, and submit to their previous examination all laws of a certain description, but it was a part of their Constitution that the Executive might negative any law whatever; a part of their Constitution which had been universally regarded as calculated for the preservation of the whole. The objection against a union of the Judiciary and Executive branches, in the

7 Caleb Strong, Massachusetts
revision of the laws, had either no foundation, or was not carried far enough. If such a union was an improper mixture of powers, or such a Judiciary check on the laws was inconsistent with the theory of a free constitution, it was equally so to admit the Executive to any participation in the making of laws; and the revisionary plan ought to be discarded altogether.

Mr. WILSON. The separation of the departments does not require that they should have separate objects; but that they should act separately, though on the same objects. It is necessary that the two branches of the Legislature should be separate and distinct, yet they are both to act precisely on the same object.

Mr. GERRY had rather give the Executive an absolute negative for its own defense, than thus to blend together the Judiciary and Executive departments. It will bind them together in an offensive and defensive alliance against the Legislature, and render the latter unwilling to enter into a contest with them.

Mr. GORHAM. All agree that a check on the Legislature is necessary. But there are two objections against admitting the Judges to share in it, which no observations on the other side seem to obviate. The first is, that the Judges ought to carry into the exposition of the laws no prepossessions with regard to them; the second, that, as the Judges will outnumber the Executive, the revisionary check would be thrown entirely out of the Executive hands, and, instead of enabling him to defend himself, would enable the Judges to sacrifice him.

On the question on Mr. WILSON’S motion for joining the judiciary in the revision of laws, it passed in the negative, — Connecticut, Maryland, Virginia, aye — 3; Massachusetts, Delaware, North Carolina, South Carolina, no — 4; Pennsylvania, Georgia, divided; New Jersey, not present.

. . . [A] Resolution giving the Executive a qualified veto, requiring two-thirds of each branch of the Legislature to overrule it, was then agreed to nem. con.8

August 15
. . . Mr. MADISON moved . . .: “Every bill which shall have passed the two Houses shall, before it become a law, be severally presented to the President of the United States, and to the Judges of the Supreme Court, for the revision of each. If, upon such revision, they shall approve of it, they shall respectively signify their approbation by signing it; but if, upon such revision, it shall appear

8 an abbreviation of nemine contradicente, Latin for “no one dissenting”
improper to either, or both, to be passed into a law, it shall be returned, with the objections against it, to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider the bill: but if, after such reconsideration, two-thirds of that House, when either the President, or a majority of the judges shall object, or three-fourths, where both shall object, shall agree to pass it, it shall, together with the objections, be sent to the other House; by which it shall likewise be reconsidered, and, if approved by two-thirds, or three-fourths of the other House, as the case may be it shall become a law."

Mr. WILSON seconds the motion.

Mr. PINCKNEY\(^9\) opposed the interference of the Judges in the legislative business: it will involve them in parties, and give a previous tincture to their opinions.

Mr. MERCER\(^10\) heartily approved the motion. It is an axiom that the Judiciary ought to be separate from the Legislative; but equally so, that it ought to be independent of that department. The true policy of the axiom is, that legislative usurpation and oppression may be obviated. He disapproved of the doctrine, that the Judges, as expositors of the Constitution, should have authority to declare a law void. He thought laws ought to be well and cautiously made, and then to be uncontrollable.

Mr. GERRY. This motion comes to the same thing with what has been already negatived.

On the question on the motion of Mr. MADISON, —

Delaware, Maryland, Virginia, aye, — 3; New Hampshire, Massachusetts, Connecticut, New Jersey Pennsylvania, North Carolina, South Carolina, Georgia, no, — 8.

Mr. GOUVERNEUR MORRIS\(^11\) regretted that something like the proposed check could not be agreed to. He dwelt on the importance of public credit, and the difficulty of supporting it without some strong barrier against the instability of legislative assemblies. He suggested the idea of requiring three-fourths of each House to repeal laws where the President should not concur. He had no great reliance on the revisionary power, as the Executive was now to be constituted (elected by Congress). The Legislature will contrive to soften down the President. He recited the history of paper emissions, and the perseverance of the legislative assemblies in repeating them, with all the

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\(^9\) Charles Pinckney, South Carolina

\(^10\) John F. Mercer, Maryland

\(^11\) Gouverneur Morris, Pennsylvania
distressing effects of such measures before their eyes. Were the National Legislature formed, and a war was now to break out, this ruinous expedient would be again resorted to, if not guarded against. The requiring three-fourths to repeal would, though not a complete remedy, prevent the hasty passage of laws, and the frequency of those repeals which destroy faith in the public, and which are among our greatest calamities.

Mr. DICKINSON\textsuperscript{12} was strongly impressed with the remark of Mr. MERCER, as to the power of the Judges to set aside the law. He thought no such power ought to exist. He was, at the same time, at a loss what expedient to substitute. The Justiciary of Arragon, he observed, became by degrees the law-giver . . .

Mr. SHERMAN.\textsuperscript{13} Can one man be trusted better than all the others, if they all agree? This was neither wise nor safe. He disapproved of judges meddling in politics and parties. We have gone far enough, in forming the negative as it now stands . . .

Mr. GORHAM saw no end to these difficulties and postponements. Some could not agree to the form of government before the powers were defined. Others could not agree to the powers till it was seen how the government was to be formed. He thought a majority as large a quorum as was necessary. It was the quorum almost every where fixed in the United States.

Mr. WILSON, after viewing the subject with all the coolness and attention possible, was most apprehensive of a dissolution of the Government from the Legislature swallowing up all the other powers. He remarked, that the prejudices against the Executive resulted from a misapplication of the adage, that the Parliament was the palladium of liberty. Where the Executive was really formidable, king and tyrant were naturally associated in the minds of people; not legislature and tyranny. But where the Executive was not formidable, the two last were most properly associated. After the destruction of the King in Great Britain, a more pure and unmixed tyranny sprang up in the Parliament, than had been exercised by the monarch. He insisted that we had not guarded against the danger on this side, by a sufficient self-defensive power, either to the Executive or Judiciary Department . . .

\textsuperscript{12} John Dickinson, Delaware

\textsuperscript{13} Roger Sherman, Connecticut
August 27

... Doctor JOHNSON\textsuperscript{14} moved to insert the words, “this Constitution and the,” before the word “laws.”

Mr. MADISON doubted whether it was not going too far, to extend the jurisdiction of the Court generally to cases arising under the Constitution, and whether it ought not to be limited to cases of a judiciary nature. The right of expounding the Constitution, in cases not of this nature, ought not to be given to that department.

The motion of Doctor Johnson was agreed to, \emph{nem. con.}, it being generally supposed, that the jurisdiction given was constructively limited to cases of a judiciary nature.

Mr. GOUVERNEUR MORRIS wished to know what was meant by the words, “In all the cases before mentioned it [jurisdiction] shall be appellate, with such exceptions, etc.,” — whether it extended to matters of fact as well as law, — and to cases of common law, as well as civil law.

Mr. WILSON. The Committee, he believed, meant facts as well as law, and common as well as civil law. The jurisdiction of the Federal court of appeals had, he said, been so construed.

Mr. DICKINSON moved to add, after the word “appellate,” the words, “both as to law and fact”; which was agreed to, \emph{nem. con.}

\textsuperscript{14} William S. Johnson, Connecticut
Creating the Electoral College
September 4 and 6, 1787

The Virginia Plan, introduced by Edmund Randolph on May 29 (Document 10), called for the creation of a National Executive elected by the Congress. In June, the delegates agreed on a single executive who would serve a seven-year term and be ineligible for reelection. Some delegates wanted to settle the issue of reeligibility first. Others wanted to fix the length of term before proceeding further. Still others wanted to discuss how the executive would be elected before considering anything else. Finally, another group of delegates thought that the powers of the president should be the primary question to be settled.

The biggest issue was how to elect the president. On June 9, the delegates defeated a motion to have the president elected by state executives. On June 18, Hamilton surprised the delegates with a proposal for a president for life. The delegates revisited the four main issues on several days in July. On July 17, the delegates agreed again to a single executive elected by the National legislature, and to be re-elected rather than serve during good behavior. On July 18 and 19, the delegates revisited the issue of whether the president should be eligible for reelection and considered the idea that the president should be elected by electors chosen by state legislatures. On July 20, a proposal permitting the impeachment of the president was approved. On July 24, the delegates returned to the earlier position: the president should be elected by the national legislature. Finally, on July 26, the delegates approved a seven-year term for the president. But he would be ineligible for reelection.

On August 24, the delegates turned to the presidential article of the Committee of Detail Report (Document 19) and rejected four different modes of electing the president. In the end, the Convention selected members of the Brearly Committee whose main objective was to settle the presidential election clause. The Brearly Committee, comprising Gilman, King, Sherman, Brearly, Gouverneur Morris, Dickinson, Carroll, Madison, Williamson, Butler, and Baldwin, proposed the adoption of an Electoral College in which both the people and the states were represented in the election of the president. The president was to be elected for four years and be eligible for reelection. This document presents the delegates’ discussion of the Brearly Committee report.
September 4

In Convention, – Mr. BREARLY,¹ from the Committee of 11, made a further partial report as follows:

“The Committee of 11, to whom sundry resolutions, etc., were referred on the thirty-first of August, report, that in their opinion the following additions and alterations should be made to the Report before the Convention, videlicet²:

1. The first clause of Article 7, Section 1,³ to read as follows: ‘The Legislature shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States.’

2. At the end of the second clause of Article 7, Section 1, add, ‘and with the Indian tribes.’

3. In the place of the 9th Article, Section 1, to be inserted: ‘The Senate of the United States shall have power to try all impeachments; but no person shall be convicted without the concurrence of two-thirds of the members present.’

4. After the word ‘Excellency,’ in Section 1, Article 10, to be inserted: ‘He shall hold his office during the term of four years, and together with the Vice President chosen for the same term, be elected in the following manner, videlicet: Each State shall appoint, in such manner as its Legislature may direct, a number of Electors equal to the whole number of Senators and members of the House of Representatives to which the State may be entitled in the Legislature. The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit, sealed, to the seat of the General Government, directed to the President of the

¹ David Brearly, New Jersey
² abbreviation of the Latin videlicet (namely)
³ The draft of the Constitution, with articles and sections, delivered by the Committee of Detail on August 6 is the document that the Brearly Committee is discussing. The delegates argued over the contents of the Committee of Detail Report throughout the month of August and settled the powers of Congress, the shape of the Judiciary, and the future of the slave trade. The creation of the presidency had not yet been settled, however, the main stumbling block was how to elect the president.
Senate. The President of the Senate shall, in that House, open all the certificates, and the votes shall be then and there counted. The person having the greatest number of votes shall be the President, if such number be a majority of that of the Electors; and if there be more than one who have such a majority, and have an equal number of votes, then the Senate shall immediately choose by ballot one of them for President; but if no person have a majority, then from the five highest on the list the Senate shall choose by ballot the President; and in every case after the choice of the President, the person having the greatest number of votes shall be Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them the Vice President. The Legislature may determine the time of choosing and assembling the Electors, and the manner of certifying and transmitting their votes.

“5. Section 2. ‘No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; nor shall any person be elected to that office who shall be under the age of thirty-five years, and who has not been, in the whole, at least fourteen years a resident within the United States.’

“6. Section 3. ‘The Vice President shall be ex officio President of the Senate; except when they sit to try the impeachment of the President; in which case the Chief Justice shall preside, and excepting also when he shall exercise the powers and duties of President; in which case, and in case of his absence, the Senate shall choose a president pro tempore. The Vice President, when acting as President of the Senate, shall not have a vote unless the House be equally divided.’

“7. Section 4. ‘The President, by and with the advice and consent of the Senate, shall have power to make treaties; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, and other public ministers, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not otherwise herein provided for. But no treaty shall be made without the consent of two-thirds of the members present.’

“8. After the words, ‘into the service of the United States,’ in Section 2, Article 10, add ‘and may require the opinion in writing of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices.’

“9. The latter part of Section 2, Article 10, to read as follows: ‘He shall be removed from his office on impeachment by the House of Representatives, and conviction by the Senate, for treason or bribery; and in case of his removal
as aforesaid, death, absence, resignation, or inability to discharge the powers or
duties of his office, the Vice President shall exercise those powers and duties
until another President be chosen, or until the inability of the President be
removed.”

The first clause of the Report was agreed to, *nem. con.*

The second clause was also agreed to, *nem. con.*

The third clause was postponed, in order to decide previously on the
mode of electing the President.

The fourth clause was accordingly taken up.

Mr. GORHAM disapproved of making the next highest after the
President the Vice President, without referring the decision to the Senate in
case the next highest should have less than a majority of votes. As the
regulation stands, a very obscure man with very few votes may arrive at that
appointment.

