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THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION

Volume X

With an Index to Volumes VIII, IX and X

Ratification of the Constitution by the States

V I R G I N I A

[3]

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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.

A R T I C L E I.

Sec. 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.

Sec. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New-Hampshire shall be en-

The year-long debate over the ratification of the Constitution reached a climax in Virginia during June 1788 as a closely divided Convention of 170 delegates vigorously debated the merits of the new frame of government. Federalists argued that the Union could not survive the rejection of the Constitution and that the dissolution of the Union meant political and social anarchy and continued economic depression. Antifederalists charged that the Constitution would create a consolidated government that would annihilate the sovereignty and authority of the states and would subvert the dear-bought rights and liberties of the people.

Virginians, like many other Americans, realized the importance of the Old Dominion in the ratification process. Without Virginia's approval, the Union would be incomplete and divided, even if the necessary nine states ratified the Constitution. The Convention debate turned on whether to adopt the Constitution unconditionally with recommended amendments, or to adopt the Constitution conditionally with a list of required amendments.

This third Virginia volume contains the last two-thirds of the Convention debate. In a two-day digression, the delegates debated whether the free navigation of the Mississippi River was more secure under the Articles of Confederation or the new Constitution. When they resumed their clause-by-clause examination of the Constitution, the delegates fought over what kinds of amendments should be proposed and when those amendments should be adopted. Patrick Henry, George Mason, and William Grayson led the Antifederalists; James Madison, Edmund Randolph, and George Nicholas the Federalists. Post-Convention documents describe the abortive attempt by some Antifederalists to resist ratification, and a table shows the payments made to the delegates and officers of the Convention.

The public and private debate over the Constitution in Virginia continued while the Convention was in session and after it adjourned. Numerous private letters and newspaper items speculate on the prospects for Virginia ratification; outline strategies for the Convention; describe the delegates, the weather, and the audience; and predict the economic consequences of ratification or rejection. Other items depict the express system arranged by Federalists in New Hampshire, Massachusetts, New York, and Virginia to speed important news from one state to another in the hope of swaying the outcome of events in different states. Foreign diplomats considered the ramifications of the new Constitution for their countries.

The aftermath of Virginia's ratification is also represented in this volume. Combined with the Independence Day festivities, celebrations of Virginia ratification occurred throughout the coun-

(continued on back endflap)

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STATE HISTORICAL SOCIETY OF WISCONSIN
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Organization

The Documentary History of the Ratification of the Constitution is divided into:

- (1) *Constitutional Documents and Records, 1776-1787* (1 volume),
- (2) *Ratification of the Constitution by the States* (13 volumes),
- (3) *Commentaries on the Constitution: Public and Private* (5 volumes),
- (4) *The Bill of Rights* (1 or 2 volumes).

Constitutional Documents and Records, 1776-1787.

This introductory volume, a companion to all of the other volumes, traces the constitutional development of the United States during its first twelve years. Cross-references to it appear frequently in other volumes when contemporaries refer to events and proposals from 1776 to 1787. The documents include: (1) the Declaration of Independence, (2) the Articles of Confederation, (3) ratification of the Articles, (4) proposed amendments to the Articles, proposed grants of power to Congress, and ordinances for the Western Territory, (5) the calling of the Constitutional Convention, (6) the appointment of Convention delegates, (7) the resolutions and draft constitutions of the Convention, (8) the report of the Convention, and (9) the Confederation Congress and the Constitution.

Ratification of the Constitution by the States.

The volumes are arranged in the order in which the states considered the Constitution. Although there are variations, the documents for each state are organized into the following groups: (1) commentaries from the adjournment of the Constitutional Convention to the meeting of the state legislature that called the state convention, (2) the proceedings of the legislature in calling the convention, (3) commentaries from the call of the convention until its meeting, (4) the election of convention delegates, (5) the proceedings of the convention, and (6) post-convention documents.

Microfiche Supplements to Ratification of the Constitution by the States.

Much of the material for each state is repetitious or peripheral but still valuable. Literal transcripts of this material are placed on microfiche supplements. Occasionally, photographic copies of significant manuscripts are also included.

The types of documents in the supplements are:

- (1) newspaper items that repeat arguments, examples of which are printed in the state volumes,
- (2) pamphlets that circulated primarily within one state and that are not printed in the state volumes or in *Commentaries*,
- (3) letters that contain supplementary material about politics and social relationships,
- (4) photographic copies of petitions with the names of signers,
- (5) photographic copies of manuscripts such as notes of debates, and
- (6) miscellaneous documents such as election certificates, attendance records, pay vouchers and other financial records, etc.

Commentaries on the Constitution: Public and Private.

This series contains newspaper items, pamphlets, and broadsides that circulated regionally or nationally. It also includes some private letters that give the writers' opinions of the Constitution in general or that report on the prospects for ratification in several states. Except for some grouped items, documents are arranged chronologically and are numbered consecutively throughout the four volumes. There are frequent cross-references between *Commentaries* and the state series.

The Bill of Rights.

The public and private debate on the Constitution continued in several states after ratification. It was centered on the issue of whether there should be amendments to the Constitution and the manner in which amendments should be proposed—by a second constitutional convention or by the new U.S. Congress. A bill of rights was proposed in the U.S. Congress on 8 June 1789. Twelve amendments were adopted on 25 September and were sent to the states on 2 October. This volume(s) will contain the documents related to the public and private debate over amendments, to the proposal of amendments by Congress, and to the ratification of the Bill of Rights by the states.

Editorial Procedures

With a few exceptions all documents are transcribed literally. Obvious slips of the pen and errors in typesetting are silently corrected. When spelling or capitalization is unclear, modern usage is followed. Superscripts and interlineated material are lowered to the line. Crossed-out words are retained when significant.

Brackets are used for editorial insertions. Conjectural readings are enclosed in brackets with a question mark. Illegible and missing words are indicated by dashes enclosed in brackets. However, when the author's intent is obvious, illegible or missing material, up to five characters in length, has been silently provided.

All headings are supplied by the editors. Headings for letters contain the names of the writer and the recipient and the place and date of writing. Headings for newspapers contain the pseudonym, if any, and the name and date of the newspaper. Headings for broadsides and pamphlets contain the pseudonym and a shortened form of the title. Full titles of broadsides and pamphlets and information on authorship are given in editorial notes. Headings for public meetings contain the place and date of the meeting.

Salutations, closings of letters, addresses, endorsements, and dockings are deleted unless they provide important information, which is then either retained in the document or placed in editorial notes.

Contemporary footnotes and marginal notes are printed after the text of the document and immediately preceding editorial footnotes. Symbols, such as stars, asterisks, and daggers have been replaced by superscripts (a), (b), (c), etc.

Many documents, particularly letters, are excerpted when they contain material that is not directly relevant to ratification. When longer excerpts or entire documents have been printed elsewhere, or are included in the microfiche supplements, this fact is noted.

General Ratification Chronology, 1786-1791

1786

- 21 January Virginia calls meeting to consider granting Congress power to regulate trade.
- 11-14 September Annapolis Convention.
- 20 September Congress receives Annapolis Convention report recommending that states elect delegates to a convention at Philadelphia in May 1787.
- 11 October Congress appoints committee to consider Annapolis Convention report.
- 23 November Virginia authorizes election of delegates to Convention at Philadelphia.
- 23 November New Jersey elects delegates.
- 4 December Virginia elects delegates.
- 30 December Pennsylvania elects delegates.

1787

- 6 January North Carolina elects delegates.
- 17 January New Hampshire elects delegates.
- 3 February Delaware elects delegates.
- 10 February Georgia elects delegates.
- 21 February Congress calls Constitutional Convention.
- 22 February Massachusetts authorizes election of delegates.
- 28 February New York authorizes election of delegates.
- 3 March Massachusetts elects delegates.
- 6 March New York elects delegates.
- 8 March South Carolina elects delegates.
- 14 March Rhode Island refuses to elect delegates.
- 23 April-26 May Maryland elects delegates.
- 5 May Rhode Island again refuses to elect delegates.
- 14 May Convention meets; quorum not present.
- 14-17 May Connecticut elects delegates.
- 25 May Convention begins with quorum of seven states.
- 16 June Rhode Island again refuses to elect delegates.
- 27 June New Hampshire renews election of delegates.
- 13 July Congress adopts Northwest Ordinance.
- 6 August Committee of Detail submits draft constitution to Convention.
- 12 September Committee of Style submits draft constitution to Convention.
- 17 September Constitution signed and Convention adjourns *sine die*.
- 20 September Congress reads Constitution.
- 26-28 September Congress debates Constitution.
- 28 September Congress transmits Constitution to the states.
- 28-29 September Pennsylvania calls state convention.

17 October	Connecticut calls state convention.
25 October	Massachusetts calls state convention.
26 October	Georgia calls state convention.
31 October	Virginia calls state convention.
1 November	New Jersey calls state convention.
6 November	Pennsylvania elects delegates to state convention.
10 November	Delaware calls state convention.
12 November	Connecticut elects delegates to state convention.
19 November-	Massachusetts elects delegates to state convention.
7 January 1788	
20 November-	Pennsylvania Convention.
15 December	
26 November	Delaware elects delegates to state convention.
27 November-	Maryland calls state convention.
1 December	
27 November-	New Jersey elects delegates to state convention.
1 December	
3-7 December	Delaware Convention.
4-5 December	Georgia elects delegates to state convention.
6 December	North Carolina calls state convention.
7 December	Delaware Convention ratifies Constitution, 30 to 0.
11-20 December	New Jersey Convention.
12 December	Pennsylvania Convention ratifies Constitution, 46 to 23.
14 December	New Hampshire calls state convention.
18 December	New Jersey Convention ratifies Constitution, 38 to 0.
25 December-	Georgia Convention.
5 January 1788	
31 December	Georgia Convention ratifies Constitution, 26 to 0.
31 December-	New Hampshire elects delegates to state convention.
12 February 1788	

1788

3-9 January	Connecticut Convention.
9 January	Connecticut Convention ratifies Constitution, 128 to 40.
9 January-	Massachusetts Convention.
7 February	
19 January	South Carolina calls state convention.
1 February	New York calls state convention.
6 February	Massachusetts Convention ratifies Constitution, 187 to 168, and proposes amendments.
13-22 February	New Hampshire Convention: first session.
1 March	Rhode Island calls statewide referendum on Constitution.
3-27 March	Virginia elects delegates to state convention.
24 March	Rhode Island referendum: voters reject Constitution, 2,711 to 239.
28-29 March	North Carolina elects delegates to state convention.
7 April	Maryland elects delegates to state convention.
11-12 April	South Carolina elects delegates to state convention.
21-29 April	Maryland Convention.
26 April	Maryland Convention ratifies Constitution, 63 to 11.
29 April-3 May	New York elects delegates to state convention.
12-24 May	South Carolina Convention.

- 23 May South Carolina Convention ratifies Constitution, 149 to 73, and proposes amendments.
- 2-27 June Virginia Convention.
- 17 June-26 July New York Convention.
- 18-21 June New Hampshire Convention: second session.
- 21 June New Hampshire Convention ratifies Constitution, 57 to 47, and proposes amendments.
- 25 June Virginia Convention ratifies Constitution, 89 to 79.
- 27 June Virginia Convention proposes amendments.
- 2 July New Hampshire ratification read in Congress; Congress appoints committee to report an act for putting the Constitution into operation.
- 21 July-4 August First North Carolina Convention.
- 26 July New York Convention Circular Letter calls for second constitutional convention.
- 26 July New York Convention ratifies Constitution, 30 to 27, and proposes amendments.
- 2 August North Carolina Convention proposes amendments and refuses to ratify until amendments are submitted to Congress and to a second constitutional convention.
- 13 September Congress sets dates for election of President and meeting of new government under the Constitution.
- 20 November Virginia requests Congress under the Constitution to call a second constitutional convention.
- 30 November North Carolina calls second state convention.

1789

- 4 March First Federal Congress convenes.
- 1 April House of Representatives attains quorum.
- 6 April Senate attains quorum.
- 30 April George Washington inaugurated first President.
- 8 June James Madison proposes Bill of Rights in Congress.
- 21-22 August North Carolina elects delegates to second state convention.
- 25 September Congress adopts twelve amendments to Constitution to be submitted to the states.
- 16-23 November Second North Carolina Convention.
- 21 November Second North Carolina Convention ratifies Constitution, 194 to 77, and proposes amendments.

1790

- 17 January Rhode Island calls state convention.
- 8 February Rhode Island elects delegates to state convention.
- 1-6 March Rhode Island Convention: first session.
- 24-29 May Rhode Island Convention: second session.
- 29 May Rhode Island Convention ratifies Constitution, 34 to 32, and proposes amendments.

1791

- 15 December Bill of Rights adopted.