Mr. SHERMAN said the object of this clause of the Report of the
Committee was to get rid of the ineligibility which was attached to the mode of
election by the Legislature, and to render the Executive independent of the
Legislature. As the choice of the President was to be made out of the five
highest, obscure characters were sufficiently guarded against in that case; and
he had no objection to requiring the Vice President to be chosen in like
manner, where the choice was not decided by a majority in the first instance.

Mr. MADISON was apprehensive that by requiring both the President
and Vice President to be chosen out of the five highest candidates, the
attention of the electors would be turned too much to making candidates,
instead of giving their votes in order to a definitive choice. Should this turn be
given to the business, the election would in fact be consigned to the Senate
altogether. It would have the effect, at the same time, he observed, of giving the
nomination of the candidates to the largest States.

Mr. GOUVERNEUR MORRIS concurred in, and enforced, the remarks
of Mr. MADISON.

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4 an abbreviation of *nemine contradicente*, Latin for “no one dissenting”
5 Nathaniel Gorham, Massachusetts
6 Roger Sherman, Connecticut
7 James Madison, Virginia
8 Gouverneur Morris, Pennsylvania
Mr. RANDOLPH⁹ and Mr. PINCKNEY¹⁰ wished for a particular explanation, and discussion, of the reasons for changing the mode of electing the Executive.

Mr. GOUVERNEUR MORRIS said, he would give the reasons of the Committee, and his own. The first was the danger of intrigue and faction, if the appointment should be made by the Legislature. The next was the inconvenience of an ineligibility required by that mode, in order to lessen its evils. The third was the difficulty of establishing a court of impeachments, other than the Senate, which would not be so proper for the trial, nor the other branch, for the impeachment of the President, if appointed by the Legislature. In the fourth place, nobody had appeared to be satisfied with an appointment by the Legislature. In the fifth place, many were anxious even for an immediate choice by the people. And finally, the sixth reason was the indispensable necessity of making the Executive independent of the Legislature. As the electors would vote at the same time, throughout the United States, and at so great a distance from each other, the great evil of cabal was avoided. It would be impossible, also, to corrupt them. A conclusive reason for making the Senate, instead of the Supreme Court, the judge of impeachments, was, that the latter was to try the President, after the trial of the impeachment.

Colonel MASON¹¹ confessed that the plan of the Committee had removed some capital objections, particularly the danger of cabal and corruption. It was liable, however, to this strong objection, that nineteen times in twenty the President would be chosen by the Senate, an improper body for the purpose.

Mr. BUTLER¹² thought the mode not free from objections; but much more so than an election by the legislature, where, as in elective monarchies, cabal, faction, and violence would be sure to prevail.

Mr. PINCKNEY stated as objections to the mode, – first, that it threw the whole appointment in fact, into the hands of the Senate. Secondly, the electors will be strangers to the several candidates, and of course unable to decide on their comparative merits. Thirdly, it makes the Executive re-eligible, which will endanger the public liberty. Fourthly, it makes the same body of men which will, in fact, elect the President, his judges in case of an impeachment.

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⁹ Edmund J. Randolph, Virginia  
¹⁰ Charles Pinckney, South Carolina  
¹¹ George Mason, Virginia  
¹² Pierce Butler, South Carolina
Mr. WILLIAMSON\textsuperscript{13} had great doubts whether the advantage of re-eligibility would balance the objection to such a dependence of the President on the Senate for his reappointment. He thought, at least, the Senate ought to be restrained to the two highest on the list.

Mr. GOUVERNEUR MORRIS said, the principal advantage aimed at was, that of taking away the opportunity for cabal. The President may be made, if thought necessary, ineligible, on this as well as on any other mode of election. Other inconveniences may be no less redressed on this plan than any other.

Mr. BALDWIN\textsuperscript{14} thought the plan not so objectionable, when well considered, as at first view. The increasing intercourse among the people of the States would render important characters less and less unknown; and the Senate would consequently be less and less likely to have the eventual appointment thrown into their hands.

Mr. WILSON.\textsuperscript{15} This subject has greatly divided the House, and will also divide the people out of doors.\textsuperscript{16} It is in truth the most difficult of all on which we have had to decide. He had never made up an opinion on it entirely to his own satisfaction. He thought the plan, on the whole, a valuable improvement on the former. It gets rid of one great evil, that of cabal and corruption; and Continental characters will multiply as we more and more coalesce, so as to enable the Electors in every part of the Union to know and judge of them. It clears the way also for a discussion of the question of re-eligibility, on its own merits, which the former mode of election seemed to forbid. He thought it might be better, however, to refer the eventual appointment to the Legislature than to the Senate, and to confine it to a smaller number than five of the candidates. The eventual election by the Legislature would not open cabal anew, as it would be restrained to certain designated objects of choice; and as these must have had the previous sanction of a number of the States; and if the election be made as it ought, as soon as the votes of the Electors are opened, and it is known that no one has a majority of the whole, there can be little danger of corruption. Another reason for preferring the Legislature to the Senate in this business was, that the House of Representatives will be so often

\textsuperscript{13} Hugh Williamson, North Carolina
\textsuperscript{14} Abraham Baldwin, Georgia
\textsuperscript{15} James Wilson, Pennsylvania
\textsuperscript{16} that is, when the people consider what the Convention proposes as the new constitution
changed as to be free from the influence, and faction, to which the permanence of the Senate may subject that branch.

Mr. RANDOLPH preferred the former mode of constituting the Executive; but if the change was to be made, he wished to know why the eventual election was referred to the Senate, and not to the Legislature? He saw no necessity for this, and many objections to it. He was apprehensive, also, that the advantage of the eventual appointment would fall into the hands of the States near the seat of government.

Mr. GOUVERNEUR MORRIS said the Senate was preferred because fewer could then say to the President, "You owe your appointment to us." He thought the President would not depend so much on the Senate for his reappointment, as on his general good conduct.

The further consideration of the Report was postponed, that each member might take a copy of the remainder of it. . . .

September 6

In Convention, – Mr. KING17 and Mr. GERRY18 moved to insert in the fourth clause of the Report, after the words, “may be entitled in the Legislature,” the words following: “But no person shall be appointed an Elector who is a member of the Legislature of the United States, or who holds any office of profit or trust under the United States”; which passed, nem. con.

Mr. GERRY proposed, as the President was to be elected by the Senate out of the five highest candidates, that if he should not at the end of his term be re-elected by a majority of the Electors, and no other candidate should have a majority, the eventual election should be made by the Legislature. This, he said, would relieve the President from his particular dependence on the Senate for his continuance in office.

Mr. KING liked the idea, as calculated to satisfy particular members, and promote unanimity; and as likely to operate but seldom.

Mr. READ19 opposed it; remarking, that if individual members were to be indulged, alterations would be necessary to satisfy most of them.

Mr. WILLIAMSON espoused it, as a reasonable precaution against the undue influence of the Senate.

Mr. SHERMAN liked the arrangement as it stood, though he should not be averse to some amendments. He thought, he said, that if the Legislature

17 Rufus King, Massachusetts
18 Elbridge Gerry, Massachusetts
19 George Read, Delaware
were to have the eventual appointment, instead of the Senate, it ought to vote in the case by States, – in favor of the small States, as the large states would have so great an advantage in nominating the candidates.

Mr. GOUVERNEUR MORRIS thought favorably of Mr. GERRY’S proposition. It would free the President from being tempted, in naming to offices, to conform to the will of the Senate, and thereby virtually give the appointments to office to the Senate.

Mr. WILSON said, that he had weighed carefully the Report of the Committee for remodeling the constitution of the Executive; and on combining it with other parts of the plan, he was obliged to consider the whole as having a dangerous tendency to aristocracy; as throwing a dangerous power into the hands of the Senate. They will have, in fact, the appointment of the President, and, through his dependence on them, the virtual appointment to offices; among others, the officers of the Judiciary department. They are to make treaties; and they are to try all impeachments. In allowing them thus to make the Executive and Judiciary appointments, to be the court of impeachments, and to make treaties which are to be laws of the land, the Legislative, Executive, and Judiciary powers are all blended in one branch of the Government. The power of making treaties involves the case of subsidies, and here, as an additional evil, foreign influence is to be dreaded. According to the plan as it now stands, the President will not be the man of the people, as he ought to be; but the minion of the Senate. He cannot even appoint a tide-waiter\textsuperscript{20} without the Senate. He had always thought the Senate too numerous a body for making appointments to office. The Senate will, moreover, in all probability, be in constant session. They will have high salaries. And with all these powers, and the President in their interest, they will depress the other branch of the Legislature, and aggrandize themselves in proportion. Add to all this, that the Senate, sitting in conclave, can by holding up to their respective States various and improbable candidates, contrive so to scatter their votes, as to bring the appointment of the President ultimately before themselves. Upon the whole, he thought the new mode of appointing the President, with some amendments, a valuable improvement; but he could never agree to purchase it at the price of the ensuing parts of the Report, nor befriend a system of which they make a part.

Mr. GOUVERNEUR MORRIS expressed his wonder at the observations of Mr. WILSON, so far as they preferred the plan in the printed Report to the new modification of it before the House; and entered into a comparative view

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\textsuperscript{20} a lower ranking customs officer who works at the docks
of the two, with an eye to the nature of Mr. WILSON’s objections to the last. By the first, the Senate, he observed, had a voice in appointing the President out of all the citizens of the United States; by this they were limited to five candidates, previously nominated to them, with a probability of being barred altogether by the successful ballot of the Electors. Here, surely was no increase of power. They are now to appoint Judges, nominated to them by the President. Before, they had the appointment without any agency whatever of the President. Here again was surely no additional power. If they are to make treaties, as the plan now stands, the power was the same in the printed plan. If they are to try impeachments, the Judges must have been triable by them before. Wherein, then, lay the dangerous tendency of the innovations to establish an aristocracy in the Senate? As to the appointment of officers, the weight of sentiment in the House was opposed to the exercise of it by the President alone; though it was not the case with himself. If the Senate would act as was suspected, in misleading the States into a fallacious disposition of their votes for a President, they would, if the appointment were withdrawn wholly from them, make such representations in their several States where they have influence, as would favor the object of their partiality.

Mr. WILLIAMSON, replying to Mr. MORRIS, observed, that the aristocratic complexion proceeds from the change in the mode of appointing the President, which makes him dependent on the Senate.

Mr. CLYMER\textsuperscript{21} said, that the aristocratic part, to which he could never accede, was that, in the printed plan, which gave the Senate the power of appointing to offices.

Mr. HAMILTON\textsuperscript{22} said, that he had been restrained from entering into the discussions, by his dislike of the scheme of government in general; but as he meant to support the plan to be recommended, as better than nothing, he wished in this place to offer a few remarks. He liked the new modification, on the whole, better than that in the printed Report. In this, the President was a monster, elected for seven years, and ineligible afterwards; having great powers in appointments to office; and continually tempted, by this constitutional disqualification, to abuse them in order to subvert the Government. Although he should be made re-eligible, still, if appointed by the Legislature, he would be tempted to make use of corrupt influence to be continued in office. It seemed peculiarly desirable, therefore, that some other mode of election should be devised. Considering the different views of different States, and the different

\begin{flushright}
\textsuperscript{21} George Clymer, Pennsylvania

\textsuperscript{22} Alexander Hamilton, New York
\end{flushright}
districts, Northern, Middle, and Southern, he concurred with those who thought that the votes would not be concentered, and that the appointment would consequently, in the present mode, devolve on the Senate. The nomination to offices will give great weight to the President. Here, then, is a mutual connection and influence, that will perpetuate the President, and aggrandize both him and the Senate. What is to be the remedy? He saw none better than to let the highest number of ballots, whether a majority or not, appoint the President. What was the objection to this? Merely that too small a number might appoint. But as the plan stands, the Senate may take the candidate having the smallest number of votes, and make him President.

Mr. SPAIGHT and Mr. WILLIAMSON moved to insert “seven,” instead of “four” years, for the term of the President.

On this motion, – New Hampshire, Virginia, North Carolina, aye, – 3; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, no, – 8.

Mr. SPAIGHT and Mr. WILLIAMSON then moved to insert “six;” instead of “four.”

On which motion, – North Carolina, South Carolina, aye, – 2; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, no, – 9.

On the term “four” all the States were aye, except North Carolina, no.

On the question on the fourth clause in the Report, for appointing the President by Electors, down to the words, “entitled in the Legislature,” inclusive, – New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, aye, – 9; North Carolina, South Carolina, no, – 2.

It was moved, that the Electors meet at the seat of the General Government; which passed in the negative, – North Carolina only being, aye.