Calendar for the Years 1787-1788

1787

S M T W T F S	S M T W T F S	S M T W T F S	S M T W T F S
JANUARY	FEBRUARY	MARCH	APRIL
1 2 3 4 5 6	1 2 3	1 2 3	1 2 3 4 5 6 7
7 8 9 10 11 12 13	4 5 6 7 8 9 10	4 5 6 7 8 9 10	8 9 10 11 12 13 14
14 15 16 17 18 19 20	11 12 13 14 15 16 17	11 12 13 14 15 16 17	15 16 17 18 19 20 21
21 22 23 24 25 26 27	18 19 20 21 22 23 24	18 19 20 21 22 23 24	22 23 24 25 26 27 28
28 29 30 31	25 26 27 28	25 26 27 28 29 30 31	29 30
MAY	JUNE	JULY	AUGUST
1 2 3 4 5	1 2	1 2 3 4 5 6 7	1 2 3 4
6 7 8 9 10 11 12	3 4 5 6 7 8 9	8 9 10 11 12 13 14	5 6 7 8 9 10 11
13 14 15 16 17 18 19	10 11 12 13 14 15 16	15 16 17 18 19 20 21	12 13 14 15 16 17 18
20 21 22 23 24 25 26	17 18 19 20 21 22 23	22 23 24 25 26 27 28	19 20 21 22 23 24 25
27 28 29 30 31	24 25 26 27 28 29 30	29 30 31	26 27 28 29 30 31
SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
1	1 2 3 4 5 6	1 2 3	1
2 3 4 5 6 7 8	7 8 9 10 11 12 13	4 5 6 7 8 9 10	2 3 4 5 6 7 8
9 10 11 12 13 14 15	14 15 16 17 18 19 20	11 12 13 14 15 16 17	9 10 11 12 13 14 15
16 17 18 19 20 21 22	21 22 23 24 25 26 27	18 19 20 21 22 23 24	16 17 18 19 20 21 22
23 24 25 26 27 28 29	28 29 30 31	25 26 27 28 29 30	23 24 25 26 27 28 29
30			30 31

1788

S M T W T F S	S M T W T F S	S M T W T F S	S M T W T F S
JANUARY	FEBRUARY	MARCH	APRIL
1 2 3 4 5	1 2	1	1 2 3 4 5
6 7 8 9 10 11 12	3 4 5 6 7 8 9	2 3 4 5 6 7 8	6 7 8 9 10 11 12
13 14 15 16 17 18 19	10 11 12 13 14 15 16	9 10 11 12 13 14 15	13 14 15 16 17 18 19
20 21 22 23 24 25 26	17 18 19 20 21 22 23	16 17 18 19 20 21 22	20 21 22 23 24 25 26
27 28 29 30 31	24 25 26 27 28 29	23 24 25 26 27 28 29	27 28 29 30
		30 31	
MAY	JUNE	JULY	AUGUST
1 2 3	1 2 3 4 5 6 7	1 2 3 4 5	1 2
4 5 6 7 8 9 10	8 9 10 11 12 13 14	6 7 8 9 10 11 12	3 4 5 6 7 8 9
11 12 13 14 15 16 17	15 16 17 18 19 20 21	13 14 15 16 17 18 19	10 11 12 13 14 15 16
18 19 20 21 22 23 24	22 23 24 25 26 27 28	20 21 22 23 24 25 26	17 18 19 20 21 22 23
25 26 27 28 29 30 31	29 30	27 28 29 30 31	24 25 26 27 28 29 30
			31
SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
1 2 3 4 5 6	1 2 3 4	1	1 2 3 4 5 6
7 8 9 10 11 12 13	5 6 7 8 9 10 11	2 3 4 5 6 7 8	7 8 9 10 11 12 13
14 15 16 17 18 19 20	12 13 14 15 16 17 18	9 10 11 12 13 14 15	14 15 16 17 18 19 20
21 22 23 24 25 26 27	19 20 21 22 23 24 25	16 17 18 19 20 21 22	21 22 23 24 25 26 27
28 29 30	26 27 28 29 30 31	23 24 25 26 27 28 29	28 29 30 31
		30	

Symbols

FOR MANUSCRIPTS, MANUSCRIPT DEPOSITORIES, SHORT TITLES, AND CROSS-REFERENCES

Manuscripts

Dft	Draft
FC	File Copy
MS	Manuscript
RC	Recipient's Copy
Tr	Translation from Foreign Language

Manuscript Depositories

DLC	Library of Congress
DNA	National Archives
MHi	Massachusetts Historical Society
NHi	New-York Historical Society
NN	New York Public Library
PHi	Historical Society of Pennsylvania
Vi	Virginia State Library
ViHi	Virginia Historical Society
ViU	University of Virginia
ViW	Earl Gregg Swem Library, College of William and Mary

Short Titles

Blackstone, <i>Commentaries</i>	Sir William Blackstone, <i>Commentaries on the Laws of England. In Four Books</i> (Re-printed from the British Copy, Page for Page with the Last Edition, 5 vols., Philadelphia, 1771-1772). Originally published in London from 1765 to 1769.
Boyd	Julian P. Boyd et al., eds., <i>The Papers of Thomas Jefferson</i> (Princeton, N.J., 1950-).
Evans	Charles Evans, <i>American Bibliography</i> (12 vols., Chicago, 1903-1934).
Farrand	Max Farrand, ed., <i>The Records of the Federal Convention of 1787</i> (3rd ed., 3 vols., New Haven, 1927).

- Fitzpatrick John C. Fitzpatrick, ed., *The Writings of George Washington* . . . (39 vols., Washington, D.C., 1931–1944).
- Hening William Waller Hening, ed., *The Statutes at Large; Being A Collection of All the Laws of Virginia, from the First Session of the Legislature, in the Year 1619* (13 vols., Richmond and Philadelphia, 1809–1823).
- House Journal* *Journal of the House of Delegates of the Commonwealth of Virginia* . . .
- Hutchinson, Madison William T. Hutchinson et al., eds., *The Papers of James Madison*, Volumes I–VII (Chicago, 1962–1971).
- JCC Worthington C. Ford et al., eds., *Journals of the Continental Congress, 1774–1789* . . . (34 vols., Washington, D.C., 1904–1937).
- LMCC Edmund C. Burnett, ed., *Letters of Members of the Continental Congress* (8 vols., Washington, D.C., 1921–1936).
- Montesquieu, *Spirit of Laws* Charles, Baron de Montesquieu, *The Spirit of Laws* (Translated from the French by Thomas Nugent, 5th ed., 2 vols., London, 1773). Originally published in Geneva in 1748.
- Morris, Jay Richard B. Morris, ed., *John Jay . . . Unpublished Papers* . . . (New York, 1975–).
- PCC Papers of the Continental Congress, 1774–1789 (Record Group 360, National Archives).
- Rutland, Madison Robert A. Rutland et al., eds., *The Papers of James Madison*, Volumes VIII– (Chicago and Charlottesville, 1973–).
- Rutland, Mason Robert A. Rutland, ed., *The Papers of George Mason, 1725–1792* (3 vols., Chapel Hill, N.C., 1970).
- Syrett Harold C. Syrett et al., eds., *The Papers of Alexander Hamilton* (27 vols., New York, 1961–1987).
- Thorpe Francis N. Thorpe, ed., *The Federal and State Constitutions* . . . (7 vols., Washington, D.C., 1909).
- Washington Diaries* Donald Jackson and Dorothy Twohig, eds., *The Diaries of George Washington* (6 vols., Charlottesville, 1976–1979).

- Wharton, Francis Wharton, ed., *The Revolutionary Diplomatic Correspondence of the United States* (6 vols., Washington, D.C., 1889).
Diplomatic Correspondence

Cross-references to Volumes of

The Documentary History of the Ratification of the Constitution

- CC References to *Commentaries on the Constitution* are cited as "CC" followed by the number of the document. For example: "CC:25."
- CDR References to the first volume, titled *Constitutional Documents and Records, 1776-1787*, are cited as "CDR" followed by the page number. For example: "CDR, 325."
- RCS References to the series of volumes titled *Ratification of the Constitution by the States* are cited as "RCS" followed by the abbreviation of the state and the page number. For example: "RCS:Pa., 325."
- Mfm References to the microform supplements to the "RCS" volumes are cited as "Mfm" followed by the abbreviation of the state and the number of the document. For example: "Mfm:Pa. 25."

Virginia Chronology, 1776–1791

1776

- 15 May Revolutionary convention instructs delegates in Congress to call for independence, foreign alliances, and a form of confederation. Also appoints a committee to prepare a declaration of rights and a form of government for Virginia.
- 7 June Richard Henry Lee moves in Congress that colonies “are, and of right ought to be, free and independent States,” that foreign alliances should be entered into, and that a plan of confederation be prepared.
- 12 June Virginia Declaration of Rights adopted.
- 29 June Virginia Constitution adopted; Patrick Henry elected governor.
- 2 July Congress declares the colonies independent.
- 4 July Congress adopts Declaration of Independence.

1777

- 15 November Congress adopts Articles of Confederation and sends them to states for approval.
- 16 December Legislature ratifies Articles of Confederation.

1781

- 2 January Legislature cedes Northwest Territory to Congress.
- 14 June Legislature approves Impost of 1781.
- 19 October British forces surrender at Yorktown.
- 17 December Legislature suspends approval of Impost of 1781 until approved by other states.

1782

- 7 December Legislature repeals its approval of Impost of 1781.

1783

- 13 September Congress requests a second cession of Northwest Territory from Virginia.
- 12 December Legislature authorizes Congress to retaliate against British trade restrictions in West Indies.
- 18 December Legislature approves Impost of 1783.
- 20 December Legislature cedes Northwest Territory to Congress.

1784

- 1 March Congress accepts Virginia's cession of Northwest Territory.
 26 June Legislature approves amendment to Articles of Confederation to share expenses according to population.
 28 June Legislature appoints commissioners to meet with Maryland commissioners to discuss commercial problems over the jurisdiction and navigation of the Potomac River.
 29 June Legislature approves amendment to Articles of Confederation to grant Congress power to regulate commerce for fifteen years.
 19 November Legislature instructs delegates to Congress to secure navigation of Mississippi River.
 15 December Congress officially informed that Spain has closed navigation of Mississippi River to Americans.

1785

- 25-28 March Mount Vernon Conference.

1786

- 21 January Legislature calls interstate meeting to consider granting Congress power to regulate trade and appoints Edmund Randolph, James Madison, Walter Jones, St. George Tucker, and Meriwether Smith as delegates.
 3 August Congress receives Secretary for Foreign Affairs John Jay's request to forbear navigation of Mississippi River for twenty-five years so he could conclude commercial treaty with Spain.
 29 August Congress votes seven states to five to approve Jay's request. Virginia votes with minority.
 11-14 September Annapolis Convention meets and calls for a convention to meet in Philadelphia on 14 May 1787.
 1 November House of Delegates rejects petitions favoring paper money; it condemns paper money as "unjust, impolitic, and destructive."
 17 November House of Delegates receives petition from inhabitants of Kentucky protesting rumored action by Congress giving up navigation of Mississippi River.
 23 November Legislature authorizes appointment of delegates to Constitutional Convention.
 4 December Legislature elects George Washington, Patrick Henry, Edmund Randolph, John Blair, James Madison, George Mason, and George Wythe as delegates to Constitutional Convention.
 7 December Legislature instructs its delegates to Congress to oppose any attempt by Congress to give up right to navigate Mississippi River.

1787

- 21 February Congress calls for Constitutional Convention to meet in Philadelphia on 14 May.
 22 February Thomas Nelson, Jr., appointed delegate to Constitutional Convention in place of Patrick Henry, who declined to serve.

- 20 March Richard Henry Lee appointed delegate to Constitutional Convention in place of Thomas Nelson, Jr., who declined to serve.
- 5 April James McClurg appointed delegate to Constitutional Convention in place of Richard Henry Lee, who declined to serve.
- 5 May James Madison arrives in Philadelphia.
- 13 May George Washington arrives in Philadelphia.
- 14 May Constitutional Convention meets, but lacks quorum.
- 17 May George Mason, the final Virginia delegate, arrives in Philadelphia.
- 25 May Convention attains quorum.
- 29 May Virginia Resolutions presented to Convention.
- 19 June Committee of the Whole adopts and reports amended Virginia Resolutions to Convention.
- 17 September Constitution signed by all delegates present except George Mason, Edmund Randolph, and Elbridge Gerry; Convention adjourns *sine die*.
- 26 September First printing of Constitution in Virginia.
- 28 September Alexandria town meeting approves Constitution.
- 28 September Berkeley County meeting approves Constitution.
- 2 October Fairfax County meeting calls for a state convention to consider Constitution.
- 6 October Williamsburg meeting calls for a convention to consider Constitution.
- 7 October George Mason sends a copy of his objections to Constitution to George Washington.
- 15-16 October Legislature convenes in Richmond. House of Delegates reads Constitution, refers it for consideration on 25 October, and orders 5,000 copies printed for distribution.
- 16 October Richard Henry Lee writes to Edmund Randolph enclosing his proposed amendments to Constitution.
- 20 October Fredericksburg meeting calls for a convention to consider Constitution.
- 22 October Frederick County meeting calls for convention to consider Constitution.
- 22 October Henrico County meeting approves Constitution.
- 24 October Petersburg meeting calls for convention to consider Constitution.
- 25-31 October Legislature debates and calls state convention.
- 3 November House of Delegates condemns paper money as "ruinous to Trade and Commerce, and highly injurious" to people.
- 12 November House of Delegates adopts resolutions asserting the God-given right of Virginians to navigate Mississippi River.
- 14 November Governor Randolph transmits a copy of the resolutions calling Virginia's convention to other states.
- 16 November Winchester *Virginia Gazette* prints Richard Henry Lee's proposed amendments to Constitution.
- 21 November-13 December Union Society of Richmond debates Constitution, voting 128 to 15 in favor of it.
- 22 November *Virginia Journal* prints George Mason's objections to Constitution.
- 23 November Winchester *Virginia Gazette* prints George Mason's objections to Constitution.

- 30 November-
12 December
1 December
6 December
12 December
26-27 December
27 December
- Legislature debates and passes act to pay state convention delegates.
Legislature passes act to allow tobacco to be used for payment of taxes.
Richard Henry Lee's amendments and 16 October letter to Edmund Randolph printed in Petersburg *Virginia Gazette*.
Legislature passes act to repeal laws interfering with collection of British debts that are contrary to Treaty of Peace of 1783, but suspends act until Great Britain complies with the treaty.
Legislature instructs Governor Randolph to forward to the states copies of 12 December act to pay convention delegates.
Randolph's reasons for not signing the Constitution are printed as a pamphlet in Richmond by this date.

1788

- 23 February-
17 May
3-27 March
24 March
2 April
2 April
2-27 June
4 June
25 June
26 June
27 June
14 July
8 November
20 November
- Political Club of Danville, Ky., debates Constitution.
Elections for delegates to Virginia Convention.
James Madison addresses voters and is elected Orange County delegate to Virginia Convention.
Volume I of *The Federalist* offered for sale in Norfolk (23 April in Richmond).
Winchester *Virginia Centinel* begins publication.
Virginia Convention meets in Richmond.
Volume II of *The Federalist* is offered for sale in Norfolk (11 June in Richmond).
Virginia Convention rejects previous amendments to Constitution, 88 to 80, and then ratifies Constitution, 89 to 79.
President of Convention signs engrossed Form of Ratification, which Convention orders sent to Congress. Retained Form signed next day.
Convention recommends Declaration of Rights and amendments to Constitution and orders them sent to Congress and states.
Virginia Form of Ratification and proposed amendments received by Congress.
Legislature elects William Grayson and Richard Henry Lee as U.S. Senators.
Legislature adopts resolutions asking first federal Congress for a second constitutional convention to consider amendments to Constitution.

1789

- 2 February
8 June
25 September
- Virginia elects ten U.S. Representatives.
James Madison proposes Bill of Rights in Congress.
Congress approves 12 amendments to Constitution to be submitted to states.

1791

- 15 December
- Virginia becomes eleventh state to ratify Bill of Rights, putting it into effect.

Officers of the Commonwealth of Virginia 1787-1788

Governor

Edmund Randolph

Council of State

Beverley Randolph (Lt. Governor)
Carter Braxton
Joseph Jones
James McClurg
Bolling Stark
James Wood
Miles Selden (resigned 31 March 1788)
Sampson Mathews (resigned, 7 April 1788)
William Heth (first attended 2 June 1788)

Treasurer

Jaquelin Ambler

Auditor of Public Accounts

John Pendleton

Receiver General of Continental Taxes

John Hopkins

Attorney General

James Innes

Solicitor General

Leighton Wood

General Court

Paul Carrington (Chief Justice)
Peter Lyons
James Mercer
William Fleming
Henry Tazewell
Elected 1788
Richard Parker
Joseph Prentis
St. George Tucker
Edmund Winston

High Court of Chancery

Edmund Pendleton (President)
George Wythe
John Blair

Court of Admiralty

Richard Cary
James Henry
John Tyler

Annapolis Convention

* Did not attend
James Madison
Edmund Randolph
St. George Tucker
Walter Jones*
George Mason*
William Ronald*
David Ross*
Meriwether Smith*

Delegates to Congress

Elected 7 November 1786
Edward Carrington
William Grayson
Joseph Jones (declined)
Richard Henry Lee
James Madison
Elected 23 October 1787
John Brown
Edward Carrington
Cyrus Griffin (President)
Henry Lee
James Madison

Confederation Board of Treasury

Arthur Lee

Constitutional Convention

John Blair
James Madison
George Mason
James McClurg
Edmund Randolph
George Washington (President)
George Wythe
Patrick Henry (declined)
Richard Henry Lee (declined)
Thomas Nelson, Jr. (declined)

Minister to France

Thomas Jefferson

Secretary to Thomas Jefferson

William Short

**The Ratification of the
Constitution by
the States**

VIRGINIA
[3]

IV.
THE VIRGINIA CONVENTION
(Continued)

Editors' Note
The Debate in the Virginia Convention
on the Navigation of the Mississippi River
12-13 June 1788

On 12 and 13 June, the Virginia Convention exhaustively discussed the free navigation of the Mississippi River, a right which the United States had been trying to get Spain to accept for almost a decade. The free navigation of the river was an important economic issue to Virginians, especially those interested in the future settlement and expansion of the West. Agricultural produce would move more cheaply and easily if settlers were allowed free access to the river. Some Virginians, however, especially those living in the Tidewater, such as George Washington and Henry Lee, did not object to the closing of the Mississippi because they were involved in the development of a river and canal system that would bring western produce to the coast.

The question of the navigation of the Mississippi River began with the Treaty of Paris of 1763. This treaty provided that "It being well understood that the navigation of the Mississippi River shall be free equally to the subjects of Great Britain and to those of France, throughout all its length and breadth, from its source to the sea. . . ." This provision was inserted in the treaty because France ostensibly retained the territory of Louisiana and the island of New Orleans located east of the Mississippi. Great Britain needed access to the river because it controlled the rest of the land east of the river, including Florida which it had just received from Spain. Unbeknownst to Britain, France had granted Louisiana and New Orleans to Spain in November 1762. France told Britain about this secret agreement in October 1763, and in April 1764 the agreement was made public in Europe.

In June 1779, three years after the American colonies declared their independence from Great Britain, Spain declared war on Great Britain. Early in the fall of 1779, Congress appointed John Jay to negotiate an alliance with Spain and instructed him to insist upon the American right to the free navigation of the Mississippi River. In return, the United States would guarantee East and West Florida to Spain, if the Spanish could recapture these territories from Great Britain. Jay left for Spain in late October. On 5 November 1779, the Virginia legislature instructed its delegates to Congress to insist upon the American right to the free navigation of the Mississippi in any alliance with Spain (JCC, XV, 1080-85, 1109-10, 1112-13, 1114, 1118-21, 1140-42,

1183; Morris, *Jay*, I, 650–51; Wharton, *Diplomatic Correspondence*, III, 352–53, 357–60; and Hening, X, 537–38).

While in Spain, John Jay quickly learned that, even though the Spanish government wanted an alliance with America, it had no intention of recognizing America's right to navigate the Mississippi. Jay outlined his difficulties in two letters to the President of Congress. In a letter dated 26 May 1780, Jay included the report of a conference with the Conde de Floridablanca, Spain's Foreign Minister, who told him: "there was but one obstacle from which he apprehended any great difficulty in forming a treaty with America, and plainly intimated that this arose from the pretensions of America to the navigation of the Mississippi." Commenting on this conference, Jay said: "If Congress remains firm, as I have no reason to doubt, respecting the Mississippi, I think Spain will finally be content with equitable regulations, and I wish to know whether Congress would consider any regulations necessary to prevent contraband as inconsistent as possible with their ideas of free navigation. I wish that as little as possible may be left to my discretion, and that as I am determined to adhere strictly to their sentiments and directions, I may be favored with them fully and in season" (Wharton, *Diplomatic Correspondence*, III, 724, 725).

In a 6 November 1780 letter, Jay noted that Don Diego de Gardoqui, an official in the Ministry of Finance, had spoken with him and had "pointedly proposed my offering the navigation of the Mississippi as a consideration for aids" (i.e., loans). Jay told Gardoqui that the United States had no intention of relinquishing the right of navigation. Near the end of the letter, Jay wrote: "In my opinion we should endeavor to be as independent on the charity of our friends as on the mercy of our enemies. Jacob took advantage even of his brother's hunger, and extorted from him a higher price than the value of the Mississippi even for a single dinner. The way not to be in *Esau's* condition is to be prepared to meet with *Jacob's*" (*ibid.*, IV, 135, 148).

In America, the war was not going well in 1779 and 1780. The Continental Army was short on supplies, Continental currency had depreciated greatly, and the war raging in the Carolinas threatened to expand into Virginia. An alliance with Spain seemed more pressing than ever. Early in 1780 the Chevalier de la Luzerne, the French minister plenipotentiary to America, told a committee of Congress that in order to secure a Spanish alliance, the United States (among other things) had to recognize Spain's right to the "exclusive navigation" of the Mississippi (JCC, XVI, 114).

To facilitate negotiations with Spain, Virginia's delegates to Congress (Theodorick Bland and James Madison) recommended to Governor

Thomas Jefferson in November and December 1780 that the legislature either revise or clarify its instructions of November 1779. Therefore, on 2 January 1781 the legislature resolved that Virginia was willing to cede the free navigation of the Mississippi below the southern boundary of the United States (i.e., the thirty-first parallel), but the state's delegates were instructed to "use their endeavour to obtain on behalf of this state or other states having territory on the said river, a free port or ports below the territory of such states respectively" (Bland to Jefferson, 22 November, and Madison and Bland to Jefferson, 12 December, Hutchinson, *Madison*, II, 194-97, 241-42; and Hening, X, 538).

On 15 February 1781 Congress, acting upon Virginia's resolution, adopted new instructions which allowed Jay to relinquish the American right to navigate the Mississippi south of the thirty-first parallel, "provided such cession shall be unalterably insisted upon by Spain; and provided the free navigation of the said river, above the said degree of north latitude, shall be acknowledged and guarantied by his Catholic Majesty to the citizens of the United States in common with his own subjects." Jay was also ordered to obtain for Americans "the use of the river aforesaid, with a free port or ports below the said thirty-first degree of north latitude." The new instructions were adopted by a vote of 7 to 3, Massachusetts, Connecticut, and North Carolina being in the minority (Hutchinson, *Madison*, II, 302-3; and JCC, XIX, 151-54. The draft instructions are in James Madison's handwriting.).

Despite America's conciliatory attitude, Jay failed to conclude a Spanish alliance while resident in Spain from January 1780 to May 1782. In 1783, Great Britain returned the Floridas to Spain, while the United States received the remainder of Britain's western territory east of the Mississippi and south of Canada. Article 8 of the Treaty of Peace stipulated that "The Navigation of the River Mississippi, from its source to the Ocean shall for ever remain free and open to the Subjects of Great Britain and the Citizens of the United States." American and British peace negotiators had included article 8 in the treaty because they believed that the restoration of the Floridas to Spain jeopardized the right of free navigation granted in 1763. Spain, however, rejected article 8; it also refused to accept the Mississippi as the western boundary of the United States and it contested the northern boundary of West Florida. At about the same time that the Treaty of Peace was signed, Spain ended the special privileges that it had given to Americans in New Orleans and Havana during the war.

On 3 June 1784, Congress reversed its 15 February 1781 instructions and resolved that its ministers plenipotentiary for negotiating

commercial treaties with foreign powers (John Adams, Benjamin Franklin, and Thomas Jefferson) "be and they are hereby instructed, in any negotiations they may enter upon with the court of Spain, not to relinquish or cede, in any event whatsoever, the right of the citizens of these United States to the free navigation of the river Mississippi from its source to the ocean" (JCC, XXVII, 529-30). Unaware of Congress' action, the Spanish government (on 26 June 1784) instructed its ad interim governor of Louisiana to issue a proclamation stating that, until the boundaries of Louisiana and the Floridas were settled, Americans would not be permitted to navigate the Mississippi River within the territory of Spain (JCC, XXVII, 690).

When the Virginia legislature met in the fall of 1784, it was disturbed by reports of possible conflicts between western settlers and Indians and by rumors of Spanish intrigue. The legislature wanted to restrain the settlers, but it also meant to affirm America's right to navigate the Mississippi. Consequently, in early November the legislature adopted two resolutions that had been drafted by Joseph Jones with the assistance of James Madison. The first said "That for preserving the tranquillity of our western inhabitants, speedy and exemplary punishment ought to be inflicted on every person doing injury to the subjects of Spain or the Indians in that quarter; and that proper laws for that purpose ought to be enacted," and the second noted "That it is essential to the prosperity and happiness of the western inhabitants of this Commonwealth, to enjoy the right of navigating the river Mississippi to the sea, and that the delegates representing this State in Congress, ought to be instructed to move that honorable body to give directions, (unless the same have already been given to the American ministers in Europe) to forward negotiations to obtain that end, without loss of time" (Rutland, *Madison*, VIII, 124-25). Later in the month, the legislature passed a "proper" law ("An act punishing certain offences injurious to the tranquillity of this commonwealth"), drafted, in part, by Jones and Madison, that gave force to the first resolution (*ibid.*, 154-55, 227-28; and Hening, XI, 471-73).

In October 1784, the Spanish government decided to move the negotiations for a commercial treaty to America. In the spring of 1785 Don Diego de Gardoqui, the encargado de negocios, arrived in America and on 2 July presented his credentials to Congress. On 25 August Congress instructed John Jay, who had become Secretary for Foreign Affairs in 1784, "particularly to stipulate the right of the United States to their territorial bounds, and the free Navigation of the Mississippi, from the source to the Ocean, as established in their Treaties with Great Britain." Jay entered into negotiations with Gardoqui, but on

29 May 1786 he wrote the President of Congress that he was having difficulties getting a commercial treaty. Congress referred the letter to a committee of three (of which James Monroe was a member), and the committee reported on 1 August that the letter should be referred to the Committee of the Whole. On 1 August Congress ordered Jay to appear on 3 August to discuss his letter. On the 3rd, Jay asked Congress to forbear the free navigation of the Mississippi for twenty-five or thirty years so that he might conclude a commercial treaty with Gardoqui (JCC, XXIX, 494-95, 657-58; XXX, 323; XXXI, 457, 457n, 467-84).

Congress debated the question of altering Jay's 1785 instructions for the next few weeks, and on 29 August it voted seven states to five to repeal that part of the instructions relating to territorial boundaries and the Mississippi. The seven Northern States voted for repeal; the five Southern States against (Delaware was absent). Two days later, Congress considered a resolution of Charles Pinckney of South Carolina (seconded by Henry Lee of Virginia), ordering Jay to abide by his 1785 instructions because the repeal of part of those instructions violated the provision of the Articles of Confederation requiring the assent of nine states to such an action. With the delegates again voting along sectional lines, Pinckney's motion was defeated seven states to five. On 28 September another attempt by Pinckney (supported by Edward Carrington of Virginia) also failed (JCC, XXXI, 574-96, 610-13, 694-97).