It was then moved to insert the words, “under the seal of the State,” after the word “transmit,” in the fourth clause of the Report; which was disagreed to; as was another motion to insert the words, “and who shall have given their votes,” after the word “appointed,” in the fourth clause of the Report, as added yesterday on motion of Mr. DICKINSON. 24

On several motions, the words, “in presence of the Senate and House of Representatives,” were inserted after the word “counted”; and the word

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23 Richard D. Spaight, North Carolina
24 John Dickinson, Delaware
“immediately,” before the word “choose”; and the words, “of the electors,” after the word “votes.”

Mr. SPAIGHT said, if the election by Electors is to be crammed down, he would prefer their meeting altogether, and deciding finally without any reference to the Senate; and moved, “that the Electors meet at the seat of the General Government.”

Mr. WILLIAMSON seconded the motion; on which all the States were in the negative, except North Carolina.

On motion, the words, “But the election shall be on the same day throughout the United States,” were added after the words, “transmitting their votes.”

New Hampshire, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye, – 8; Massachusetts, New Jersey, Delaware, no, – 3.

On the question on the sentence in the fourth clause, “if such number be a majority of that of the Electors appointed,” – New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, South Carolina, Georgia, aye, – 8; Pennsylvania, Virginia, North Carolina, no, – 3.

On a question on the clause referring the eventual appointment of the President to the Senate, – New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, aye, – 7; North Carolina, no. Here the call ceased.

Mr. MADISON, made a motion requiring two-thirds at least of the Senate to be present at the choice of a President.

Mr. PINCKNEY seconded the motion.

Mr. GORHAM thought it a wrong principle to require more than a majority in any case. In the present, it might prevent for a long time any choice of a President.

On the question moved by Mr. MADISON and Mr. PINCKNEY, – New Hampshire, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye, – 6; Connecticut, New Jersey, Pennsylvania, Delaware, no, – 4; Massachusetts, absent.

Mr. WILLIAMSON suggested, as better than an eventual choice by the Senate, that this choice should be made by the Legislature, voting by States and not per capita.

Mr. SHERMAN suggested, “the House of Representatives,” as preferable to “the legislature”; and moved accordingly, to strike out the words, “The Senate shall immediately choose,” etc. and insert: “The House of
Representatives shall immediately choose by ballot one of them for President, the members from each State having one vote.”

Colonel MASON liked the latter mode best, as lessening the aristocratic influence of the Senate.

On the motion of Mr. SHERMAN, – New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye, – 10; Delaware, no, – 1.

Mr. GOUVERNEUR MORRIS suggested the idea of providing that, in all cases, the President in office should not be one of the five candidates; but be only re-eligible in case a majority of the Electors should vote for him. (This was another expedient for rendering the President independent of the Legislative body for his continuance in office.)

Mr. MADISON remarked, that as a majority of members would make a quorum in the House of Representatives, it would follow from the amendment of Mr. SHERMAN, giving the election to a majority of States, that the President might be elected by two States only, Virginia and Pennsylvania, which have eighteen members, if these States alone should be present.

On a motion, that the eventual election of President, in case of an equality of the votes of the Electors, be referred to the House of Representatives, – New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye, – 7; New Jersey, Delaware, Maryland, no, – 3.

Mr. KING moved to add to the amendment of Mr. SHERMAN, “But a quorum for this purpose shall consist of a member or members from two-thirds of the States, and also of a majority of the whole number of the House of Representatives.”

Colonel MASON liked it, as obviating the remark of Mr. MADISON.

The motion, as far as “States,” inclusive, was agreed to. On the residue, to wit: “and also of a majority of the whole number of the House of Representatives,” it passed in the negative, – Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, aye, – 5; New Hampshire, New Jersey, Delaware, Maryland, South Carolina, Georgia, no, – 6.

The Report relating to the appointment of the Executive stands, as amended, as follows:

“He shall hold his office during the term of four years; and, together with the Vice President, chosen for the same term, be elected in the following manner:

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25 The sentence inside the parentheses is Madison’s explanatory comment.
“Each State shall appoint, in such manner as its Legislature may direct, a number of electors equal to the whole number of Senators and members of the House of Representatives to which the state may be entitled in the Legislature.

“But no person shall be appointed an elector who is a member of the Legislature of the United States, or who holds any office of profit or trust under the United States.

“The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the General Government, directed to the President of the Senate.

“The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

“The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; the representation from each State having one vote. But if no person have a majority, then from the five highest on the list the House of Representatives shall, in like manner, choose by ballot the President. In the choice of a President by the House of Representatives, a quorum shall consist of a member or members from two-thirds of the States, (and the concurrence of a majority of all the States shall be necessary to such choice.)* And in every case after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them the Vice President.

“The Legislature may determine the time of choosing the electors, and of their giving their votes; and the manner of certifying and transmitting their votes; but the election shall be on the same day throughout the United States.”

Adjourned.

* [Madison’s note]

This clause was not inserted on this day, but on the seventh of September.
Objections to the Constitution
September 10, 12, 15, and 17, 1787

Edmund Randolph and George Mason of Virginia and Elbridge Gerry of Massachusetts played leading roles in the Convention, arriving at the beginning and staying to the very end. During their 88 days at the Convention, their opinions changed dramatically. All three of these influential delegates supported the initial Virginia Plan but declined to support the Constitution. Is it possible to locate the moment when they started to have reservations about the direction of the conversation? Randolph was the first to state his objections. He did so on September 10, when Gerry raised a question about the provisions for ratifying the Constitution. Gerry disliked the removal of a phrase requiring that the Constitution be approved by Congress before being submitted to the state conventions. Randolph went further, declaring that the Constitution should give the state ratifying conventions the power to propose amendments. Later in that day’s discussion, Randolph revealed a lengthy series of complaints against what he considered inadequate provisions for limiting the power of the executive and the legislature.

Mason and Gerry seemed to suggest on September 12 that Randolph’s concerns could be resolved if the Convention added a Bill of Rights to the Constitution. Their motion was immediately rejected by all the state delegations present. On September 15, Randolph elaborated his concerns. He was joined on that day by Mason and then by Gerry. Mason also wrote his objections (repeating some of those Randolph and Gerry had raised but adding others) on his copy of the Committee of Style Report. The decision of Randolph, Mason, and Gerry to withhold their signatures became important in the debate over the ratification of the Constitution.

September 10

Mr. GERRY moved to reconsider Articles 21 and 22; from the latter of which “for the approbation of Congress,” had been struck out.¹ He objected to proceeding to change the Government without the approbation of Congress, as being improper, and giving just umbrage to that body. He repeated his objections, also, to an annulment of the Confederation with so little scruple or formality.

Mr. HAMILTON² concurred with Mr. GERRY as to the indecorum of not requiring the approbation of Congress. He considered this as a necessary ingredient in the transaction. He thought it wrong, also, to allow nine States, as provided by Article 21, to institute a new Government on the ruins of the existing one. He would propose, as a better modification of the two Articles (21 and 22), that the plan should be sent to Congress, in order that the same, if approved by them, may be communicated to the State Legislatures, to the end that they may refer it to State conventions; each Legislature declaring, that, if the convention of the State should think the plan ought to take effect among nine ratifying States, the same should take effect accordingly.

Mr. GORHAM.³ Some States will say that nine States shall be sufficient to establish the plan; others will require unanimity for the purpose, and the different and conditional ratifications will defeat the plan altogether.

Mr. HAMILTON. No convention convinced of the necessity of the plan will refuse to give it effect, on the adoption by nine States. He thought this mode less exceptionable than the one proposed in the article: while it would attain the same end.

Mr. FITZSIMONS⁴ remarked, that the words, “for their approbation,” had been struck out in order to save Congress from the necessity of an act inconsistent with the Articles of Confederation under which they held their authority.

Mr. RANDOLPH declared if no change should be made in this part of the plan, he should be obliged to dissent from the whole of it. He had from the beginning, he said, been convinced that radical changes in the system of the Union were necessary. Under this conviction he had brought forward a set of republican propositions, as the basis and outline of a reform. These republican propositions had, however, much to his regret, been widely, and, in his

¹ For these articles, see the Committee of Detail Report, Document 19.
² Alexander Hamilton, New York
³ Nathaniel Gorham, Massachusetts
⁴ Thomas Fitzsimons, Pennsylvania
opinion, irreconcilably departed from. In this state of things, it was his idea, and he accordingly meant to propose, that the State conventions should be at liberty to offer amendments to the plan; and that these should be submitted to a second General Convention, with full power to settle the Constitution finally. He did not expect to succeed in this proposition, but the discharge of his duty in making the attempt would give quiet to his own mind.

Mr. WILSON⁵ was against a reconsideration for any of the purposes which had been mentioned.

Mr. KING⁶ thought it would be more respectful to Congress, to submit the plan generally to them than in such a form as expressly and necessarily to require their approbation or disapprobation. The assent of nine States he considered as sufficient; and that it was more proper to make this a part of the Constitution itself, than to provide for it by a supplemental or distinct recommendation.

Mr. GERRY urged the indecency and pernicious tendency of dissolving, in so slight a manner, the solemn obligations of the Articles of Confederation. If nine out of thirteen can dissolve the compact, six out of nine will be just as able to dissolve the new one hereafter.

Mr. SHERMAN⁷ was in favor of Mr. KING’S idea of submitting the plan generally to Congress. He thought nine States ought to be made sufficient; but that it would be better to make it a separate act, and in some such form as that intimated by Col. HAMILTON, than to make it a particular article of the Constitution.

On the question for reconsidering the two articles, 21 and 22, – Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, Georgia, aye, – 7; Massachusetts, Pennsylvania, South Carolina, no, – 3; New Hampshire, divided.

. . . Mr. RANDOLPH took this opportunity to state his objections to the system. They turned on the Senate’s being made the court of impeachment for trying the Executive, – on the necessity of three-fourths instead of two-thirds of each House to overrule the negative of the President, – on the smallness of the number of the Representative branch, – on the want of limitation to a standing army, – on the general clause concerning necessary and proper laws, – on the want of some particular restraint on navigation acts, – on the power to lay duties on exports, – on the authority of the General Legislature to interpose

⁵ James Wilson, Pennsylvania
⁶ Rufus King, Massachusetts
⁷ Roger Sherman, Connecticut
Objections to the Constitution

on the application of the Executives of the States, – on the want of a more definite boundary between the General and State Legislatures, – and between the General and State Judiciaries, – on the unqualified power of the President to pardon treasons, – on the want of some limit to the power of the Legislature in regulating their own compensations. With these difficulties in his mind, what course, he asked, was he to pursue? Was he to promote the establishment of a plan which he verily believed would end in tyranny? He was unwilling, he said, to impede the wishes and judgment of the Convention, but he must keep himself free, in case he should be honored with a seat in the Convention of his State, to act according to the dictates of his judgment. The only mode in which his embarrassment could be removed was that of submitting the plan to Congress, to go from them to the State Legislatures, and from these to State Conventions, having power to adopt, reject, or amend; the process to close with another General Convention, with full power to adopt or reject the alterations proposed by the State Conventions, and to establish finally the Government. He accordingly proposed a resolution to this effect.

Doctor FRANKLIN\textsuperscript{8} seconded the motion.

Colonel MASON urged and obtained that the motion should lie on the table for a day or two, to see what steps might be taken with regard to the parts of the system objected to by Mr. RANDOLPH.

Mr. PINCKNEY moved, “that it be an instruction to the Committee for revising the style and arrangement of the articles agreed on, to prepare an address to the people, to accompany the present Constitution, and to be laid, with the same, before the United States in Congress.”

The motion itself was referred to the Committee, \textit{nem. con.}\textsuperscript{9}

Mr. RANDOLPH moved to refer to the Committee, also, a motion relating to pardons in cases of treason; which was agreed to, \textit{nem. con.}

Adjourned.

\textbf{September 12}

Colonel MASON . . . wished the plan had been prefaced with a Bill of Rights, and would second a Motion if made for the purpose. It would give great quiet to the people; and with the aid of the State declarations, a bill might be prepared in a few hours.

Mr. GERRY concurred in the idea and moved for a Committee to prepare a Bill of Rights.

\textsuperscript{8} Benjamin Franklin, Pennsylvania

\textsuperscript{9} an abbreviation of \textit{nemine contradicente}, Latin for “no one dissenting”
Colonel MASON seconded the motion.

Mr. SHERMAN, was for securing the rights of the people where requisite. The State Declarations of Rights are not repealed by this Constitution; and being in force are sufficient. There are many cases where juries are proper which can not be discriminated. The Legislature may be safely trusted.

Colonel MASON. The Laws of the U.S. are to be paramount to State Bills of Rights.


September 15

Mr. RANDOLPH animadverting on the indefinite and dangerous power given by the Constitution to Congress, expressing the pain he felt at differing from the body of the Convention on the close of the great and awful subject of their labors, and anxiously wishing for some accommodating expedient which would relieve him from his embarrassments, made a motion importing, "that amendments to the plan might be offered by the State conventions, which should be submitted to, and finally decided on by, another general Convention." Should this proposition be disregarded, it would, he said, be impossible for him to put his name to the instrument. Whether he should oppose it afterwards, he would not then decide; but he would not deprive himself of the freedom to do so in his own State, if that course should be prescribed by his final judgment.