In December 1786, the Virginia legislature adopted a series of resolutions, probably written by James Madison, that instructed the state's congressional delegates to oppose any attempt to give up the right of navigation. In April 1787, Congress heatedly debated the question; but, by the end of the month, Congress dropped the matter and by the end of August the question was in "a State of absolute dormification." In November the Virginia House of Delegates appointed a committee to instruct the state's congressional delegates to oppose the bartering away of the right to navigate, but the committee does not appear to have reported. Finally, on 16 September 1788 Congress resolved "That the free navigation of the river Mississippi is a clear and essential right of the United States," and it referred all negotiations with Spain to the government under the new Constitution (JCC, XXXIV, 534-35; William Grayson to James Madison, 31 August 1787, Rutland, *Madison*, X, 159; and RCS:Va., xxx, xxxi).

For a full discussion of the responses to the Jay-Gardoqui treaty negotiations, see RCS:Va., xxix-xxx; and CC:46.

The Virginia Convention
Thursday
12 June 1788

Debates

The Convention, according to the order of the day, again resolved itself into a Committee of the whole Convention, to take into farther consideration the proposed plan of Government.—Mr. *Wythe* in the Chair.

(The first and second sections still under consideration.)

Mr. *Grayson*.—Mr. Chairman,—I asserted yesterday that there were two opinions in the world—the one that mankind were capable of governing themselves, the other, that it required actual force to govern them. On the principle that the first position was true, and which is consonant to the rights of humanity, the House will recollect that it was my opinion to amend the present Confederation, and infuse a new portion of health and strength into the State Governments; to apportion the public debts in such a manner as to throw the unpopular ones on the back lands—to divide the rest of the domestic debt among the different States—and to call for requisitions only for the interest of the foreign debt. If contrary to this maxim, force is necessary to govern men, I then did propose as an alternative, not a Monarchy like that of Great-Britain, but a milder Government, one which under the idea of a general corruption of manners and the consequent necessity of force, should be as gentle as possible. I shewed in as strong a manner as I could, some of the principle defects in the Constitution. The greatest defect is the opposition of the component parts to the interests of the whole. For let Gentlemen ascribe its defects to as many causes as their imaginations may suggest, this is the principle and radical one. I urged, that to remedy the evils which must result from this Government, a more equal representation in the Legislature and proper checks against abuse, were indispensibly necessary. I do not pretend to propose for your adoption, the plan of Government which I mentioned as an alternative to a Monarchy, in case mankind were incapable of governing themselves. I only meant, that if it were once established, that force was necessary to govern men, that such a plan would be more eligible for a free people than the introduction of Crowned Heads and Nobles. Having premised this much to obviate misconstruction, I shall proceed to the clause before us with this observation, that I prefer a compleat consolidation to a partial one, but a Fœderal

Government to either. In my opinion the State which gives up the power of taxation has nothing more to give. The people of that State, which suffer any power but her own immediate Government, to interfere with the sovereign right of taxation, are gone forever. Giving the right of taxation is giving a right to increase the miseries of the people. Is it not a political absurdity to suppose that there can be two concurrent Legislatures, each possessing the supreme power of direct taxation? If two powers come in contact must not the one prevail over the other? Must it not strike every man's mind, that two unlimited, co-equal, co-ordinate authorities, over the same objects, cannot exist together? But we are told that there is one instance of co-existent powers, in cases of petty corporations, as well here as in other parts of the world.¹ The case of petty corporations does not prove the propriety or possibility of two co-equal transcendent powers over the same objects. Although these have the power of taxation, it only extends to certain degrees and for certain purposes. The powers of corporations are defined, and operates on limited objects. Their power originates by the authority of the Legislature, and can be destroyed by the same authority. Persons carrying on the powers of a petty corporation may be punished for interfering with the power of the Legislature. Their acts are entirely nugatory if they contravene those of the Legislature. Scotland is also introduced to shew, that two different bodies may with convenience exercise the power of taxation in the same country. How is the land tax there? There is a fixed apportionment. When England pays four shillings in the pound, Scotland only pays £. 45,000. This proportion cannot be departed from, whatever augmentation may take place.² There are stannary courts and a variety of other inferior private courts in England. But when they pass the bounds of their jurisdiction, the supreme courts in Westminster Hall may, on appeal, correct the abuse of their powers. Is there any connection between the Federal Courts and State Courts? What power is there to keep them in order? Where is there any authority to terminate disputes between these two contending powers? An observation came from an Honorable Gentleman (Mr. *Mason*,) when speaking of the propriety of the General Government exercising this power, that according to the rules and doctrine of representation, the thing was entirely impracticable. I agreed with him in sentiments. I waited to hear the answer from the admirers of the New Constitution. What was the answer? Gentlemen were obliged to give up the point with respect to general uniform taxes. They have the candour to acknowledge that taxes on slaves would not affect the Eastern States, and that taxes on fish or pot-ash, would not affect the Southern States. They are then reduced to this dilemma.—In order to

support this part of the system, they are obliged to controvert the first maxims of representation. The best writers on this subject lay it down as a fundamental principle, that he who lays a tax, should bear his proportion of paying it. A tax that might with propriety be laid and with ease collected in Delaware, might be highly improper in Virginia. The taxes cannot be uniform throughout the States without being oppressive to some. If they be not uniform, some of the members will lay taxes, in the payment of which they will bear no proportion. The members of Delaware will assist in laying a tax on our slaves, of which they will pay no part whatever. The members of Delaware do not return to Virginia to give an account of their conduct. This total want of responsibility and fellow feeling, will destroy the benefits of representation. In order to obviate this objection, the Gentleman [James Madison] has said that the same evil existed in some degree in the present Confederation. To which I answer, that the present Confederation has nothing to do, but to say how much money is necessary, and to fix the proportion to be paid by each State. They cannot say in what manner the money shall be raised. This is left to the State Legislatures.

But says the Honorable Gentleman (Mr. *Madison*) if we were in danger we should be convinced of the necessity of the clause. Are we to be terrified into a belief of its necessity? It is proposed by the opposition, to amend it in the following manner—that requisitions shall be first made, and if not paid, that direct taxes shall be laid by way of punishment. If this ultimate right be in Congress, will it not be in their power to raise money on any emergency? Will not their credit be competent to procure any sum they may want? Gentlemen agree that it would be proper to imitate the conduct of other countries, and Great-Britain particularly, in borrowing money and establishing funds for the payment of the interest on the loans: That, when the Government is properly organized and its competency to raise money made known, public and private confidence will be the result, and men will readily lend it any sums it may stand in need of. If this should be a fact and the reasoning well founded, it will clearly follow that it will be practicable to borrow money in cases of great difficulty and danger on the principles contended for by the opposition, and this observation must supercede the necessity of granting them the powers of direct taxation in the first instance, provided the right is secured in the second. As to the idea of making extensive loans for extinguishing the present domestic debt, it is what I have not by any means in contemplation; I think it would be unnecessary, unjust, and impolitic. This country is differently situated and circumstanced from all other countries in the world. It is now thinly inhabited, but daily increasing in

numbers. It would not be politic to lay grievous taxes and burdens at present. If our numbers double in 25 years, as is generally believed, we ought to spare the present race because there will be double the number of persons to pay in that period of time. So that were our matters so arranged that the interest could be paid regularly, and that any individual might get his money when he thought proper, as is the case now in England, it would be all that public faith would require. Place the subject, however, in every point of view, whether as it relates to raising money for the immediate exigencies of the State, or for the extinction of the foreign or the domestic debt, still it must be obvious that if a proper confidence is placed in the acknowledgment of the right of taxation in the second instance, that every purpose can be answered. However, Sir, if the States are not blameless, why has not the Congress used that coercion which is vested in their Government? It is an unquestionable fact that the Belgic Republic on a similar occasion, by an actual exertion of force, brought a delinquent province to a proper sense of justice.³ The Gentleman said, that in case of a partial compliance with requisitions, the alternative proposed will operate unequally by taxing those who may have already paid, as well as those who have not, and involving the innocent in the crimes of the guilty. Suppose the new Government fully vested with authority to raise taxes, it will also operate unequally. To make up antecedent deficiencies they will lay more taxes the next succeeding year. By this means, those persons from whom a full proportion shall have been extracted, will be saddled with a share of the deficiencies, as well as those who shall not have discharged their full portion. This mode then will have precisely the same unequal and unjust operation as the other.

I said yesterday that there were 1500 Representatives and 160 Senators, who transacted the affairs of the different States. But we are told that this great number is unnecessary, and that in the multitude of counsellors there is folly instead of wisdom—that they are a dead weight on the public business, which is said in all public assemblies to devolve on a few.⁴ This may in some degree be true, but it will not apply in the great latitude as mentioned by the Gentleman. If ten men in our Assembly do the public business, may not the same observation extend to Congress? May not five men do the public business of the Union? But there is a great difference between the objects of legislation in Congress and those of the State Legislatures. If the former be more complicated there is a greater necessity of a full and adequate representation. It must be confessed that it is highly improper to trust our liberty and property in the hands of so few persons if they were any thing less than divine. But it seems that in this contest for power,

the State Governments have the advantage. I am of opinion that it will be directly the reverse. What influence can the State Governments be supposed to have, after the loss of their most important rights? Will not the diminution of their power and influence be an augmentation of those of the General Government? Will not the officers of the General Government receive higher compensations for their services than those of the State Governments? Will not the most influential men be employed by Congress? I think that the State Governments will be contemned and despised as soon as they give up the power of direct taxation, and a State, says Montesquieu, should loose her existence sooner than her importance. But, Sir, we are told, that if we do not give up this power to Congress, the impost will be stretched to the utmost extent. I do suppose this might follow, if the thing did not correct itself. But we know, that it is the nature of this kind of taxation, that a small duty will bring more real money than a large one. The experience of the English nation proves the truth of this assertion. There has been much said of the necessity of the five per cent impost. I have been ever of opinion, that two and a half per cent, would produce more real money into the treasury. But we need not be alarmed on this account, because when smugglers will be induced by heavy imposts to elude the laws, the General Government will find it their interest again to reduce them within reasonable and moderate limits. But it is suggested, that if direct taxation be inflicted by way of punishment, it will create great disturbances, in the country. This is an assertion without argument. If man is a reasonable being, he will submit to punishment, and acquiesce in the justice of its infliction, when he knows he deserves it. The States will comply with the requisitions of Congress more readily, when they know that this power may be ultimately used, and if they do not comply, they will have no reason to complain of its exercise.

We are then told of the armed neutrality of the Empress of Russia, the opposition to it by Great-Britain, and the acquiescence of other powers.⁵ We are told that in order to become the carriers of contending nations, it will be necessary to be formidable at sea—that we must have a fleet in case of a war between Great-Britain and France. I think that the powers who formed that treaty will be able to support it. But if we were certain that this would not be the case, still I think the profits that might arise from such a transient commerce, could not compensate for the expences of rendering ourselves formidable at sea, or the dangers that would probably result from the attempt. To have a fleet, in the present limited population of America, is, in my opinion, impracticable and inexpedient. Is America in a situation

to have a fleet? I take it to be a rule founded in common sense, that manufacturers, as well as sailors, proceed from a redundancy of inhabitants. Our numbers compared to our territory are very small indeed. I think therefore that all attempts to have a fleet, till our Western lands are fully settled, are nugatory and vain. How will you induce your people to go to sea? Is it not more agreeable to follow agriculture than to encounter the dangers and hardships of the ocean? The same reasoning will apply in a great degree to manufactures. Both are the result of necessity. It would besides be dangerous to have a fleet in our present weak, dispersed, and defenceless situation. The powers of Europe, who have West-India possessions, would be alarmed at any extraordinary maritime exertions; and knowing the danger of our arrival at manhood would crush us in our infancy. In my opinion, the great objects most necessary to be promoted and attended to in America, are agriculture and population. First take care that you are sufficiently strong by land, to guard against European partitions: Secure your own house, before you attack that of other people. I think that the sailors who would be prevailed on to go to sea, would be a real loss to the community: Neglect of agriculture, and loss of labour, would be the certain consequence of such an irregular policy. I hope, that when these objections are thoroughly considered, all ideas of having a fleet in our infant situation will be given over. When the American character is better known, and the Government established on permanent principles—when we shall be sufficiently populous, and our situation secure, then come forward with a fleet—not with a small one, but with one sufficient to meet any of the maritime powers.

The Honorable Gentleman (Mr. *Madison*) said that the impost will be less productive hereafter, on account of the increase of population. I shall not controvert this principle. When all the lands are settled and we have manufactures sufficient, this may be the case. But I believe, that for a very long time this cannot possibly happen. In islands and thick settled countries, where they have manufactures, the principle will hold good; but will not apply in any degree to our country. I apprehend that among us, as the people in the lower country find themselves straightened they will remove to the frontiers, which for a considerable period will prevent the lower country from being very populous, or having recourse to manufactures. I cannot therefore but conclude, that the amount of the imposts will continue to increase at least for a great number of years.