Colonel MASON seconded and followed Mr. RANDOLPH in animadversions on the dangerous power and structure of the Government, concluding that it would end either in monarchy, or a tyrannical aristocracy; which, he was in doubt, but one or other, he was sure. This Constitution had been formed without the knowledge or idea of the people. A second Convention will know more of the sense of the people, and be able to provide a system more consonant to it. It was improper to say to the people, take this or nothing. As the Constitution now stands, he could neither give it his support or vote in Virginia; and he could not sign here what he could not support there. With the expedient of another Convention, as proposed, he could sign.

Mr. PINCKNEY. These declarations from members so respectable, at the close of this important scene, give a peculiar solemnity to the present

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10 pointing critically to

11 Charles Pinckney, South Carolina
Objections to the Constitution

12 moment. He descanted on the consequences of calling forth the deliberations and amendments of the different States, on the subject of government at large. Nothing but confusion and contrariety will spring from the experiment. The States will never agree in their plans, and the deputies to a second convention, coming together under the discordant impressions of their constituents, will never agree. Conventions are serious things, and ought not to be repeated. He was not without objections, as well as others, to the plan. He objected to the contemptible weakness and dependence of the Executive. He objected to the power of a majority, only, of Congress, over commerce. But apprehending the danger of a general confusion, and an ultimate decision by the sword, he should give the plan his support.

Mr. GERRY stated the objections which determined him to withhold his name from the Constitution:

1. the duration and re-eligibility of the Senate; 2. the power of the House of Representatives to conceal their Journals; 3. the power of Congress over the places of election; 4. the unlimited power of Congress over their own compensation; 5. that Massachusetts has not a due share of representatives allotted to her; 6. that three-fifths of the blacks are to be represented, as if they were freemen; 7. that under the power over commerce, monopolies may be established; 8. the Vice President being made head of the Senate.

He could, however, he said, get over all these, if the rights of the citizens were not rendered insecure, – first, by the general power of the Legislature to make what laws they may please to call “necessary and proper”; secondly, to raise armies and money without limit; thirdly, to establish a tribunal without juries, which will be a Star Chamber as to civil cases. Under such a view of the Constitution, the best that could be done, he conceived, was to provide for a second general Convention.

On the question, on the proposition of Mr. RANDOLPH, all the States answered, no.

12 spoke at length

13 The Star Chamber existed as an English court of law between the late fifteenth and mid-seventeenth centuries. Designed as a supplement to common law courts that would ensure speedier trial and stricter judgments against prominent people, it dispensed with indictments and substituted appointive judges for a jury of commoners. It came to be seen as a tool by which the monarch could enforce his arbitrary will.
On the question to agree to the Constitution, as amended, all the States, aye. The Constitution was then ordered to be engrossed\(^{14}\), and the House Adjourned.

**Mason’s Objections to the Constitution**

**September 17**

[1] There is no declaration of rights: and the laws of the general government being paramount to the laws and constitutions of the several states, the declarations of rights, in the separate states, are no security. Nor are the people secured even in the enjoyment of the benefit of the common law, which stands here upon no other foundation than its having been adopted by the respective acts forming the constitutions of the several states.

[2] In the House of Representatives there is not the substance, but the shadow only of representation; which can never produce proper information in the legislature, or inspire confidence in the people. – The laws will, therefore, be generally made by men little concerned in, and unacquainted with, their effects and consequences.

[3] The Senate have the power of altering all money-bills, and of originating appropriations of money, and the salaries of the officers of their own appointment, in conjunction with the President of the United States – Although they are not the representatives of the people, or amenable to them. These, with their other great powers (\textit{viz.}\(^{15}\) their powers in the appointment of ambassadors, and all public officers, in making treaties, and in trying all impeachments), their influence upon, and connection with, the supreme executive from these causes, their duration of office, and their being a constant existing body, almost continually sitting, joined with their being one complete branch of the legislature, will destroy any balance in the government, and enable them to accomplish what usurpations they please upon the rights and liberties of the people.

[4] The judiciary of the United States is so constructed and extended, as to absorb and destroy the judiciaries of the several states; thereby rendering laws as tedious, intricate, and expensive, and justice as unattainable by a great part of the community, as in England; and enabling the rich to oppress and ruin the poor.

[5] The President of the United States has no constitutional council (a thing unknown in any safe and regular government). He will therefore be

\(^{14}\) hand copied in clear, formal script

\(^{15}\) abbreviation of the Latin \textit{videlicet}, “namely”
unsupported by proper information and advice; and will generally be directed
by minions and favorites – or he will become a tool to the Senate – or a council
of state will grow out of the principal officers of the great departments – the
worst and most dangerous of all ingredients for such a council, in a free
country; for they may be induced to join in any dangerous or oppressive
measures, to shelter themselves, and prevent an inquiry into their own
misconduct in office. Whereas, had a constitutional council been formed (as
was proposed) of six members, \textit{viz.}, two from the eastern, two from the middle,
and two from the southern states, to be appointed by vote of the states in the
House of Representatives, with the same duration and rotation of office as the
Senate, the executive would always have had safe and proper information and
advice; the president of such a council might have acted as Vice President of
the United States, \textit{pro tempore}, upon any vacancy or disability of the chief
magistrate, and long continued sessions of the Senate, would in a great
measure have been prevented. From this fatal defect of a constitutional
council, has arisen the improper power of the Senate, in the appointment of
the public officers, and the alarming dependence and connection between that
branch of the legislature and the supreme executive. Hence, also, sprung that
unnecessary officer, the Vice President, who, for want of other employment, is
made President of the Senate, thereby dangerously blending the executive and
legislative powers; besides always giving to some one of the states an
unnecessary and unjust pre-eminence over the others.

[6] The President of the United States has the unrestrained power of
granting pardon for treason; which may be sometimes exercised to screen from
punishment those whom he had secretly instigated to commit the crime, and
thereby prevent a discovery of his own guilt. By declaring all treaties supreme
laws of the land, the executive and the Senate have, in many cases, an exclusive
power of legislation, which might have been avoided, by proper distinctions
with respect to treaties, and requiring the assent of the House of
Representatives, where it could be done with safety.

[7] By requiring only a majority to make all commercial and navigation
laws, the five southern states (whose produce and circumstances are totally
different from those of the eight northern and eastern States) will be ruined:
for such rigid and premature regulations may be made, as will enable the
merchants of the northern and eastern states not only to demand an exorbitant
freight, but to monopolize the purchase of the commodities, at their own price,
for many years, to the great injury of the landed interest, and the
impoverishment of the people: and the danger is the greater, as the gain on one
side will be in proportion to the loss on the other. Whereas, requiring two-
thirds of the members present in both houses, would have produced mutual moderation, promoted the general interest, and removed an insuperable objection to the adoption of the government.

[8] Under their own construction of the general clause at the end of the enumerated powers, the Congress may grant monopolies in trade and commerce, constitute new crimes, inflict unusual and severe punishments, and extend their power as far as they shall think proper; so that the state legislatures have no security for the powers now presumed to remain to them, or the people for their rights. There is no declaration of any kind for preserving the liberty of the press, the trial by jury in civil cases, nor against the danger of standing armies in time of peace.

[9] The state legislatures are restrained from laying export duties on their own produce – the general legislature is restrained from prohibiting the further importation of slaves for twenty odd years, though such importations render the United States weaker, more vulnerable, and less capable of defense. Both the general legislature, and the state legislatures are expressly prohibited making ex post facto laws, though there never was, nor can be, a legislature but must and will make such laws, when necessity and the public safety require them, which will hereafter be a breach of all the constitutions in the union, and afford precedents for other innovations.

[10] This government will commence in a moderate aristocracy; it is at present impossible to foresee whether it will, in its operation, produce a monarchy, or a corrupt oppressive aristocracy; it will most probably vibrate some years between the two, and then terminate in the one or the other.
The Fugitive Slave Clause

July 14; August 6, 28, and 29; and September 12, 15, and 17, 1787

The Fugitive Slave Clause of the Constitution was the outcome of discussions and negotiations between Northern and Southern delegates, occurring from mid-July until mid-September. There are seven important dates to bear in mind when considering its adoption. On each date, a decision was made and recorded in the documents excerpted below. We list these in chronological order, under their dates.

Here is a brief history: (1) The Fugitive Slave Clause first appeared in the last article in the Northwest Ordinance. That ordinance was passed on July 14, 1787. The news of the Northwest Ordinance reached the Constitutional Convention at the time the delegates were passing the Connecticut Compromise on federal representation and congressional powers. (2) On August 6, the Committee of Detail issued its report. There was no mention of the Fugitive Slave Clause, but Article XV addressed what became popularly known as the Extradition Clause. (3) During the discussion of this clause on August 28, the South Carolina delegation attempted, unsuccessfully, to include “fugitive slaves” in the “fugitive” provision of the Extradition Clause. (4) On August 29 that delegation came up with a separate fugitive clause that was accepted. (5) That clause was placed right under the original Extradition Clause in the Committee of Style Report. (On September 8, the delegates appointed a Committee of Style “to revise the style of, and arrange, the articles which have been agreed to by the House.”) (6) On September 15, the delegates agreed to a change in the language of the Fugitive Slave Clause. (7) The Constitution was signed by 39 of the 55 delegates attending the Convention on September 17, 1787.

The language and contiguous location of the Extradition Clause and the Fugitive Slave Clause in the Constitution invite the reader to compare and contrast them.

(1) **Northwest Ordinance, July 14**  
**ARTICLE VI**  
There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: Provided, always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

(2) **Committee of Detail Report, August 6**  
**ARTICLE XV**  
Any person charged with treason, felony, or high misdemeanor in any State, who shall flee from justice, and shall be found in any other State, shall, on demand of the Executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of the offence.

(3) **Madison’s Account of Debates in the Constitutional Convention, August 28**  
Article 15 being then taken up, the words, “high misdemeanor,” were struck out, and the words, “other crime,” inserted, in order to comprehend all proper cases; it being doubtful whether “high misdemeanor” had not a technical meaning too limited.

Mr. BUTLER¹ and Mr. PINCKNEY² moved to require “fugitive slaves and servants to be delivered up like criminals.”

Mr. WILSON.³ This would oblige the Executive of the State to do it at the public expense.

Mr. SHERMAN⁴ saw no more propriety in the public seizing and surrendering a slave or servant than a horse.

Mr. BUTLER withdrew his proposition, in order that some particular provision might be made, apart from this article.

Article 15, as amended, was then agreed to, nem. con.⁵

Adjourned.

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¹ Pierce Butler, South Carolina  
² Charles Pinckney, South Carolina  
³ James Wilson, Pennsylvania  
⁴ Roger Sherman, Connecticut  
⁵ abbreviation of *nemine contradicente*, Latin for “no one dissenting”
(4) Madison’s Account of Debates in the Constitutional Convention, August 29

Mr. BUTLER moved to insert after Article 15, “If any person bound to service or labor in any of the United States, shall escape into another State, he or she shall not be discharged from such service or labor, in consequence of any regulations subsisting in the State to which they escape, but shall be delivered up to the person justly claiming their service or labor,” – which was agreed to, nem. con.

(5) Committee of Style Report, September 12

Article IV. Sect. 2.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, and removed to the State having jurisdiction of the crime.

No person legally held to service or labor in one State, escaping into another, shall, in consequence of regulations subsisting therein, be discharged from such service or labor; but shall be delivered up, on claim of the party to whom such service or labor may be due.

(6) Madison’s Account of Debates in the Constitutional Convention, September 15

Article 4, Section 2, (the third paragraph), the term “legally” was struck out; and the words “under the laws thereof,” inserted after the word “State,” in compliance with the wish of some who thought the term legal equivocal, and favoring the idea that slavery was legal in a moral view.

(7) The Constitution, September 17

Extradition Clause

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

Fugitive Slave Clause

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.
The Powers of Congress
September 12 and 14, 1787

In the Virginia Plan, the powers of Congress seem to be unlimited, certainly when compared to the specific enumeration of powers in the Articles of Confederation. The New Jersey Plan reflected the hesitation of numerous delegates to give Congress the power to do what the states were deemed, by Congress, incapable of doing. The first time the powers of Congress are listed is in the Committee of Detail Report of August 6 (Document 19). Although the necessary and proper clause first appears in the Committee of Detail, September 14 marks the first time that a serious discussion takes place over the meaning of this clause.