Holland, we are informed, is not happy, because she has not a Constitution like this. This is but an unsupported assertion. Do we not know the cause of her misfortunes? The evil is co-eval with her exist-

ence—There are always opposite parties in that Republic. There are now two parties—the Aristocratic party supporting the Prince of Orange, and the Louvestein party supporting the rights of the people. France foments the one, and Great-Britain the other.⁶ Is it known that if Holland had begun with such a Government as this, that the violence of faction would not produce the same evils which they experience at this present moment? It is said that all our evils result from requisitions on the States. I did not expect to hear of complaints for non-compliance during the war. Do not Gentlemen recollect our situation during the war? Our ports were blocked up, and all means of getting money destroyed, and almost every article taken from the farmer for the public service, so as, in many instances, not to leave him enough to support his own family with tolerable decency and comfort. It cannot be forgot that another resort of Government was applied to, and that press warrants were made to answer for the non-compliance of requisitions.—Every person must recollect our miserable situation during the arduous contest, therefore shall make no farther apology for the States during the existence of the war.—Since the peace there have been various causes for not furnishing the necessary quotas to the General Government. In some of the flourishing States the requisitions have been attended to; in others their non-compliance is to be attributed more to the inability of the people, than to their unwillingness to advance the general interests.—Massachusetts attempted to correct the nature of things, by extracting more from the people than they were able to part with: What did it produce? A revolution, which shook that State to its centre.⁷

Paper money has been introduced. What did we do a few years ago? Struck off many millions, and by the charms of magic made the value of the emissions diminish by a forty fold ratio.⁸ However unjust or unreasonable this might be, I suppose it was warranted by the inevitable laws of necessity. But, Sir, there is no disposition now of having paper money: This engine of iniquity is universally reprobated. But Conventions give power, and Conventions can take away. This observation does not appear to me to be well founded. It is not so easy to dissolve a Government like this. Its dissolution may be prevented by a trifling minority of the people of America. The consent of so many States are necessary to introduce amendments, that I fear they will with great difficulty be obtained. It is said, that a strong Government will increase our population by increasing of emigrants. From what quarter is emigration to proceed? From the arbitrary Monarchies of Europe? I fear this kind of population would not add much to our happiness or improvement: It is supposed from the prevalence of the

Orange faction, that numbers will come hither from Holland, although it is not imagined the strength of the Government will form the inducement. The exclusive power of Legislation over the 10 miles square is introduced by many Gentlemen. I would not deny the utility of vesting the General Government with a power of this kind, were it properly guarded. Perhaps I am mistaken, but it occurs to me that Congress may give exclusive privileges to merchants residing within the ten miles square, and that the same exclusive power of legislation will enable them to grant similar privileges to merchants in the strong holds within the States. I wish to know if there be any thing in the Constitution to prevent it. If there be, I have not been able to discover it. I may perhaps, not thoroughly comprehend this part of the Constitution, but it strikes my mind that there is a possibility that in process of time and from the simple operation of effects from causes, that the whole commerce of the United States may be exclusively carried on by the merchants residing within the seat of Government, and those places of arms, which may be purchased of the State Legislatures. How detrimental and injurious to the community, and how repugnant to the equal rights of mankind, such exclusive emoluments would be, I submit to the consideration of the Committee. Things of a similar nature have happened in other countries, or else from whence have issued the Hans-towns, Cinque ports and other places in Europe, which have peculiar privileges in commerce as well as in other matters?⁹ I do not offer this sentiment as an opinion, but a conjecture; and in this doubtful agitation of mind on a point of such infinite magnitude, only ask for information from the framers of the Constitution, whose superior opportunities must have furnished them with more ample lights on the subject than I am possessed of. Something is said on the other side with respect to the Mississippi. An Honorable Gentleman has mentioned, that he was satisfied that no member of Congress had any idea of giving up that river.¹⁰ Sir, I am not at liberty from my situation to enter into any investigation on the subject: I am free, however, to acknowledge that I have frequently heard the honorable member declare, that he conceived the object then in contemplation, was the only method by which the right of that river could be ultimately secured. I have heard similar declarations from other members. I must beg leave to observe, at the same time, that I most decidedly differed with them in sentiment.—With respect to the citizens of the Eastern and some of the middle States, perhaps the best and surest means of discovering their general dispositions, may be by having recourse to their interests: This seems to be the pole star to which the policy of nations is directed: If this supposition should be founded, I think they

must have reasons of considerable magnitude, for wishing the occlusion of that river. If the Mississippi was yielded to Spain, the migration to the Western country would be stopped, and the Northern States would, not only retain their inhabitants, but preserve their superiority and influence over that of the Southern. If matters go on in their present direction, there will be a number of new States to the Westward—Population may become greater in the Southern scale—The ten miles square may approach us! This they must naturally wish to prevent. I think Gentlemen may know the disposition of the different States, from the geography of the country and from the reason and nature of things. Is it not highly imprudent to vest a power in the generality, which will enable those States to relinquish that river? There are but feeble restrictions at present to prevent it. By the old confederation nine States are necessary to form any treaty. By this Constitution, the President with two thirds of the members present in the Senate, can make any treaty. Ten members are two thirds of a quorum. Ten members are the Representatives of five States. The Northern States may then easily make a treaty relinquishing this river. In my opinion, the power of making treaties, by which the territorial rights of any of the States may be essentially affected, ought to be guarded against every possibility of abuse: And the precarious situation to which those rights will be exposed, is one reason with me, among a number of others, for voting against its adoption.

Mr. *Pendleton*.—Mr. Chairman,—When I spoke formerly,¹¹ I endeavored to account for the uneasiness of the public mind—that it arose from objections to Governments drawn from mistaken sources. I stated the General Governments of the world to have been either dictated by a conquerer, at the point of his sword, or the offspring of confusion, when a great popular leader, seizing the occasion, if he did not produce it, restored order at the expence of liberty, and became the tyrant. In either case the interest and ambition of the despot, and not the good of the society, give the tone to the Government, and establish contending interests. A war is commenced, and kept up, where there ought to be union; and the friends of liberty have sounded the alarm to the people, to regain that liberty which circumstances had thus deprived them of. Those alarms, misrepresented and improperly applied to this Government, have produced uneasiness in the public mind. I said improperly applied, because the people by us are peaceably assembled, to contemplate in the calm lights of mild philosophy, what Government is best calculated to promote their happiness, and secure their liberty. This I am sure we shall effect, if we do not lose sight of them by too much attachment to pictures of beauty, or horror, in our researches

into antiquity, our travels for examples into remote regions—or severe criticisms upon, or unfriendly applications of expressions which may drop in the effusions of honest zeal.—The term *herd* was thus produced—meaning to express a multitude.¹² It was capable of an odious application, that of placing the citizens in a degrading character. I wish it had not been used, and I wish the Gentleman on the other side had thought himself at liberty to have let it pass, without pointing its odious meaning. However, I claim no right to prescribe to him. It is done, and it must rest with the candour of the attending citizens whom it concerns, to give it the innocent meaning, which I am sure the Honorable Gentleman intended.

On the subject of Government the worthy member (Mr. *Henry*) and I differ at the threshold. I think Government necessary to protect liberty. He supposes the American spirit all-sufficient for the purpose. What say the most respectable writers—Montesquieu, Locke, Sidney, Harrington, &c.? They have presented us with no such idea. They properly discard from their system, all the severity of cruel punishments, such as tortures, inquisitions, and the like—shocking to human nature, and only calculated to coerce the dominion of tyrants over slaves. But they recommend making the ligaments of Government firm, and a rigid execution of the laws as more necessary than in a Monarchy—to preserve that virtue, which they all declare to be the pillar on which the Government, and liberty its object, must stand. They are not so visionary, as to suppose, there ever did or ever will exist a society, however large their aggregate fund of virtue may be, but hath among them persons of a turbulent nature, restless in themselves, and disturbing the peace of others—Sons of rapine and violence, who unwilling to labour themselves, are watching every opportunity to snatch from the industrious peasant the fruits of his honest labour. Was I not then correct in my inference, that such a Government and liberty were friends and allies, and that their common enemy was turbulence, faction, and violence? 'Tis those therefore that will be offended by good Government, and for those I suppose no Gentleman will profess himself an advocate. The writers just mentioned, point out licentiousness as the natural offspring of liberty, and that therefore all free Governments should endeavor to suppress it, or else it will ultimately overthrow that liberty of which it is the result. Is this speculation only? Alas! reason and experience too fatally prove its truth in all instances. A Republican Government is the nursery of science. It turns the bent of it to eloquence, as a qualification for the representative character, which is, as it ought to be, the road to our public offices. I have pleasure in beholding these characters already produced in our coun-

cils—and a rising fund equal to a constant supply—May heaven prosper their endeavors, and direct their eloquence to the real good of their country. I am unfortunate enough to differ from the worthy member in another circumstance. He professes himself an advocate for the *middling* and *lower* classes of *men*. I profess to be a friend to the *equal* liberty of *all men*, from the palace to the cottage, without any other distinction than between *good* and *bad* men. I appeal to my public life and private behaviour, to decide whether I have departed from this rule. Since distinctions have been brought forth and communicated to the audience; and will be therefore disseminated, I beg Gentlemen to take with them this observation, that distinctions have been produced by the opposition. From the friends of the new Government, they have heard none.—None such are to be found in the organization of the paper before you.

Why bring into debate the whims of writers—introducing the distinction of *well born* from others?¹³—I consider every man *well born* who comes into the world with an intelligent mind, and with all his parts perfect. I am an advocate for fixing our Government on true republican principles, giving to the poor man free liberty in his person and property. Whether a man be great or small he is equally dear to me. I wish, Sir, for a regular Government, in order to secure and protect those honest citizens who have been distinguished—I mean the industrious farmer and planter. I wish them to be protected in the enjoyment of their honestly and industriously acquired property. I wish commerce to be fully protected and encouraged, that the people may have an opportunity of disposing of their crops at market, and of procuring such supplies as they may be in want of. I presume that there can be no political happiness, unless industry be cherished and protected, and property secured.—Suppose a poor man becomes rich by honest labour, and increases the public stock of wealth, shall his reward be the loss of that liberty he set out with? Will you take away every stimulus to industry, by declaring that he shall not retain the fruits of it? The idea of the poor becoming rich by assiduity is not mere fancy. I am old enough, and have had sufficient experience to know the effects of it. I have often known persons commencing in life without any other stock but industry and economy; by the mere efforts of these, rise to opulence and wealth. This could not have been the case without a Government to protect their industry.—In my mind the true principles of republicanism, and the greatest security of liberty, is regular Government. Perhaps I may not be a republican, but this is my idea. In reviewing the history of the world, shall we find an instance where any society retained its liberty without Government?

As I before hinted, the smallest society in extent, to the greatest empire, can only be preserved by a regular Government, to suppress that faction and turbulence so natural to many of our species. What do men do with those passions when they come into society? Do they leave them? No—they bring them with them.—These passions which they thus bring into society will produce disturbances which without any check will overturn it.

A distinction has been made which surprised me, between the *illuminated* mind and the *ignorant*. I have heard with pleasure in other places, that worthy Gentleman expatiate on the advantages of learning, among other things as friendly to liberty. I have seen in our code of laws, the *public* purse applied to cherish *private* seminaries.¹⁴ This is not strictly just, but with me the end sanctified the means, and I was satisfied. But did we thus encourage learning, to set up those who attained its benefits, as butts of invidious distinction? Surely the worthy member [George Mason], on reflection, will disavow the idea. He learns to little purpose indeed, who vainly supposes himself become, from that circumstance, of an order of beings superior to the honest citizens—peasants if you please to term them so—who in their labour produce great good to the community. But those illuminated minds who apply their knowledge to promote and cherish liberty—equal liberty to all, the peasant as well as others—give to society the real blessings of learning. I have seen learning used both ways—but have had pleasure in observing, that lately the latter fruits only have generally appeared, which I attribute to the influence of republican principles, and a regard for true liberty. Am I still suspected of want of attachment for my worthy fellow-citizens, whom the Gentleman calls peasants and cottagers? Let me add one more observation.—I cannot leave them in the state in which he has placed them—in the parallel between them and those of Switzerland—the United Netherlands and Great-Britain. The peasants of the Swiss Cantons, trade in war—Trained in arms, they become the mercenaries of the best bidder, to carry on the destruction of mankind, as an occupation, where they have not even resentment. Are these a fit people for a comparison with our worthy planters and farmers—in their drawing food and raiment, and even wealth, by honest labour from the bowels of the earth, where an inexhaustible store is placed by a bountiful Creator?

The citizens of the United Netherlands have no right of suffrage. There they lose that distinguished badge of freedom. Their representation to their State Assemblies is of towns and cities, and not of the people at large.

The people of Britain have the right of suffrage, but sell it for a mess of pottage.

The happiness of the people is the object of this Government, and the people are therefore made the fountain of all power. They cannot act personally and must delegate powers. Here the worthy Gentleman who spoke last [William Grayson], and I, travelling not together indeed, but in sight, are placed at an immeasurable distance—as far as the poles asunder. He recommends a Government more energetic and strong than this—abundantly too strong ever to receive my approbation. A first Magistrate borrowed from Britain, to whom you are to make a surrender of your liberty, and you give him a separate interest from yours. You intrench that interest by powers and prerogatives undefined—implant in him self-love, from the influence of which he is to do, what—to promote your interest in opposition to his own?—An operation of self-love, which is new! Having done this, you accept from him a charter of the right you have parted with—present him a Bill of Rights—telling him, *thus far shall you oppress us and no farther*.¹⁵ It still depends on him whether he will give you that charter, or allow the operation of the Bill of Rights. He will do it as long as he cannot do otherwise, but no longer. Did ever any free people in the world, not dictated to, by the sword of a conquerer, or by circumstances into which licentiousness may have plunged them, place themselves in so degrading a situation, or make so disgraceful a sacrifice of their liberty? If they did, sure I am that the example will not be followed by this Convention. This is not all; we are to look some where for the chosen few to go into the ten miles square, with extensive powers for life, and thereby destroy every degree of true responsibility. Is there no medium, or shall we recur to extremes? As a republican, Sir, I think that the security of the liberty and happiness of the *people*, from the highest to the lowest, being the object of Government, the people are consequently the fountain of all power. They must, however, delegate it to agents, because from their number, dispersed situation, and many other circumstances, they cannot exercise it in person. They must therefore by frequent, and certain elections, choose Representatives to whom they trust it. Is there any distinction in the exercise of this delegation of power? The man who possesses twenty-five acres of land, has an equal right of voting for a Representative, with the man who has twenty-five thousand acres. This equality of suffrage, secures the people in their property. While we are in pursuit of checks and balances, and proper security in the delegation of power, we ought never to lose sight of the representative character. By this we preserve the great principle, of the primary right of power in the people, and should

deviations happen from our interests, the spirit of liberty in future elections will correct it.—A security I esteem far superior to Paper-Bills of Rights.

When the bands of our former society were dissolved, and we were under the necessity of forming a new Government, we established a Constitution, founded on the principle of representation, preserving therein frequency of elections, and guarding against inequality of suffrage. I am one of those who are pleased with that Constitution, because it is built on that foundation. I believe that if the Confederation had the principles and efficacy of that Constitution, we should have found that peace and happiness which we are all in search of. In this State Constitution, to the Executive you commit the sword,—to the Legislative you commit the purse, and every thing else without any limitation. In both cases the representative character is in full effect, and thereby responsibility is secured.—The Judiciary is separate and distinct from both the other branches, has nothing to do with either the purse or sword, and for obvious reasons, the judges hold their office during good behaviour.

There will be deviations even in our State Legislature thus constituted. I say, (and I hope to give no offence when I do) there *have been* some. I believe every Gentleman will see that it is unconstitutional to condemn any man without a fair trial. Such a condemnation is repugnant to the principles of justice. It is contrary to the Constitution, and the spirit of the common law. Look at the Bill of Rights. You find there, that no man should be condemned without being confronted with his accusers and witnesses—that every man has a right to call for evidence in his favor, and above all, to a speedy trial by an impartial jury of the vicinage, without whose unanimous consent he cannot be found guilty.—These principles have not been attended to. An instance has been mentioned already, where they have been in some degree violated.¹⁶ (Here Mr. *Pendleton* spoke so very low that he could not be heard) My brethern in that department (*the judicial*) felt great uneasiness in their minds, to violate the Constitution by such a law. They have prevented the operation of some unconstitutional acts.¹⁷ Notwithstanding those violations, I rely upon the principles of the Government—that it will produce its own reform, by the responsibility resulting from frequent elections.—We are finally safe while we preserve the representative character. I made these observations as introductory to the consideration of the paper on your table. I conceive that in those respects where our State Constitution has not been disapproved of, objections will not apply against that on your table: When we were forming our State Constitution we were confined to local

circumstances. In forming a Government for the Union, we must consider our situation as connected with our neighbouring States. We have seen the advantages and blessings of the Union. Every intelligent and patriotic mind must be convinced that it is essentially necessary to our happiness. God grant we may never see the disadvantages of disunion.

To come to the great subject of direct taxation, more immediately under consideration—If we find it our interest to be intimately connected with the other 12 States, to establish one common Government, and bind in one ligament the strength of 13 States, we will find it necessary to delegate powers proportionate to that end; for the delegation of adequate powers in this Government is no less necessary than in our State Government. To whom do we delegate these powers?—To our own Representatives. Why should we fear so much greater dangers from our Representatives there than from those we have here?—Why make so great a distinction between our Representatives here, and in the Federal Government, where every branch is formed on the same principles—preserving throughout—the Representative responsible character? We have trusted our lives and every thing to our State Representatives. We have particularly committed our purse to them with unlimited confidence. I never heard any objection to it—I am sure I make none.—We ought to contribute our share of fixing the principles of the Government. Here the Representative character is still preserved. We are to have an equal share in the representation of the General Government, should we ratify this Constitution. We have hitherto paid more than our share of taxes for the support of the Government, &c. But by this system we are to pay our equal rateable share only. Where is the danger of confiding in our Federal Representatives? We must choose those in whom we can put the greatest confidence. They are only to remain two years in office. Will they in that time loose all regard for the principles of honor, and their character, and become abandoned prostitutes of our rights? I have no such fear.—When power is in the hands of my Representatives, I care not whether they meet here or 100 miles off.

A Gentleman (Mr. *Monro*)¹⁸ has said, that the power of direct taxation was unnecessary, because the impost and back lands would be abundantly sufficient to answer all federal purposes—If so, what are we disputing about? I ask the Gentleman who made the observation, and this Committee, if they believe that Congress will ever lay direct taxes if the other funds are sufficient? It will then remain a harmless power upon paper, and do no injury. If it should be necessary, will Gentlemen run the risque of the Union by withholding it? I was sorry to hear the

subjects of requisitions and taxation misinterpreted. The latter has been compared to taxation by Great-Britain without our own consent. The two cases are by no means similar. The King of Great-Britain has not the purse, though he holds the sword. He has no means of *using* the sword but by requisitions on them who hold the purse.—He applied to the British Parliament, and they were pleased to trust him with our money. We declared, as we had a right, that we ought to be taxed by our own Representatives, and that therefore their disposing of our money without our consent was unjust.—Here requisitions are to be made by one body of our Representatives to another. Why should this be the case, when they are both possessed of our equal confidence—both chosen in the same manner, and equally responsible to us? But we are told, that there will be a war between the two bodies equally our Representatives, and that the State Government will be destroyed and consolidated into the General Government. I stated before that this could not be so.—The two Governments act in different manners, and for different purposes—The General Government in great national concerns, in which we are interested in common with other members of the Union—The State Legislature in our mere local concerns.—Is it true, or merely imaginary, that the State Legislatures will be confined to the care of bridges and roads? I think that they are still possessed of the highest powers—Our dearest rights—life, liberty, and property, as Virginians, are still in the hands of our State Legislature. If they prove too feeble to protect us, we resort to the aid of the General Government for security. The true distinction is, that the two Governments are established for different purposes and act on different objects.—So that notwithstanding what the worthy Gentleman [William Grayson] said, I believe I am still correct, and insist that if each power is confined within its proper bounds, and to its proper objects, an interference can never happen. Being for two different purposes, as long as they are limited to their different objects, they can no more clash, than two parallel lines can meet.—Both lay taxes, but for different purposes.—The same officers may be used by both Governments, which will prevent a number of inconveniences.—If an invasion or insurrection, or other misfortune, should make it necessary for the General Government to interpose, this will be for the general purposes of the Union, and for the manifest interest of the States.—I mentioned formerly that it would never be the interest of the General Government, to destroy the State Governments. From these it will derive great strength, for if *they* be possessed of power, they will assist *it*.—If *they* become feeble, or decay, the General Government must likewise become weak, or moulder away.

But we are alarmed on account of Kentucky—We are told, that the Mississippi is taken away.—When Gentlemen say, that seven States are now disposed to give it up, and that it *will be* given up by the operation of this Government; are they correct? It must be supposed that on occasions of great moment, the Senators from all the States will attend—If they do, there will be no difference between this Constitution and the Confederation in this point.—When they are all present, two-thirds of them will consist of the Senators from nine States, which is the number required by the existing system to form treaties.—The consent of the President, who is the Representative of the Union, is also necessary. The right to that river must be settled by the sword or negotiation.—I understood that the purpose of that negotiation which has been on foot, was, that Spain should have the navigation of that river for 25 years, after which we were peaceably to retain it forever. This, I was told, was all that Spain required. If so, the Gentlemen who differed in opinion from others, in wishing to gratify Spain, must have been actuated from a conviction, that it would be better to have the right fixed in that manner, than trust to uncertainty. I think the inhabitants of that country, as well as of every other part of the Union, will be better protected by an efficient firm Government, than by the present feeble one. We shall have also a much better chance for a favorable negotiation, if our Government be respectable, than we have now. It is also suggested, that the citizens of the Western District run the risk of losing their lands, if this Constitution be adopted.¹⁹—I am not acquainted with the circumstances of the title set up to those lands.—But this I know, that it is founded, not upon any claim commenced during the revolution, but on some latent claim that existed before that period.—It was brought before our Assembly and rejected, I suppose, because *they thought* it would at this late period, involve the just and unjust, indiscriminately, in distresses. I am bold to say, that no assistance can be given by the Constitution to the claimants. The Federal Legislature is not authorised to pass any law affecting claims that existed before. If the claim is brought forth, it must be before the Court of the State, on the ground on which it now stands, and must depend on the same principles on which it now depends. Whether this Constitution be adopted or not, will not affect the parties in this case. It will make no difference, as to the principles on which the decision will be made, whether it will come before the State Court or the Federal Court.—They will be both equally independent, and ready to decide in strict conformity to justice. I believe the Federal Courts will be as independent as the State Courts.—I should no more hesitate to trust my liberty and property to the one, than the other. Whenever,

in any country in the world, the Judges are independent, property is secure. The existence of Great-Britain depends on that purity with which justice is administered. When Gentlemen will therefore find that the Federal Legislature cannot affect pre-existing claims by their legislation, and the Federal Courts are on the same ground with the State Courts, I hope there will be no ground of alarm.

Permit me to deliver a few sentiments on the great and important subject of previous and subsequent amendments. When I sat down to read that paper, I did not read it with an expectation that it was perfect, and that no man would object to it.—I had learned, Sir, that an expectation of such perfection in any institution devised by *man*, was as vain as the search for the philosopher's stone. I discovered objections—I thought I saw there sown some seeds of disunion—not in the immediate operation of the Government, but which *might* happen in some future time.—I wish amendments to remove these. But these remote possible errors may be eradicated by the amendatory clause in the Constitution.—I see no danger in making the experiment, since the system itself points out an easy mode of removing any errors which shall have been experienced. In this view then, I think we may safely trust in the Government. With respect to the eight States who have already acceded to it, do Gentlemen believe, that, should we propose amendments, as *the sine qua non* of our adoption, they would listen to our proposal? I conceive, Sir, that they would not retract.—They would tell us—*No Gentlemen, we cannot accept of your conditions. You put yourselves upon the ground of opposition. Your amendments are dictated by local considerations. We, in our adoption have been influenced by considerations of general utility to the Union. We cannot abandon principles like these to gratify you.*—Thus, Sir, by previous amendments, we present a hostile countenance. If on the contrary we imitate the conduct of those States, our language will be conciliatory and friendly.—*Gentlemen, we put ourselves on the same ground that you are on. We are not actuated by local considerations, but by such as affect the people of America in general.*—This conduct will give our amendments full weight. I was surprised when I heard introduced, the opinion of a Gentleman (Mr. Jefferson) whom I highly respect.²⁰ I know the great abilities of that Gentleman. Providence has, for the good of mankind, accompanied those extensive abilities with a disposition to make use of them for the good of his fellow beings; and I wish with all my heart that he was here to assist us on this interesting occasion. As to his letter, impressed as I am with the force of his authority, I think it was improper to introduce it on this occasion. The opinion of a private individual, however enlightened, ought not to influence our decision. But admit-

ting that this opinion ought to be conclusive with us, it strikes me in a different manner from the honorable Gentleman [Patrick Henry]. I have seen the letter in which this Gentleman has written his opinion upon this subject—It appears that he is possessed of that Constitution, and has in his mind the idea of amending it—He has in his mind the very question of subsequent or previous amendments, which is now under consideration.—His sentiments on this subject are as follows—“I wish with all my soul that the nine first Conventions may accept the New Constitution, because it will secure to us the good it contains, which I think great and important. I wish the four latest which ever they be, may refuse to accede to it, till amendments are secured”—He then enumerates the amendments which he wishes to be secured, and adds, “We must take care however, that neither this, nor any other objection to the form, produce a schism in our Union. That would be an incurable evil; because friends falling out never cordially re-unite.” Are these sentiments in favor of those who wish to prevent its adoption by previous amendments? He wishes the first nine States to adopt it—What are his reasons? Because he thinks it will secure to us the good it contains, which he thinks *great* and *important*, and he wishes the other four may refuse it, because he thinks it will tend to obtain necessary amendments. But he would not wish that a schism should take place in the Union on any consideration. If then we are to be influenced by his opinion at all, we will ratify it, and secure thereby the good it contains.—The Constitution points out a plain and ordinary method of reform without any disturbance or convulsions whatever. I therefore think that we ought to ratify it in order to secure the Union, and trust to this method for removing those inconveniences which experience shall point out.

Mr. *Pendleton* added several other observations, but spoke too low to be heard.

Mr. *Madison*.—Mr. Chairman,—Finding, Sir, that the clause more immediately under consideration still meets with the disapprobation of the Honorable Gentleman over the way (Mr. *Grayson*) and finding that the reasons of the opposition as farther developped are not satisfactory to myself and others who are in favor of the clause; I wish that it may meet with the most thorough and complete investigation. I beg the attention of the Committee, in order to obviate what fell from the Honorable Gentleman. He set forth that by giving up the power of taxation, we should give up every thing, and still insists on requisitions being made on the States, and that then, if they be not complied with, Congress shall lay direct taxes by way of penalty. Let us consider the dilemma which arises from this doctrine. Either req-

uisitions will be efficacious or they will not. If they will be efficacious, then I say, Sir, we gave up every thing as much as by direct taxation. The same amount will be paid by the people as by direct taxes.—If they be not efficacious where is the advantage of this plan? In what respect will it relieve us from the inconveniences which we have experienced from requisitions? The power of laying direct taxes by the General Government is supposed by the Honorable Gentleman to be chimerical and impracticable. What is the consequence of the alternative he proposes? We are to rely upon this power to be ultimately used as a penalty to compel the States to comply. If it be chimerical and impracticable in the first instance, it will be equally so when it will be exercised as a penalty. A reference was made to concurrent executions as an instance of the possibility of interference between the two Governments. (Here Mr. *Madison* spoke so low that he could not be distinctly heard.) This has been experienced under the State Governments without involving any inconvenience. But it may be answered, that under the State Governments, concurrent executions cannot produce the inconvenience here dreaded, because they are executed by the same officer. Is it not in the power of the General Government to employ the State officers? Is nothing to be left to future legislation, or must every thing be immutably fixed in the Constitution? Where exclusive power is given to the Union, there can be no interference. Where the General and State Legislatures have concurrent power, such regulations will be made as shall be found necessary to exclude interferences and other inconveniences. It will be their interest to make such regulations.