From September 12 to September 17, the delegates debated the Committee of Style Report that refined the Committee of Detail listing of 18 powers of Congress. The “necessary and proper” clause received the most attention. The exchange on September 14 leaves us pondering what is included and what is excluded in the clause. For example, James Madison and Charles Pinckney moved to insert in the list of powers one to “establish an University, in which no preferences or distinctions should be allowed on account of religion” Gouverneur Morris mentioned that it was not necessary to be that specific. On the question, it was defeated 6–4–1. That is a division over whether a strict or a loose interpretation of the power of Congress is necessary and proper.

Article I

... Sect. 8. The Congress may by joint ballot appoint a Treasurer. They shall have power, –

To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States.

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, among the several states, and with the Indian tribes.

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

To provide for the punishment of counterfeiting the securities and current coin of the United States.

To establish post offices and post roads.

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

To constitute tribunals inferior to the Supreme Court.

To define and punish piracies and felonies committed on the high seas, and [punish] offences against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

To raise and support armies: but no appropriations of money to that use shall be for a longer term than two years.

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces.

To provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions.

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States; and to exercise like authority over all places purchased by the consent
of the Legislature of the State in which the same shall be, for the erection of
forts, magazines, arsenals, dock-yards, and other needful buildings. And,

To make all laws which shall be necessary and proper for carrying into
execution the foregoing powers, and all other powers vested by this
Constitution in the Government of the United States, or in any department or
officer thereof. . . .

Friday, September 14

In Convention. – The Report of the Committee of Style and Arrangement
being resumed, –

. . . Article 1, Sect. 8. The Congress “may by joint ballot appointed a
Treasurer,” –

Mr. RUTLEDGE\(^1\) moved to strike out this power, and let the Treasurer be
appointed in the same manner with other officers.

Mr. GORHAM\(^2\) and Mr. KING\(^3\) said that the motion, if agreed to, would
have a mischievous tendency. The people are accustomed and attached to that
mode of appointing Treasurers, and the innovation will multiply objections to
the system.

Mr. GOUVERNEUR MORRIS\(^4\) remarked, that if the Treasurer be not
appointed by the Legislature, he will be more narrowly watched, and more
readily impeached.

Mr. SHERMAN.\(^5\) As the two Houses appropriate money, it is best for
them to appoint the officer who is to keep it; and to appoint him as they make
the appropriation, not by joint, but several votes.

General PINCKNEY.\(^6\) The Treasurer is appointed by joint ballot in South
Carolina. The consequence is, that bad appointments are made, and the
Legislature will not listen to the faults of their own officer.

On the motion to strike out, –

New Hampshire, Connecticut, New Jersey, Delaware, Maryland, North
Carolina, South Carolina, Georgia, aye, – 8; Massachusetts, Pennsylvania,
Virginia, no, – 3.

\(^1\) John Rutledge, South Carolina
\(^2\) Nathaniel Gorham, Massachusetts
\(^3\) Rufus King, Massachusetts
\(^4\) Gouverneur Morris, Pennsylvania
\(^5\) Roger Sherman, Connecticut
\(^6\) Charles Cotesworth Pinckney, South Carolina
Article 1, Sect. 8, – the words “but all such duties, imposts, and excises, shall be uniform throughout the United States,” were unanimously annexed to the power of taxation.

On the clause, “to define and punish piracies and felonies on the high seas, and punish offences against the law of nations,” –

Mr. GOUVERNEUR MORRIS moved to strike out “punish,” before the words, “offences against the law of nations,” so as to let these be definable, as well as punishable, by virtue of the preceding member of the sentence.

Mr. WILSON hoped the alteration would by no means be made. To pretend to define the law of nations, which depended on the authority of all the civilized nations of the world, would have a look of arrogance that would make us ridiculous.

Mr. GOUVERNEUR MORRIS. The word define is proper when applied to offences in this case; the law of nations being often too vague and deficient to be a rule.

On the question to strike out the word “punish,” it passed in the affirmative, –

New Hampshire, Connecticut, New Jersey, Delaware, North Carolina, South Carolina, aye, – 6; Massachusetts, Pennsylvania, Maryland, Virginia, Georgia, no, – 5.

Doctor FRANKLIN moved to add, after the words, “post roads,” Article 1, Sect. 8, a power “to provide for cutting canals where deemed necessary.”

Mr. WILSON seconded the motion.

Mr. SHERMAN objected. The expense in such cases will fall on the United States, and the benefit accrue to the places where the canals may be cut.

Mr. WILSON. Instead of being an expense to the United States, they may be made a source of revenue.

Mr. MADISON suggested an enlargement of the motion, into a power “to grant charters of incorporation where the interest of the United States might require, and the legislative provisions of individual States may be incompetent.” His primary object was, however, to secure an easy communication between the States, which the free intercourse now to be opened seemed to call for. The political obstacles being removed, a removal of the natural ones, as far as possible ought to follow.

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7 James Wilson, Pennsylvania
8 Benjamin Franklin, Pennsylvania
9 James Madison, Virginia
Mr. RANDOLPH\textsuperscript{10} seconded the proposition.

Mr. KING thought the power unnecessary.

Mr. WILSON. It is necessary to prevent a State from obstructing the general welfare.

Mr. KING. The States will be prejudiced and divided into parties by it. In Philadelphia and New York, it will be referred to the establishment of a bank, which has been a subject of contention in those cities. In other places it will be referred to mercantile monopolies.

Mr. WILSON mentioned the importance of facilitating, by canals the communication with the Western settlements. As to banks, he did not think with Mr. KING, that the power in that point of view would excite the prejudices and parties apprehended. As to mercantile monopolies, they are already included in the power to regulate trade.

Colonel MASON\textsuperscript{11} was for limiting the power to the single case of canals. He was afraid of monopolies of every sort, which he did not think were by any means already implied by the Constitution, as supposed by Mr. WILSON.

The motion being so modified as to admit a distinct question specifying and limited to the case of canals, –

Pennsylvania, Virginia, Georgia, aye, – 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, no, – 8.

The other part fell, of course, as including the power rejected.

Mr. MADISON and Mr. PINCKNEY\textsuperscript{12} then moved to insert, in the list of powers vested in Congress, a power “to establish an University, in which no preferences or distinctions should be allowed on account of religion.”

Mr. WILSON supported the motion.

Mr. GOUVERNEUR MORRIS. It is not necessary. The exclusive power at the seat of government will reach the object.

On the question, – Pennsylvania, Virginia, North Carolina, South Carolina, aye, – 4; New Hampshire, Massachusetts, New Jersey, Delaware, Maryland, Georgia, no, – 6; Connecticut, divided, (Dr. JOHNSON,\textsuperscript{13} aye; Mr. SHERMAN, no.)

Colonel MASON, being sensible that an absolute prohibition of standing armies in time of peace might be unsafe, and wishing at the same time to insert

\textsuperscript{10} Edmund J. Randolph, Virginia
\textsuperscript{11} George Mason, Virginia
\textsuperscript{12} Charles Pinckney, South Carolina
\textsuperscript{13} William S. Johnson, Connecticut
something pointing out and guarding against the danger of them, moved to preface the clause (Article 1, Sect. 8), “to provide for organizing, arming, and disciplining the militia,” etc., with the words, “and that the liberties of the people may be better secured against the danger of standing armies in time of peace.”

Mr. RANDOLPH seconded the motion.

Mr. MADISON was in favor of it. It did not restrain Congress from establishing a military force in time of peace, if found necessary; and as armies in time of peace are allowed on all hands to be an evil, it is well to discountenance them by the Constitution, as far as will consist with the essential power of the Government on that head.

Mr. GOUVERNEUR MORRIS opposed the motion, as setting a dishonorable mark of distinction on the military class of citizens.

Mr. PINCKNEY and Mr. BEDFORD concurred in the opposition.

On the question, – Virginia, Georgia, aye, – 2; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, no, – 9.

Colonel MASON moved to strike out from the clause (Article 1, Sect. 9), “no bill of attainder, nor any ex post facto law, shall be passed,” the words “nor any ex post facto law.” He thought it not sufficiently clear, that the prohibition meant by this phrase was limited to cases of a criminal nature; and no legislature ever did or can altogether avoid them in civil cases.

Mr. GERRY seconded the motion; but with a view to extend the prohibition to “civil cases,” which he thought ought to be done.

On the question, all the States were, no.

Mr. PINCKNEY and Mr. GERRY, moved to insert a declaration, “that the liberty of the press should be inviolably observed.”

Mr. SHERMAN. It is unnecessary. The power of Congress does not extend to the press.

On the question, it passed in the negative, – Massachusetts, Maryland, Virginia, South Carolina, aye, – 4; New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, Georgia, no, – 7.

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14 Gunning Bedford Jr., Delaware
15 Elbridge Gerry, Massachusetts
The Signing of the Constitution

September 17, 1787

The delegations unanimously agreed to sign the Constitution, although three prominent delegates – Randolph, Gerry, and Mason – refused to sign, despite an eloquent plea from Benjamin Franklin for unanimity. Before the signing, George Washington spoke for the first time at the Convention. He supported a proposal to increase the size of the representative branch from 1 for 40,000 to 1 for 30,000, which the delegates accepted. After the signing, Washington noted in his diary, “the members adjourned to the City Tavern, dined together and took a cordial leave of each other.”

Franklin’s speech echoed the Constitution’s preamble by asking the delegates and all those for whom they worked, in effect, is not “a more perfect union” better than “a less perfect union?” Is not “a more perfect union” also achievable, whereas “a perfect union” would be achievable only in speech?


Monday, September 17

In Convention. – The engrossed\(^1\) Constitution being read, –

Doctor FRANKLIN rose with a speech in his hand, which he had reduced to writing for his own convenience, and which Mr. WILSON\(^2\) read in the words following: –

“Mr. President:

“I confess that there are several parts of this Constitution which I do not at present approve, but I am not sure I shall never approve them. For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore

\(^1\) formally and neatly copied

\(^2\) James Wilson, Pennsylvania
that, the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men, indeed, as well as most sects in religion, think themselves in possession of all truth, and that wherever others differ from them, it is so far error. Steele, a Protestant, in a dedication, tells the Pope, that the only difference between our churches, in their opinions of the certainty of their doctrines, is, 'the Church of Rome is infallible, and the Church of England is never in the wrong.' But though many private persons think almost as highly of their own infallibility as of that of their sect, few express it so naturally as a certain French lady, who, in a dispute with her sister, said, 'I don't know how it happens, sister, but I meet with nobody but myself that is always in the right – il n'y a que moi qui a toujours raison.'

"In these sentiments, Sir, I agree to this Constitution, with all its faults, if they are such; because I think a General Government necessary for us, and there is no form of government, but what may be a blessing to the people if well administered; and believe further, that this is likely to be well administered for a course of years, and can only end in despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic government, being incapable of any other. I doubt, too, whether any other Convention we can obtain may be able to make a better Constitution. For, when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded, like those of the builders of Babel; and that our states are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, Sir, to this Constitution, because I expect no better, and because I am not sure, that it is not the best. The opinions I have had of its errors I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born, and here they shall die. If every one of us, in returning to our constituents, were to report the objections he has had to it, and endeavor to gain partisans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects and great advantages resulting naturally in our favor among foreign nations as well as among ourselves, from our real or apparent unanimity. Much of the strength and efficiency of any government, in procuring and securing happiness to the people, depends on opinion, – on the general opinion of the goodness of the government, as well as
of the wisdom and integrity of its governors. I hope, therefore, that for our own 
sakes, as a part of the people, and for the sake of posterity, we shall act heartily 
and unanimously in recommending this Constitution (if approved by 
Congress and confirmed by the Conventions) wherever our influence may 
extend, and turn our future thoughts and endeavors to the means of having it 
well administered.

"On the whole, Sir, I cannot help expressing a wish that every member of 
the Convention, who may still have objections to it, would with me, on this 
ocasion, doubt a little of his own infallibility, and to make manifest our 
unanimity, put his name to this instrument." He then moved, that the 
Constitution be signed by the members, and offered the following as a 
convenient form, viz.: “Done in Convention by the unanimous consent of the 
States present, the seventeenth of September, etc. In witness whereof, we have 
hereunto subscribed our names.”

This ambiguous form had been drawn up by Mr. GOUVERNEUR 
MORRIS, in order to gain the dissenting members, and put into the hands of 
Doctor FRANKLIN, that it might have the better chance of success.

Mr. GORHAM said, if it was not too late, he could wish, for the purpose 
of lessening objections to the Constitution, that the clause, declaring that “the 
number of Representatives shall not exceed one for every forty thousand,” 
which had produced so much discussion, might be yet reconsidered, in order 
to strike out “forty thousand,” and insert “thirty thousand.” This would not, he 
remarked, establish that as an absolute rule, but only give Congress a greater 
latitude, which could not be thought unreasonable.

Mr. KING and Mr. CARROLL seconded and supported the ideas of Mr. 
GORHAM.