It has been said, that there is no similarity between petty corporations and independent States. I admit that in many points of view there is a great dissimilarity, but in others, there is a striking similarity between them, which illustrates what is before us. Have we not seen in our own country (as has been already suggested in the course of the debates) concurrent collections of taxes going on at once, without producing any inconvenience? We have seen three distinct collections of taxes, for three distinct purposes. Has it not been possible for collections of taxes, for parochial, county and State purposes, to go on at the same time? Every Gentleman must know that this is now the case, and though there be a subordination in these cases which will not be in the General Government, yet in practice it has been found, that these different collections have been concurrently carried on, with convenience to the people, without clashing with one another, and without deriving their harmony from the circumstance of being subordinate to one Legislative body. The taxes will be laid for different

purposes. The members of the one Government as well as of the other, are the agents of, and subordinate to the people. I conceive that the collections of the taxes of the one will not impede those of the other, and that there can be no interference. This concurrent collection appears to me neither chimerical nor impracticable. He compares resistance of the people to collectors, to refusal of requisitions. This goes against all Government. It is as much as to urge, that there should be no Legislature. The Gentlemen who favored us with their observations on this subject, seemed to have reasoned on a supposition, that the General Government was confined by the paper on your table to lay general uniform taxes. Is it necessary that there should be a tax on any given article throughout the United States? It is represented to be oppressive, that the States who have slaves and make tobacco, should pay taxes on these for Federal wants, when other States who have them not would escape. But does the Constitution on the table admit of this? On the contrary, there is a proportion to be laid on each State according to its population. The most proper articles will be selected in each State. If one article in any State should be deficient, it will be laid on another article. Our State is secured on this foundation.—Its proportion will be commensurate to its population. This is a constitutional scale, which is an insuperable bar against disproportion, and ought to satisfy all reasonable minds.—If the taxes be not uniform, and the Representatives of some States contribute to lay a tax of which they bear no proportion, is not this principle reciprocal? Does not the same principle hold in our State Government in some degree? It has been found inconvenient to fix on uniform objects of taxation in this State, as the back parts are not circumstanced like the lower parts of the country. In both cases the reciprocity of the principle will prevent a disposition in one part to oppress the other. My honorable friend seems to suppose that Congress, by the possession of this ultimate power as a penalty, will have as much credit and will be as able to procure any sums, on any emergency, as if they were possessed of it in the first instance; and that the votes of Congress will be as competent to procure loans, as the votes of the British Commons. Would the votes of the British House of Commons have that credit which they now have, if they were liable to be retarded in their operation, and perhaps rendered ultimately nugatory as those of Congress must be by the proposed alternative? When their vote passes, it usually receives the concurrence of the other branch, and it is known that there is sufficient energy in the Government, to carry it into effect. But here the votes of Congress are in the first place dependent on the compliance of 13 different bodies, and after non compliance, are

liable to be opposed and defeated, by the jealousy of the States against the exercise of this power, and by the opposition of the people which may be expected, if this power be exercised by Congress after partial compliances. These circumstances being known, Congress could not command one shilling.—My honorable friend seems to think that we ought to spare the present generation, and throw our burthens upon posterity. I will not contest the equity of this reasoning, but I must say that good policy as well as views of œconomy, strongly urge us even to distress ourselves to comply with our most solemn engagements. We must make effectual provision for the payment of the interest of our public debts. In order to do justice to our creditors, and support our credit and reputation; we must lodge power some where or other for this purpose. As yet the United States have not been able by any energy contained in the old system, to accomplish this end. Our creditors have a right to demand the principal, but would be satisfied with a punctual payment of the interest. If we have been unable to pay the interest, much less shall we be able to discharge the principal. It appears to me that the whole reasoning used on this occasion shews, that we ought to adopt this system to enable us to throw our burdens on posterity. The honorable member [William Grayson] spoke of the Decemviri at Rome as having some similitude to the ten Representatives who are to be appointed by this State. I can see no point of similitude here, to enable us to draw any conclusion. For what purpose were the Decemviri appointed? They were invested with a plenipotentiary commission to make a code of laws. By whom were they appointed? By the people at large?—My memory is not infallible, but it tells me they were appointed by the Senate. I believe in the name of the people. If they were appointed by the Senate and composed of the most influential characters among the Nobles, can any thing be inferred from that against our Federal Representatives? Who made a discrimination between the Nobles and the people?—The Senate. Those men totally perverted the powers which were given them for the purpose above specified, to the subversion of the public liberty. Can we suppose that a similar usurpation might be made, by men appointed in a totally different manner? As their circumstances were totally dissimilar I conceive that no arguments drawn from that source, can apply to this Government. I do not thoroughly comprehend the reasoning of my honorable friend, when he tells us, that the Federal Government will predominate, and that the State interest will be lost; when at the same time he tells us, that it will be a faction of seven States.—If seven States will prevail *as States*, I conceive that state influence will prevail. If state influence under the present feeble Gov-

ernment has prevailed, I think that a remedy ought to be introduced by giving the General Government power to suppress it.

He supposed that my argument with respect to a future war between Great-Britain and France was fallacious. The other nations of Europe have acceded to that neutrality while Great-Britain opposed it.²¹ We need not expect in case of such a war, that we should be suffered to participate of the profitable emoluments of the carrying trade, unless we were in a respectable situation. Recollect the last war.—Was there ever a war in which the British nation stood opposed to so many nations? All the belligerent nations in Europe, with near one half of the British empire, were united against it. Yet that nation, though defeated, and humbled beyond any previous example, stood out against this. From her firmness and spirit in such desperate circumstances, we may divine what her future conduct may be. I did not contend that it was necessary for the United States to establish a navy for that sole purpose, but instanced it as one reason out of several, for rendering ourselves respectable. I am no friend to naval or land armaments in time of peace, but if they be necessary, the calamity must be submitted to. Weakness will invite insults. A respectable Government will not only intitle us to a participation of the advantages which are enjoyed by other nations, but will be a security against attacks and insults. It is to avoid the calamity of being obliged to have large armaments that we should establish this Government. The best way to avoid danger, is to be in a capacity to withstand it.

The impost, we are told, will not diminish, because the emigrations to the Westward will prevent the increase of population.—He has reasoned on this subject justly to a certain degree. I admit that the imposts will increase till population becomes so great as to compel us to recur to manufactures. The period cannot be very far distant, when the unsettled parts of America will be inhabited. At the expiration of twenty-five years hence, I conceive that in every part of the United States, there will be as great a population as there is now in the settled parts. We see already, that in the most populous parts of the Union, and where there is but a medium, manufactures are beginning to be established. Where this is the case the amounts of importations will begin to diminish. Although the impost may even increase during the term of twenty-five years, yet when we are preparing a Government for perpetuity, we ought to found it on permanent principles and not on those of a temporary nature.

Holland is a favorite quotation with honorable members on the other side of the question. Had not their sentiments been discovered by other circumstances, I should have concluded from their reasonings

on this occasion, that they were friends to the Constitution. I should suppose that they had forgotten which side of the question they were on. Holland has been called a Republic, and a Government friendly to liberty. Though it may be greatly superior to some other Governments in Europe, still it is not a Republic, or a Democracy. Their Legislature consist in some degree of men who legislate for life. Their Councils consists of men who hold their offices for life, who fill up offices and appoint their salaries themselves. The people have no agency mediate or immediate in the Government. If we look at their history we shall find, that every mischief which has befallen them, has resulted from the existing Confederacy. If the Stadtholder has been productive of mischief—if we ought to guard against such a Magistrate more than any evil, let me beseech the Honorable Gentleman to take notice of what produced that, and those troubles which have interrupted their tranquillity from time to time—The weakness of their Confederacy produced both. When the French arms were ready to overpower their Republic, and were feeble in the means of defence, which was principally owing to the violence of parties, they then appointed a Stadtholder, who sustained them. If we look at more recent events, we shall have a more pointed demonstration that their political infelicity arises from the imbecility of their Government. In the late disorders the States were almost equally divided, three Provinces on one side, three on the other, and the other divided—one party inclined to the Prussians, and the other to the French. The situation of France did not admit of their interposing immediately in their disputes by an army—That of the Prussians did. A powerful and large army marched into Holland and compelled the other party to surrender. We know the distressing consequences to the people.²² What produced those disputes and the necessity of foreign interference, but the debility of their Confederacy? We may be warned by their example, and shun their fate, by removing the causes which produced their misfortunes.

My honorable friend has referred to the transactions of the Federal Council with respect to the navigation of the Mississippi. I wish it was consistent with delicacy and prudence to lay a complete view of the whole matter before this Committee. The history of it is singular and curious, and perhaps its origin ought to be taken into consideration. I will touch on some circumstances, and introduce nearly the substance of most of the facts relative to it, that I may not seem to shrink from explanation. It was soon perceived, Sir, after the commencement of the war with Britain, that among the various objects that would affect the happiness of the people of America, the navigation of the Mississippi was one. Throughout the whole history of foreign negotiation,

great stress was laid on its preservation. In the time of our greatest distresses, and particularly when the Southern States were the scene of war, the Southern States cast their eyes around to be relieved from their misfortunes. It was supposed that assistance might be obtained for the relinquishment of that navigation. It was thought that for so substantial a consideration, Spain might be induced to afford decisive succour. It was opposed by the Northern and Eastern States. They were sensible that it might be dangerous to surrender this important right, particularly to the inhabitants of the Western country. But so it was, that the Southern States were for it, and the Eastern States opposed it. Since obtaining that happy peace, which secures to us all our claims, this subject has been taken again into consideration, and deliberated upon in the Federal Government. A temporary relinquishment has been agitated. Several members from the different States, but particularly from the Northern, were for a temporary surrender, because it would terminate disputes, and at the end of the short period for which it was to be given, the right would revert of course to those who had given it up. And for this temporary surrender some commercial advantages were offered. For my part, I considered that this measure, though founded on considerations plausible and honorable, was yet not justifiable but on grounds of inevitable necessity. I must declare in justice to many characters who were in Congress, that they declared that they never would enter into the measure unless the situation of the United States was such as could not prevent it.

I suppose that the adoption of this Government will be favorable to the preservation of the right to that navigation. Emigrations will be made from those parts of the United States which are settled, to those parts which are unsettled. If we afford protection to the Western country, we will see it rapidly peopled. Emigrations from some of the Northern States have been lately increased. We may conclude, as has been said by a Gentleman on the same side (Mr. *Nicholas*) that those who emigrate to that country, will leave behind them all their friends and connections as advocates for this right.²³

What was the cause of those States being the champions of this right when the Southern States were disposed to surrender it? The preservation of this right will be for the general interest of the Union. The Western country will be settled from the North as well as from the South, and its prosperity will add to the strength and security of the Union. I am not able to recollect all those circumstances which would be necessary to give Gentlemen a full view of the subject. I can only add, that I conceive that the establishment of the new Government will be the best possible means of securing our rights as well in the

Western parts as elsewhere. I will not sit down till I make one more observation on what fell from my honorable friend [William Grayson]. He says, that the true difference between the States lies in this circumstance—that some are carrying States and others productive, and that the operation of the new Government will be, that there will be a plurality of the former to combine against the interest of the latter, and that consequently it will be dangerous to put it in their power to do so. I would join with him in sentiments, if this were the case.—Were this within the bounds of probability, I should be equally alarmed, but I think that those States which are contradistinguished as carrying States, from the non-importing States will be but few. I suppose the Southern States will be considered by all, as under the latter description. Some other States have been mentioned by an honorable member [Patrick Henry] on the same side, which are not considered as carrying States. New-Jersey and Connecticut can by no means be enumerated among the carrying States.²⁴ They receive their supplies through New-York. Here then is a plurality of non-importing States. I could add another if necessary. Delaware, though situated upon the water, is upon the list of non-carrying States. I might say that a great part of New-Hampshire is so. I believe a majority of the people of that State receive their supplies from Massachusetts, Rhode-Island, and Connecticut. Might I not add all those States which will be admitted hereafter into the Union? These will be non-carrying States, and will support Virginia in case the carrying States will attempt to combine against the rest. This objection must therefore fall to the ground. My honorable friend has made several other remarks, but I will defer saying any more till we come to those parts to which his objections refer.

Mr. *Henry*.—Mr. Chairman,—Once more I find it necessary to trespass on your patience. An Honorable Gentleman [Edmund Randolph] several days ago observed, that the great object of this Government, was justice. We were told before, that the greater consideration was Union. However, the consideration of justice seems to have been what influenced his mind when he made strictures on the proceedings of the Virginia(n) Assembly.²⁵ I thought the reasons of that transaction had been sufficiently explained. It is exceedingly painful to me to be objecting, but I must make a few observations. I shall not again review the catalogue of dangers which the Honorable Gentleman entertained us with. They appear to me absolutely imaginary. They have in my conception proved to be such. But sure I am, that the dangers of this system are real, when those who have no similar interests with the people of this country, are to legislate for us—when our dearest in-

terests are left in the power of those whose advantage it may be to infringe them. How will the quotas of troops be furnished? *Hated* as requisitions are, your Federal officers cannot collect troops like dollars, and carry them in their pockets. You must make those *abominable* requisitions for them, and the scale will be in proportion to the number of your blacks, as well as your whites, unless they violate the constitutional rule of apportionment. This is not calculated to rouse the fears of the people. It is founded in truth. How oppressive and dangerous must this be to the Southern States who alone have slaves? This will render their proportion infinitely greater than that of the Northern States. It has been openly avowed that this shall be the rule. I will appeal to the judgments of the Committee, whether there be danger.—The Honorable Gentleman said, that there was no precedent for *this* American revolution.²⁶ We have precedents in abundance. They have been drawn from Great-Britain. Tyranny has arisen there in the same manner in which it was introduced among the Dutch. The tyranny of Philadelphia may be like the tyranny of George the III^d. I believe this similitude will be incontestably proved before we conclude.