When the President rose, for the purpose of putting the question, he said, 
that although his situation had hitherto restrained him from offering his 
sentiments on questions depending in the House, and, it might be thought, 
ought now to impose silence on him, yet he could not forbear expressing his 
wish that the alteration proposed might take place. It was much to be desired 
that the objections to the plan recommended might be made as few as

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3 Gouverneur Morris, Pennsylvania  
4 This paragraph is Madison’s comment.  
5 Nathaniel Gorham, Massachusetts  
6 Rufus King, Massachusetts  
7 Daniel Carroll, Maryland  
8 The President of the Convention, General George Washington
The smallness of the proportion of Representatives had been considered, by many members of the Convention an insufficient security for the rights and interests of the people. He acknowledged that it had always appeared to himself among the exceptionable parts of the plan; and late as the present moment was for admitting amendments, he thought this of so much consequence, that it would give him much satisfaction to see it adopted.\(^9\)

No opposition was made to the proposition of Mr. GORHAM, and it was agreed to unanimously.

On the question to agree to the Constitution, enrolled, in order to be signed, it was agreed to, all the States answering, aye.

Mr. RANDOLPH\(^{10}\) then rose, and with an allusion to the observations of Doctor FRANKLIN, apologized for his refusing to sign the Constitution, notwithstanding the vast majority and venerable names that would give sanction to its wisdom and its worth. He said, however, that he did not mean by this refusal to decide that he should oppose the Constitution without doors. He meant only to keep himself free to be governed by his duty, as it should be prescribed by his future judgment. He refused to sign, because he thought the object of the Convention would be frustrated by the alternative which it presented to the people. Nine States will fail to ratify the plan, and confusion must ensue. With such a view of the subject he ought not, he could not, by pledging himself to support the plan, restrain himself from taking such steps as might appear to him most consistent with the public good.

Mr. GOUVERNEUR MORRIS said, that he too had objections, but considering the present plan as the best that was to be attained, he should take it with all its faults. The majority had determined in its favor, and by that determination he should abide. The moment this plan goes forth, all other considerations will be laid aside, and the great question will be, shall there be a National Government, or not? And this must take place, or a general anarchy will be the alternative. He remarked that the signing, in the form proposed, related only to the fact that the States present were unanimous.

Mr. WILLIAMSON\(^{11}\) suggested that the signing should be confined to the letter accompanying the Constitution to Congress, which might perhaps do nearly as well, and would be found satisfactory to some members who disliked

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\(^9\) Madison provides the following footnote: “This was the only occasion on which the President entered at all into the discussion of the Convention.”

\(^{10}\) Edmund J. Randolph, Virginia

\(^{11}\) Hugh Williamson, North Carolina
the Constitution. For himself, he did not think a better plan was to be expected, and had no scruples against putting his name to it.

Mr. HAMILTON\textsuperscript{12} expressed his anxiety that every member should sign. A few characters of consequence, by opposing, or even refusing to sign the Constitution, might do infinite mischief, by kindling the latent sparks that lurk under an enthusiasm in favor of the Convention which may soon subside. No man's ideas were more remote from the plan than his own were known to be; but is it possible to deliberate between anarchy and convulsion on one side, and the chance of good to be expected from the plan on the other?

Mr. BLOUNT\textsuperscript{13} said, he had declared that he would not sign so as to pledge himself in support of the plan, but he was relieved by the form proposed, and would, without committing himself, attest the fact that the plan was the unanimous act of the States in Convention.

Doctor FRANKLIN expressed his fears, from what Mr. RANDOLPH had said, that he thought himself alluded to in the remarks offered this morning to the House. He declared, that, when drawing up that paper, he did not know that any particular member would refuse to sign his name to the instrument, and hoped to be so understood. He possessed a high sense of obligation to Mr. RANDOLPH for having brought forward the plan in the first instance, and for the assistance he had given in its progress; and hoped that he would yet lay aside his objections, and, by concurring with his brethren, prevent the great mischief which the refusal of his name might produce.

Mr. RANDOLPH could not but regard the signing in the proposed form, as the same with signing the Constitution. The change of form, therefore, could make no difference with him. He repeated, that, in refusing to sign the Constitution, he took a step which might be the most awful of his life; but it was dictated by his conscience, and it was not possible for him to hesitate, much less, to change. He repeated, also, his persuasion, that the holding out this plan, with a final alternative to the people of accepting or rejecting it \textit{in toto}, would really produce the anarchy and civil convulsions which were apprehended from the refusal of individuals to sign it.

Mr. GERRY\textsuperscript{14} described the painful feelings of his situation, and the embarrassments under which he rose to offer any further observations on the subject which had been finally decided. Whilst the plan was depending, he had treated it with all the freedom he thought it deserved. He now felt himself

\textsuperscript{12} Alexander Hamilton, New York
\textsuperscript{13} William Blount, North Carolina
\textsuperscript{14} Elbridge Gerry, Massachusetts
bound, as he was disposed, to treat it with the respect due to the act of the Convention. He hoped he should not violate that respect in declaring, on this occasion, his fears that a civil war may result from the present crisis of the United States. In Massachusetts, particularly, he saw the danger of this calamitous event. In that State there are two parties, one devoted to Democracy, the worst, he thought, of all political evils; the other as violent in the opposite extreme. From the collision of these in opposing and resisting the Constitution, confusion was greatly to be feared. He had thought it necessary, for this and other reasons, that the plan should have been proposed in a more mediating shape, in order to abate the heat and opposition of parties. As it had been passed by the Convention, he was persuaded it would have a contrary effect. He could not, therefore, by signing the Constitution, pledge himself to abide by it at all events. The proposed form made no difference with him. But if it were not otherwise apparent, the refusals to sign should never be known from him. Alluding to the remarks of Doctor FRANKLIN, he could not, he said, but view them as leveled at himself and the other gentlemen who meant not to sign.

General PINCKNEY. We are not likely to gain many converts by the ambiguity of the proposed form of signing. He thought it best to be candid, and let the form speak the substance. If the meaning of the signers be left in doubt, his purpose would not be answered. He should sign the Constitution with a view to support it with all his influence, and wished to pledge himself accordingly.

Doctor FRANKLIN. It is too soon to pledge ourselves, before Congress and our constituents shall have approved the plan.

Mr. INGERSOLL did not consider the signing, either as a mere attestation of the fact, or as pledging the signers to support the Constitution at all events; but as a recommendation of what, all things considered, was the most eligible.

On the motion of Doctor FRANKLIN, – New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye, – 10; South Carolina, divided.

Mr. KING suggested that the Journals of the Convention should be either destroyed, or deposited in the custody of the President. He thought, if suffered

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15 Charles Cotesworth Pinckney, South Carolina
16 Jared Ingersoll, Pennsylvania
17 Madison provides the following footnote: “General PINCKNEY and MR. BUTLER disliked the equivocal form of signing, and on that account voted in the negative.”
to be made public, a bad use would be made of them by those who would wish to prevent the adoption of the Constitution.

Mr. WILSON preferred the second expedient. He had at one time liked the first best; but as false suggestions may be propagated, it should not be made impossible to contradict them.

A question was then put on depositing the Journals, and other papers of the Convention, in the hands of the President; on which, – New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye, — 10; Maryland,\textsuperscript{18} no, – 1.

The President, having asked what the Convention meant should be done with the Journals, etc., whether copies were to be allowed to the members, if applied for, it was resolved, \textit{nem. con.}\textsuperscript{19} “that he retain the Journal and other papers, subject to the order of Congress, if ever formed under the Constitution.”

The members then proceeded to sign the Constitution, as finally amended, as follows: …

The Constitution being signed by all the members, except Mr. RANDOLPH, Mr. MASON,\textsuperscript{20} and Mr. GERRY, who declined giving it the sanction of their names, the Convention dissolved itself by an adjournment \textit{sine die}.\textsuperscript{21}

Whilst the last members were signing, Doctor FRANKLIN, looking towards the President’s chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that painters had found it difficult to distinguish in their art, a rising, from a setting sun. I have, said he, often and often, in the course of the session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President, without being able to tell whether it was rising or setting: but now at length, I have the happiness to know, that it is a rising and not a setting sun.

\textsuperscript{18} Madison provides the following footnote: “This negative of Maryland was occasioned by the language of the instructions to the deputies of that state, which required them to report to the state the \textit{proceedings} of the Convention.”

\textsuperscript{19} no one disagreeing

\textsuperscript{20} George Mason, Virginia

\textsuperscript{21} without specifying a day to reconvene
Appendices
## Appendix A:
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#### The Constitutional Convention: The Alternative Plans

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### The Constitutional Convention: The Committee of Detail

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23. Objections to the Constitution (September 10, 12, 15, and 17, 1787)

24. The Fugitive Slave Clause (July 14; August 6, 28 and 29; and September 12, 15, and 17, 1787)

25. The Powers of Congress (September 12 and 14, 1787)

26. The Signing of the Constitution (September 17, 1787)
Appendix B:
The Three Plans from Which the Constitution Grew

The Constitutional Convention met from May 25 to September 17, 1787. Two different plans of government, and one plan compromising between them, shaped the Convention’s deliberations.

On May 29, Edmund Randolph introduced “The Virginia Plan” (Document 10), which reflected the shift of sovereignty from the States to the Federal Government that Madison had recommended in his “Vices of the Political System of the United States” (Document 7). It stripped the states qua states of the pre-eminence they held under the Articles of Confederation (Document 6). In particular, according to the Virginia Plan, the states would no longer have the right either to equal representation in the federal structure or to elect representatives to the Congress. The states fared no better in the area of powers: Congress was granted the right “to legislate in all cases to which the separate States were incompetent . . . [and] . . . to negative all laws passed by the several States, contravening in the opinion of the national legislature the articles of Union.” The Virginia Plan also introduced bicameralism and the separation of powers to the federal structure.

By contrast, the New Jersey Plan, introduced by William Patterson on June 15 (Document 13), did not reduce the power of the states. It retained the structural features of the Articles of Confederation and focused instead on enhancing the power of a unicameral Congress in which each state was equally represented. The plan acknowledged the defects in the Articles, but these “vices” were due solely to the want of power. It authorized Congress “to pass acts for raising a revenue . . . [and] . . . for the regulation of trade & commerce as well with foreign nations as with each other.”

On July 16th the delegates adopted, by a narrow margin, the “Connecticut Compromise” (Document 16, 17, and 18) which retained the bicameral legislature of the Virginia Plan but gave equal representation to the people in the House and equal representation to each State in the Senate. The compromise also restricted the Senate from altering money bills introduced by the House, a feature that would be absent in the final Constitution.

The Committee of Detail Report (Document 19), which was to fill in some of the details of the working plan, was presented to the Convention on August 6th. Among other things, the Report abandoned an earlier feature of
the Virginia Plan: Congress was no longer authorized to “legislate in all cases to which the separate States are incompetent.” Instead of this broad grant of power, Congress was given enumerated, that is specified, powers.
Appendix C:
Free and Slave Populations by State
According to the 1790 Census

<table>
<thead>
<tr>
<th>State</th>
<th>Free Whites</th>
<th>Other Free Persons</th>
<th>Slaves</th>
<th>% Slave</th>
<th>Total</th>
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<tr>
<td>Vermont</td>
<td>85,268</td>
<td>255</td>
<td>16</td>
<td>0.01</td>
<td>85,539</td>
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<td>630</td>
<td>158</td>
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<td>948</td>
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<td>2,764</td>
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<td>21,324</td>
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<td>1,801</td>
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<td>43</td>
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<tr>
<td>Georgia</td>
<td>52,886</td>
<td>398</td>
<td>29,264</td>
<td>35</td>
<td>82,548</td>
</tr>
</tbody>
</table>
Appendix D:
Declaration of Independence

_In CONGRESS, July 4, 1776_

The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

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 to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. — Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.
He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For Quartering large bodies of armed troops among us:
For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:
For cutting off our Trade with all parts of the world:
For imposing Taxes on us without our Consent:
For depriving us in many cases, of the benefits of Trial by Jury:
For transporting us beyond Seas to be tried for pretended offences:
For abolishing the free System of English Laws in a neighbouring
Province, establishing therein an Arbitrary government, and enlarging its
Boundaries so as to render it at once an example and fit instrument for
introducing the same absolute rule into these Colonies:
For taking away our Charters, abolishing our most valuable Laws, and
altering fundamentally the Forms of our Governments:
For suspending our own Legislatures, and declaring themselves invested
with power to legislate for us in all cases whatsoever.
He has abdicated Government here, by declaring us out of his Protection
and waging War against us.
He has plundered our seas, ravaged our Coasts, burnt our towns, and
destroyed the lives of our people.
He is at this time transporting large Armies of foreign Mercenaries to
compleat the works of death, desolation and tyranny, already begun with
circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous
ages, and totally unworthy the Head of a civilized nation.
He has constrained our fellow Citizens taken Captive on the high Seas to
bear Arms against their Country, to become the executioners of their friends
and Brethren, or to fall themselves by their Hands.
He has excited domestic insurrections amongst us, and has endeavourd
to bring on the inhabitants of our frontiers, the merciless Indian Savages,
whose known rule of warfare, is an undistinguished destruction of all ages,
sexes and conditions.
In every stage of these Oppressions We have Petitioned for Redress in the
most humble terms: Our repeated Petitions have been answered only by
repeated injury. A Prince whose character is thus marked by every act which
may define a Tyrant, is unfit to be the ruler of a free people.
Nor have We been wanting in attentions to our British brethren. We have
warned them from time to time of attempts by their legislature to extend an
unwarrantable jurisdiction over us. We have reminded them of the
circumstances of our emigration and settlement here. We have appealed to
their native justice and magnanimity, and we have conjured them by the ties of
our common kindred to disavow these usurpations, which, would inevitably
interrupt our connections and correspondence. They too have been deaf to the
voice of justice and of consanguinity. We must, therefore, acquiesce in the
necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

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 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; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

[Georgia:] Button Gwinnett
Lyman Hall
George Walton
[North Carolina:] William Hooper
Joseph Hewes
John Penn
[South Carolina:] Edward Rutledge
Thomas Heyward, Jr.
Thomas Lynch, Jr.
Arthur Middleton
[Maryland:] Samuel Chase
William Paca
Thomas Stone
Charles Carroll of Carrollton

[Virginia:] George Wythe
Richard Henry Lee
Thomas Jefferson
Benjamin Harrison
Thomas Nelson, Jr.
Francis Lightfoot Lee
Carter Braxton
Robert Morris
Benjamin Rush
Benjamin Franklin
John Morton
George Clymer
James Smith
George Taylor
James Wilson
George Ross

[Delaware:] Caesar Rodney
George Read
Thomas McKean
[New York:] William Floyd
Philip Livingston
Francis Lewis
Lewis Morris
[New Jersey:] Richard Stockton
John Witherspoon
Francis Hopkinson
John Hart
Abraham Clark
[New Hampshire:]
Josiah Bartlett
William Whipple
Matthew Thornton

[Rhode Island:]
Stephen Hopkins
William Ellery

[Massachusetts:]
John Hancock
Samuel Adams
John Adams
Robert Treat Paine
Elbridge Gerry

[Connecticut:]
Roger Sherman
Samuel Huntington
William Williams
Oliver Wolcott
Appendix E:
Constitution of the United States of America

September 17, 1787

[Editors’ note: Bracketed sections in the text of the Constitution have been superceded or modified by Constitutional amendments.]

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one

1 modified by Section 2 of the Fourteenth Amendment
Representative; and until such enumeration shall be made, the State of New
Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island
and Providence Plantations one, Connecticut five, New-York six, New Jersey
four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North
Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the
Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other
Officers; and shall have the sole Power of Election.

Section 3. The Senate of the United States shall be composed of two
Senators from each State, [chosen by the Legislature thereof,] for six Years;
and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first
Election, they shall be divided as equally as may be into three Classes. The
Seats of the Senators of the first Class shall be vacated at the Expiration of the
second Year, of the second Class at the Expiration of the fourth Year, and of
the third Class at the Expiration of the sixth Year, so that one third may be
chosen every second Year; [and if Vacancies happen by Resignation, or
otherwise, during the Recess of the Legislature of any State, the Executive
thereof may make temporary Appointments until the next Meeting of the
Legislature, which shall then fill such Vacancies.] 3

No Person shall be a Senator who shall not have attained to the Age of
thirty Years, and been nine Years a Citizen of the United States, and who shall
not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate,
but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro
tempore, in the Absence of the Vice President, or when he shall exercise the
Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When
sitting for that Purpose, they shall be on Oath or Affirmation. When the
President of the United States is tried, the Chief Justice shall preside: And no
Person shall be convicted without the Concurrence of two thirds of the
Members present.

Judgment in Cases of Impeachment shall not extend further than to
removal from Office, and disqualification to hold and enjoy any Office of

2 superseded by the Seventeenth Amendment
3 modified by the Seventeenth Amendment
honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be [on the first Monday in December,]⁴ unless they shall by Law appoint a different Day.

Section. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the

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⁴ modified by Section 2 of the Twentieth Amendment
United States, shall be a Member of either House during his Continuance in Office.

Section. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;
To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;
To establish Post Offices and post Roads;
To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;
To constitute Tribunals inferior to the supreme Court;
To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;
To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;
To provide and maintain a Navy;
To make Rules for the Government and Regulation of the land and naval Forces;
To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;
To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;
To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; — And
To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.
The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.  

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it’s inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

5 modified by the Sixteenth Amendment
Article II.

Section. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]\(^6\)

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Persons except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall

\(^6\) modified by the Twelfth Amendment
not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

[In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.] 7

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:— “I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”

Section. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

7 modified by the Twenty-Fifth Amendment
Section. 3. He shall from time to time give to the Congress Information of
the State of the Union, and recommend to their Consideration such Measures
as he shall judge necessary and expedient; he may, on extraordinary Occasions,
convene both Houses, or either of them, and in Case of Disagreement between
them, with Respect to the Time of Adjournment, he may adjourn them to such
Time as he shall think proper; he shall receive Ambassadors and other public
Ministers; he shall take Care that the Laws be faithfully executed, and shall
Commission all the Officers of the United States.

Section. 4. The President, Vice President and all civil Officers of the
United States, shall be removed from Office on Impeachment for, and
Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article. III.

Section. 1. The judicial Power of the United States, shall be vested in one
supreme Court, and in such inferior Courts as the Congress may from time to
time ordain and establish. The Judges, both of the supreme and inferior
Courts, shall hold their Offices during good Behaviour, and shall, at stated
Times, receive for their Services, a Compensation, which shall not be
diminished during their Continuance in Office.

Section. 2. The judicial Power shall extend to all Cases, in Law and
Equity, arising under this Constitution, the Laws of the United States, and
Treaties made, or which shall be made, under their Authority;—to all Cases
affecting Ambassadors, other public Ministers and Consuls;—to all Cases of
admiralty and maritime Jurisdiction;—to Controversies to which the United
States shall be a Party;—to Controversies between two or more States;—
[between a State and Citizens of another State;—]8 between Citizens of
different States;—between Citizens of the same State claiming Lands under
Grants of different States, [and between a State, or the Citizens thereof, and
foreign States, Citizens or Subjects.]9

In all Cases affecting Ambassadors, other public Ministers and Consuls,
and those in which a State shall be Party, the supreme Court shall have original
Jurisdiction. In all the other Cases before mentioned, the supreme Court shall
have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and
under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury;
and such Trial shall be held in the State where the said Crimes shall have been

8 superseded by the Eleventh Amendment
9 superseded by the Eleventh Amendment
committed; but when not committed within any State, the Trial shall be at
such Place or Places as the Congress may by Law have directed.

Section. 3. Treason against the United States, shall consist only in levying
War against them, or in adhering to their Enemies, giving them Aid and
Comfort. No Person shall be convicted of Treason unless on the Testimony of
two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but
no Attainer of Treason shall work Corruption of Blood, or Forfeiture except
during the Life of the Person attained.

Article. IV.

Section. 1. Full Faith and Credit shall be given in each State to the public
Acts, Records, and judicial Proceedings of every other State. And the Congress
may by general Laws prescribe the Manner in which such Acts, Records and
Proceedings shall be proved, and the Effect thereof.

Section. 2. The Citizens of each State shall be entitled to all Privileges and
Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who
shall flee from Justice, and be found in another State, shall on Demand of the
executive Authority of the State from which he fled, be delivered up, to be
removed to the State having Jurisdiction of the Crime.

[No Person held to Service or Labour in one State, under the Laws
thereof, escaping into another, shall, in Consequence of any Law or Regulation
therein, be discharged from such Service or Labour, but shall be delivered up
on Claim of the Party to whom such Service or Labour may be due.]\(^{10}\)

Section. 3. New States may be admitted by the Congress into this Union;
but no new State shall be formed or erected within the Jurisdiction of any other
State; nor any State be formed by the Junction of two or more States, or Parts
of States, without the Consent of the Legislatures of the States concerned as
well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules
and Regulations respecting the Territory or other Property belonging to the
United States; and nothing in this Constitution shall be so construed as to
Prejudice any Claims of the United States, or of any particular State.

Section. 4. The United States shall guarantee to every State in this Union
a Republican Form of Government, and shall protect each of them against

\(^{10}\) superseded by the Thirteenth Amendment
Article V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America.
America the Twelfth In Witness whereof We have hereunto subscribed our Names,

Go. Washington—
Presidt. and deputy from Virginia

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Attest William Jackson Secretary
AMENDMENTS TO THE CONSTITUTION OF
THE UNITED STATES OF AMERICA

Amendment I.
Ratified December 15, 1791
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II.
Ratified December 15, 1791
A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III.
Ratified December 15, 1791
No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV.
Ratified December 15, 1791
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V.
Ratified December 15, 1791
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
Amendment VI.
Ratified December 15, 1791

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Amendment VII.
Ratified December 15, 1791

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment VIII.
Ratified December 15, 1791

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX.
Ratified December 15, 1791

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X.
Ratified December 15, 1791

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.
Appendix F:
Study Questions

For each of the Documents in this collection, we suggest below in section A questions relevant for that document alone and in Section B questions that require comparison between documents.

1. The Fundamental Orders of Connecticut (1638–39)
   A. On what authority does the Connecticut Orders rely? What structure of government, if any, did the Orders create? Are oaths an important part of enforcing the content of the Orders?
   B. Compare and contrast the Orders with other plans of government included in this volume. See Documents 2, 3, 5, 10, 13, 15, and 25.

2. The Pennsylvania Charter of Privileges (1701)
   A. Is there something “constitutional” that is recognizable in this document? Should the 1701 Pennsylvania Charter retain its status through the ages?
   B. How is this constitution similar to and different from the “constitutionalism” of other colonial and early state documents? See Documents 1, 3, 5, and 6.

3. Virginia Declaration of Rights and Constitution (June 12 and 29, 1776)
   A. Does it seem curious that (1) the Virginia Declaration and the Virginia Constitution were written two weeks apart and that (2) both preceded the passage of the Declaration of Independence? According to these two documents, what is the purpose of government? What is the role of the Legislature, Executive, and Judiciary in the newly adopted Virginia Constitution? What sort of “republicanism” do these two documents express? Is it surprising that the Bill of Rights precedes the Constitution?
   B. By what authority was the Virginia Declaration of Rights and Constitution initiated and adopted? Compare and contrast the Virginia
Study Questions

4. Thomas Jefferson, Draft of the Declaration of Independence (July 2–4, 1776)

A. Does Jefferson’s draft convey a substantially different meaning from that of the Declaration of Independence the Continental Congress signed (Appendix D)? Would the less moderate tone of the draft have communicated a different message to the audience outside of America? To American loyalists and those uncertain whether to join the Revolution? Is it likely that the explicit condemnation of slavery would have changed the conversation about slavery at the Founding or during the next 80 years?

B. Is there a parallel between the complaints listed in the draft and the rights to be secured by the Virginia Declaration of Rights (Document 3)? Are there parallels between the complaints it lists and the rights secured by the Constitution and its first ten amendments (Appendix E)?

5. Massachusetts Bill of Rights (March 2, 1780)

A. How do the Massachusetts Bill of Rights and Constitution provide for religious liberty, economic liberty, and political liberty? What are the roles of the Executive and Judicial branches? How is the Constitution to be ratified?

B. How is the Massachusetts version of republicanism similar to and different from that found in the Virginia Declaration of Rights and Constitution (Document 3), as well as in the earlier colonial documents (Documents 1 and 2)?

6. Articles of Confederation (1781)

A. Is there a central contradiction at the heart of the Articles, given that the union is supposed to be perpetual, “a firm league of friendship,” yet the powers of the union are “expressly delegated”? Is there a separation of powers under the Articles? Why is it significant that the delegates should sign the document? What is the status of the states under the Articles? How is the union to operate under the Articles? What is the difference between a confederation/federation and a national government with respect to: (1) the structure of the institutions and (2) the powers of the union?

B. Compare the Articles to the Virginia Plan (Document 10), the New Jersey Plan (Document 13), and the solution proposed in Document 16.
7. James Madison, “Vices of the Political System of the United States” (April 1787)

A. Why does Madison argue that the very structure of the Articles of Confederation needs to be altered? What is Madison’s case against the traditional small republic, and how does that argument assist in his critique of the inadequacies of the Confederation?

B. Madison’s critique of the Articles does not assume that republican government will necessarily be supported by the virtue of the governed. How does this critique anticipate the Virginia Plan (Document 10) and the Hamilton Plan (Document 15)? How does it anticipate Madison’s argument in Federalist 10 (see The American Founding: Core Documents, Document 20)?

8. The Two Authorizations (September 1786 and February 1787)

A. Are the two authorizations compatible? If not, which authorization should prevail? Did the Congress limit the Convention to the discussion of specific and particular matters, or did the Congress empower the Convention to propose whatever alterations the delegates deemed necessary to preserve the principles of the Revolution? Must any plan devised by the Convention require not only the approval of Congress, but approval by all the state legislatures to become law? Is there room in the Congressional endorsement of the Convention for ratification by the consent of the governed?

B. How did the two authorizations enter the debate at the Constitutional Convention of 1787? See for example Documents 13, 16, and 17. Do you see a significant relation between, on the one hand, supporters of the Virginia Plan and those delegates selected according to the Annapolis authorization; and, on the other hand, supporters of the New Jersey Plan and those delegates selected according to the Confederation Congress mandate?


A. How and why is the laying down of rules important for encouraging the subsequent discussion of potentially divisive issues? Do you agree with Jefferson or Madison concerning the adoption of the rule of secrecy? Do you think that consideration of the other rules has been overwhelmed by the secrecy rule?

B. Did these rules have an impact on the nature of the discussion process that took place during the 88 days at the Constitutional Convention? Did the
rules inhibit the free exchange of ideas? Compare and contrast with the rules articulated in other documents. See Documents 1, 2, and 6.

### 10. The Virginia Plan (May 29, 1787)

A. Do the states have any significant role under the Virginia Plan? The Virginia Plan seems to place significant authority in the national legislature, yet at the same the Council of Revision seems to tilt the balance of power toward the Executive and the Judiciary. Is there a tension at the heart of the Virginia Plan?

B. In what way is the Virginia Plan a radical departure from the Articles of Confederation (Document 6)? Is the vision of republicanism similar to or different from earlier statements of representative government? See Documents 1, 2, 3, and 5.

### 11. The Madison-Sherman Exchange (June 6, 1787)

A. Why does Sherman think that people are happier in smaller communities? Why does Madison disagree?

B. Compare Madison’s argument here against majority faction with the argument he presented in Document 7. Why does the intent and success of the Virginia Plan turn so much on the case for the extended commercial republic? What does Madison include in his list of items as examples of majority faction? See Documents 7 and 10.

### 12. The Three-Fifths Clause and Federal Representation (June 11, 1787)

A. What were the arguments in favor of including the Three-Fifths Clause in the scheme of representation in the first branch? Why was there resistance to including the clause in the second branch? What role did Madison and Sherman play in response to the introduction of the Three-Fifths Clause?

B. How did the introduction of the Three-Fifths Clause alter the conversation over representation of the people or representation of the states? Compare this model with the Articles of Confederation, the Virginia Plan, the New Jersey Plan, and the final Constitution (Documents 6, 10, 13, and Appendix E).
13. The Revised Virginia Plan and the New Jersey Plan (June 13 and 15, 1787)

A. How is the New Jersey Plan a rejection of the Revised Virginia Plan? How are we to interpret Dickinson’s remark that it was Madison’s unwillingness to compromise that brought about this breakdown in negotiations. Where does the Three-Fifths Clause fit in to the two documents? Can we say that these two documents show it is pretty clear that the key debate is between the small states and the large states?

B. Is the Revised Virginia Plan pretty much the same as the original Virginia Plan (Document 10)? Is the New Jersey Plan pretty much the same as the Articles of Confederation (Document 6)?

14. The Two Authorizations Revisited (June 16, 1787)

A. What is the main defense of the New Jersey Plan? How do the supporters of the Revised Virginia Plan respond? Who, if any, of the delegates are acting like statesmen in this exchange? Are we witnessing an exchange that pits advocates of the rule of man made law against delegates who appeal to a higher law?

B. How do the documents in the two authorizations play a part in discussions over the support for or rejection of the New Jersey Plan and the very legality and propriety of the Convention itself? See Document 8.

15. The Hamilton Plan (June 18, 1787)

A. Hamilton suggests that his plan is still within the proper sphere of both republicanism and federalism, rather than being a reformulation of monarchy and nationalism. Does his plan support his claim? Do the states have any role under his plan? Has he elevated the presidency to a position of greater importance than the governors of the states?

B. Compare and contrast Hamilton’s position on the separation of powers with that found in the Virginia Plan, the New Jersey Plan, and the Committee of Detail Report (Documents 10, 13 and 19).

16. Partly National, Partly Federal (June 29 and 30, 1787)

A. When Ellsworth argues on behalf of equal representation of the states in the Senate, is he offering a principled compromise? Is Madison’s argument that the great divide in American politics is the issue of slavery persuasive? How does the Three-Fifths Clause become part of the discussion of representation?
What role did Madison and Sherman play in response to the introduction of the Three-Fifths Clause?

B. How is this discussion over the “partly national, partly federal” character of the union similar to and different from earlier and later discussions of the issue of federal representation? When Sherman previously argued on behalf of equal representation of the states in the Senate (see Document 13), was he arguing from principle? How does the debate on June 29 and 30 influence the later discussion of the Three-Fifths Clause (Document 18)?

17. The Gerry Committee Report (July 2 and 5, 1787)

A. Students of the American Founding are usually introduced to the partly national, partly federal nature of the Constitution through reading Federalist 39. In that essay, it is not completely clear where Madison (writing as Publius) stands on the five tests of federalism and nationalism to which he subjects the Constitution. At the Convention, Madison argues that the partly national, partly federal solution is unprincipled; what is his argument? Who at the Constitutional Convention understood the partly national, partly federal solution to rise to the level of principle, albeit a newly discovered principle? What kind of compromise is a 5–4–1 vote with three absent?

B. Reflect on the “dynamics” of the Convention between May 28 and the Report of the Gerry Committee. Who has “won,” and who has “lost” – or has everyone actually won by the time we get to July 16?

18. The Three-Fifths Clause and the Connecticut Compromise (July 11–14 and 16, 1787)

A. Is it surprising that the South Carolina delegates want to count slaves as “five-fifths” of a person? Do they offer any logical grounds for this position? Why is the Three-Fifths Clause embedded in a discussion about the “scheme of representation” appropriate for a federal republic?

B. Do the arguments between July 11 and 16 on the representation of people, states, and wealth mirror and flesh out the discussions on June 11, June 29, and June 30, or do they break new ground (Documents 12 and 16)?

19. The Committee of Detail Report (July 23–24 and August 6, 1787)

A. From which states were the five delegates chosen? Does this matter? What strikes you as novel and what as traditional in this draft of the Constitution? Were there any changes made to the Connecticut Compromise
that settled the structural, or representative, question? How does the Committee of Detail propose that the Constitution be adopted and altered?

B. Compare and contrast the powers of Congress listed in the Committee of Detail Report with the powers of Congress found in the Articles of Confederation (Document 6), the Virginia Plan (Document 10), the Revised Virginia Plan and the New Jersey Plan (Document 13), and the final Constitution (Appendix E).

20. The Slave Trade Clause (August 21, 22, 24, and 25, 1787)

A. In what way did the Committee of 11 alter the Report of the Committee of Detail concerning the slave trade? Who was on that committee who was not on the Committee of Detail? Did the delegates who voted against the 1808 compromise want a date of “never” or of 1800?

B. Why did it take until the end of August to consider the slave trade clause? Does this clause resolve issues raised by Sections 4, 5 and 6 of Article VII of the Committee of Detail Report (Document 19)? How does the Fugitive Slave Clause (Document 24) temper our understanding of the Founders’ expectation that the institution of slavery would end?

21. The Judiciary (June 4; July 21; August 15 and 27, 1787)

A. The phrase “judicial review” does not appear in the Constitution. Can a reasonable case nevertheless be made that the Framers wanted to secure “subsequent review” of public policy but not “prior review” of public policy? What clause in the Constitution might reasonably be interpreted to grant judicial review to the Supreme Court? Is it surprising that Madison initially wanted a robust role for the judiciary but then expressed reservation at Johnson’s proposition about the role of the judiciary. How does the discussion over the Council of Revision fit into the debate over the reach of the judiciary and the power of the executive?

B. The creation of the Judiciary went through several “enhancements” during the debates of the Convention. What were the critical developments that were and were not made concerning the status of the Judiciary from the Articles of Confederation to the state constitutions through the various plans presented to the Convention (Documents 5, 6, 10 and 13)?
22. Creating the Electoral College (September 4 and 6, 1787)

A. What role did Madison and Sherman play in the final construction of the Electoral College? What evidence is there to support the claim that the Electoral College reflects an opposition to the role of the people in directly electing the president? Does the Connecticut Compromise play a role in the compromise over the election of the president?

B. Compare and contrast the Electoral College with earlier proposals for the election of the president (Documents 10, 13, and 15).

23. Objections to the Constitution (September 10, 12, 15, and 17, 1787)

A. Do Randolph, Gerry, and Mason have similar reasons for declining to sign the Constitution? Do they share a central concern about the Constitution? Other delegates had reservations, yet they still signed; do Randolph, Gerry, and Mason expect a kind of perfection that would have been impossible? Or does their dissent demonstrate an admirable feature of the American experiment?

B. Prior to this point, other delegates have dissented to decisions made during the 88 days of the Constitutional Convention. See, for example, Patterson’s introduction of the New Jersey Plan (Document 13), Sherman’s objection to the Virginia Plan for representation in the Senate (Document 13), Hamilton’s introduction of his own plan (Document 15), and Madison’s refusal to vote for the Connecticut Compromise (Documents 16 and 17). Does it strike you as odd that Randolph, who introduced and defended the Virginia Plan, objected to signing the Constitution? What is so different about these three dissents from other objections?

24. The Fugitive Slave Clause (July 14; August 6, 28 and 29; and September 12, 15, and 17, 1787)

A. What is the significance of the change in language from “justly” to “legally” to “under the laws thereof”? Why is the Fugitive Slave Clause located right under the Extradition Clause in the Constitution? Is there a significant difference between the language of the Fugitive Slave Clause and the Extradition Clause?

B. Do the Fugitive Slave Clause and the Three-Fifths Clause (Document 18) contradict the claim in the Declaration of Independence that all men are created equal? How do the discussions of these provisions in the
Constitutional Convention address that question? What do the inclusion of these clauses and the inclusion of the ban on the slave trade (Document 20) tell us about the relationship between the Declaration and the Constitution?

25. The Powers of Congress (September 12 and 14, 1787)

A. Should the inclusion of the general welfare and common defense clauses in both the Preamble and Article I, Section 8, have an influence on how to read the “necessary and proper” clause? Based on the exchange between the delegates on September 14, is the “necessary and proper” clause, in their opinion, an elastic clause or a confining clause?

B. Is the “necessary and proper” clause a constitutional compromise, one somewhere between the Virginia Plan disposition not to enumerate any congressional powers at all and the concern of the New Jersey Plan to limit the reach of Congress to those items expressly itemized? On August 6, the Committee of Detail presented the first draft of the Constitution. How are the enumerated powers similar and different in the Committee of Detail Report (Document 19) and the Committee of Style Report (Document 25)? Is the general welfare clause in both documents? Is it in the Articles of Confederation (Document 6)?

26. The Signing of the Constitution (September 17, 1787)

A. Is it disappointing or a relief that the Framers signed a “more perfect” Constitution rather than a perfect Constitution? Do you agree with Franklin that with the closure of the debates there are serious reasons for optimism rather than pessimism regarding the future of the country? Why did Washington attempt to reconcile Randolph? What are we to make of the phenomenon of “signing” that permeates the American experience?

B. What would (1) Madison, (2) Randolph, (3) Patterson, and (4) Hamilton consider to be an even more perfect union than the Constitution? See Documents 3, 6, 10, 13, 16, 13, and 15.
Appendix G:
Suggestions For Further Reading


Suggestions for Further Reading


Hening, W. W. Statutes at Large. Richmond, VA: George Cochran, 1823.


This collection of documents on the Constitutional Convention explains why the Convention was held and illustrates the ideas of government and politics that the delegates carried with them to Philadelphia. Its pages recount the Convention’s critical debates over the purpose and powers of government, the nature of representation, and the relation between the states and the central government. They recount as well the way that slavery and the interests of the various states shaped those debates. With its document introductions, annotations, and helpful appendices, this collection is an indispensable resource for understanding the Constitution.

This volume is the second of four volumes covering the Founding in the Ashbrook Center’s document series. The American Founding, already published, is the capstone of the four. The others – this collection, and volumes on the ratification of the Constitution and the Bill of Rights (forthcoming) tell aspects of the founding story in more detail.

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