The Honorable Gentleman has endeavored to explain the opinion of Mr. Jefferson our common friend, into an advice to adopt this new Government.²⁷ What are his sentiments? He wishes nine States to adopt, and that four States may be found somewhere to reject it? Now, Sir, I say, if we pursue his advice, what are we to do?—To prefer form to substance? For, give me leave to ask what is the substantial part of his counsel? It is, Sir, that four States should *reject*. They tell us, that from the most authentic accounts, New-Hampshire will adopt it. When I denied this, Gentlemen said they were absolutely certain of it. Where then will four States be found to reject, if we adopt it? If we do, the counsel of this enlightened and worthy countryman of ours, will be thrown away,—and for what? He wishes to secure amendments and a Bill of Rights, if I am not mistaken. I speak from the best information, and if wrong, I beg to be put right. His amendments go to that despised thing *a Bill of Rights*, and all the rights which are dear to human nature—Trial by jury, the liberty of religion, and the press, &c.—Do not Gentlemen see, that if we adopt under the idea of following Mr. Jefferson's opinion, we amuse ourselves with the shadow, while the substance is given away? If Virginia be for adoption, what States will be left, of sufficient respectability and importance, to secure amendments by their rejection? As to North Carolina it is *a poor despised place*. Its dissent will not have influence to introduce any amendments.—Where is the American spirit of liberty? Where will you find attachment to the rights of mankind, when Massachusetts the great Northern State,

Pennsylvania the great middle State, and Virginia the great Southern State, shall have adopted this Government? Where will you find magnanimity enough to reject it? Should the remaining States have this magnanimity, they will not have sufficient weight to have the Government altered. This State has weight and importance. Her example will have powerful influence—Her rejection will procure amendments—Shall we by our adoption hazard the loss of amendments?—Shall we forsake that importance and respectability which our station in America commands, in hopes that relief will come from an obscure part of the Union? I hope my countrymen will spurn at the idea. The necessity of amendments is universally admitted. It is a word which is re-echoed from every part of the Continent. A majority of those who hear me, think amendments are necessary. Policy tells us they are necessary. Reason, self-preservation, and every idea of propriety, powerfully urge us to secure the dearest rights of human nature—Shall we in direct violation of these principles, rest this security upon the uncertainty of its being obtained by a few States more weak, and less respectable than ourselves—and whose virtue and magnanimity may be overborne by the example of so many adopting States?—*Poor* Rhode-Island and North-Carolina, and even New-York, surrounded with Federal walls on every side, may not be magnanimous enough to reject, and if they do reject it, they will have but little influence to obtain amendments. I ask, if amendments be necessary, from whence can they be so properly proposed as from this State? The example of Virginia is a powerful thing, particularly with respect to North-Carolina, whose supplies must come *through* Virginia. Every possible opportunity of procuring amendments is gone—Our power and political salvation is gone, if we ratify unconditionally. The important right of making treaties is upon the most dangerous foundation. The President with a few Senators possess it in the most unlimited manner, without any real responsibility, if from sinister views they should think proper to abuse it. For they may keep all their measures in the most profound secrecy as long as they please. Were we not told that war was the case wherein secrecy was most necessary? But by the paper on your table, their secrecy is not limited to this case only. It is as unlimited and unbounded as their powers. Under the abominable veil of political secrecy and contrivance, your most valuable rights may be sacrificed by a most corrupt faction, without having the satisfaction of knowing who injured you. They are bound by honor and conscience to act with integrity, but they are under no constitutional restraint. The navigation of the Mississippi, which is of so much importance to the happiness of the people of this country, may be lost by the operation of that paper. There are seven

States now decidedly opposed to this navigation. If it be of the highest consequence to know who they are who shall have voted its relinquishment, the Federal veil of secrecy will prevent that discovery. We may labor under the magnitude of our miseries without knowing or being able to punish those who produced them. I did not wish that transactions relative to treaties should when unfinished, be exposed; but that it should be known after they were concluded, who had advised them to be made, in order to secure some degree of certainty that the public interest shall be consulted in their formation.

We are told that all powers not given are reserved. I am sorry to bring forth hackneyed observations. But, Sir, important truths lose nothing of their validity or weight, by frequency of repetition. The English history is frequently recurred to by Gentlemen. Let us advert to the conduct of the people of that country. The people of England lived without a declaration of rights, till the war in the time of Charles Ist. That King made usurpations upon the rights of the people. Those rights were in a great measure before that time undefined. Power and privilege then depended on implication and logical discussion. Though the declaration of rights was obtained from that King, his usurpations cost him his life. The limits between the liberty of the people, and the prerogative of the King, were still not clearly defined. The rights of the people continued to be violated till the Steward family was banished in the year 1688. The people of England magnanimously defended their rights, banished the tyrant, and prescribed to William Prince of Orange, *by the Bill of Rights*, on what terms he should reign. And this Bill of Rights put an end to all construction and implication. Before this, Sir, the situation of the public liberty of England was dreadful. For upwards of a century the nation was involved in every kind of calamity, till the Bill of Rights put an end to all, by defining the rights of the people, and limiting the King's prerogative. Give me leave to add (if I can add any thing to so splendid an example) the conduct of the American people. They Sir, thought *a Bill of Rights* necessary. It is alledged that several States, in the formation of their governments, omitted a Bill of Rights. To this I answer, that they had the substance of a Bill of Rights contained in their Constitutions, which is the same thing. I believe that Connecticut has preserved by her Constitution her royal charter, which clearly defines and secures the great rights of mankind—Secure to us the great important rights of humanity, and I care not in what form it is done. Of what advantage is it to the American Congress to take away this great and general security? I ask of what advantage is it to the public or to Congress to drag an unhappy debtor, not for the sake of justice, but to gratify the malice of the

plaintiff, with his witnesses to the Federal Court, from a great distance? What was the principle that actuated the Convention in proposing to put such dangerous powers in the hands of any one? Why is the trial by jury taken away? All the learned arguments that have been used on this occasion do not prove that it is secured. Even the advocates for the plan do not all concur in the certainty of its security. Wherefore is religious liberty not secured? One Honorable Gentleman²⁸ who favors adoption, said that he had had his fears on the subject. If I can well recollect, he informed us that he was perfectly satisfied by the powers of reasoning (with which he is so happily endowed) that those fears were not well grounded. There is many a religious man who knows nothing of argumentative reasoning;—there are many of our most worthy citizens, who cannot go through all the labyrinths of syllogistic argumentative deductions, when they think that the rights of conscience are invaded. This sacred right ought not to depend on constructive logical reasoning. When we see men of such talents and learning, compelled to use their utmost abilities to convince themselves that there is no danger, is it not sufficient to make us tremble? Is it not sufficient to fill the minds of the ignorant part of men with fear? If Gentlemen believe that the apprehensions of men will be quieted, they are mistaken; since our best informed men are in doubt with respect to the security of our rights. Those who are not so well informed will spurn at the Government. When our common citizens, who are not possessed with such extensive knowledge and abilities, are called upon to change their Bill of Rights, (which in plain unequivocal terms, secures their most valuable rights and privileges) for construction and implication, will they implicitly acquiesce? Our Declaration of Rights tells us, "That all men are by nature free and independent, &c." (Here Mr. *Henry* read the Declaration of Rights.) Will they exchange these Rights for logical reasons? If you had a thousand acres of land, dependent on this, would you be satisfied with logical construction? Would you depend upon a title of so disputable a nature? The present opinions of individuals will be buried in entire oblivion when those rights will be thought of. That sacred and lovely thing Religion, ought not to rest on the ingenuity of logical deduction. Holy Religion, Sir, will be prostituted to the lowest purposes of human policy. What has been more productive of mischief among mankind than Religious disputes. Then here, Sir, is a foundation for such disputes, when it requires learning and logical deduction to perceive that religious liberty is secure. The Honorable member [Edmund Randolph] told us that he had doubts with respect to the judiciary department. I hope those doubts will be explained.—He told us that his

object was Union. I admit that the reality of Union and not the name, is the object which most merits the attention of every friend to his country. He told you that you should hear many great *sounding words* on our side of the question. We have heard the *word Union* from him. I have heard no word so often pronounced in this House as he did this. I admit that the American Union is dear to every man—I admit that every man who has three grains of information, must know and think that Union is the best of all things. But as I said before, we must not mistake the end for the means. If he can shew that the rights of the Union are secure, we will consent. It has been sufficiently demonstrated that they are not secured. It sounds mighty prettily to Gentlemen to curse paper money and honestly pay debts. But apply to the situation of America, and you will find there are thousands and thousands of contracts, whereof equity forbids an exact literal performance. Pass that government, and you will be bound hand and foot. There was an immense quantity of depreciated continental paper money in circulation at the conclusion of the war. This money is in the hands of individuals to this day. The holders of this money may call for the nominal value, if this government be adopted. This State may be compelled to pay her proportion of that currency pound for pound. Pass this government and you will be carried to the Federal Court (if I understand that paper right) and you will be compelled to pay shilling for shilling. I doubt on the subject, at least as a public man, I ought to have doubts. A State may be sued in the Federal Court by the paper on your table. It appears to me then, that the holder of the paper money may require shilling for shilling. If there be any latent remedy to prevent this, I hope it will be discovered.

The precedent, with respect to the Union between England and Scotland, does not hold.²⁹ The Union of Scotland speaks in plain and direct terms. Their privileges were particularly secured. It was expressly provided, that they should retain their own particular laws. Their nobles have a right to choose Representatives to the number of sixteen.—I might thus go on and specify particulars, but it will suffice to observe generally, that their rights and privileges were expressly and unequivocally reserved.—The power of direct taxation was not given up by the Scotch people. There is no trait in that Union which will maintain their arguments. In order to do this, they ought to have proved that Scotland united without securing their rights, and afterwards got that security by subsequent amendments. Did the people of Scotland do this? No, Sir, like a sensible people, they trusted nothing to hazard. If they have but 45 members, and those be often corrupted, these defects will be greater here. The number will be smaller, and they will be consequently

the more easily corrupted. Another Honorable Gentleman advises us to give this power, in order to exclude the necessity of going to war. He wishes to establish national credit I presume—and imagines that if a nation has public faith and shews a disposition to comply with her engagements, she is safe among ten thousand dangers. If the Honorable Gentleman can prove that this paper is calculated to give us public faith, I will be satisfied. But if you be in constant preparation for war, on such airy and imaginary grounds, as the mere possibility of danger, your government must be military, which will be inconsistent with the enjoyment of liberty. But, Sir, we must become formidable, and have a strong government to protect us from the British nation. Will the paper on the table prevent the attacks of the British navy, or enable us to raise a fleet equal to the British fleet? The British have the strongest fleet in Europe, and can strike any where. It is the utmost folly to conceive, that that paper can have such an operation. It will be no less so to attempt to raise a powerful fleet. With respect to requisitions, I beseech Gentlemen to consider the importance of the subject. We who are for amendments propose, (as has been frequently mentioned) that a requisition shall be made for £. 200,000 for instance, instead of direct taxation, and that if it be not complied with, then it shall be raised by direct taxes. We do not wish to have strength to refuse to pay them, but to possess the power of raising the taxes in the most easy mode for the people. But says he, you may delay us by this mode.—Let us see if there be not sufficient to counterbalance this evil. The oppression arising from taxation, is not from the amount but, from the mode—a thorough acquaintance with the condition of the people, is necessary to a just distribution of taxes. The whole wisdom of the science of Government, with respect to taxation, consists in selecting that mode of collection which will best accommodate the convenience of the people. When you come to tax a great country, you will find that ten men are too few to settle the manner of collection. One capital advantage which will result from the proposed alternative is this, that there will be necessary communications between your ten members in Congress, and your 170 Representatives here. If it goes through the hands of the latter, they will know how much the citizens *can* pay, and by looking at the paper on your table, they will know how much they *ought* to pay. No man is possessed of sufficient information to know how much we can or ought to pay.

We might also remonstrate, if by mistake or design, they should call for a greater sum than our proportion. After a remonstrance, and a free investigation between our Representatives here, and those in Congress, the error would be removed.

Another valuable thing which it will produce is, that the people will pay the taxes cheerfully. It is supposed, that this would occasion a waste of time, and be an injury to public credit. This would only happen if requisitions should not be complied with. In this case the delay would be compensated by the payment of interest, which with the addition of the credit of the State to that of the General Government, would in a great measure obviate this objection. But if it had all the force which it is supposed to have, it would not be adequate to the evil of direct taxation. But there is every probability that requisitions would be then complied with. Would it not then be our interest, as well as duty, to comply? After non-compliance, there would be a general acquiescence in the exercise of this power. We are fond of giving power, at least power which is constitutional. Here is an option to pay according to your own mode, or otherwise. If you give probability fair play, you must conclude, that they would be complied with. Would the Assembly of Virginia by refusal, destroy the country and plunge the people into miseries and distress? If you give your reasoning faculty fair play, you cannot but know, that payment must be made when the consequence of a refusal would be an accumulation of inconveniences to the people. Then they say, that if requisitions be not complied with, in case of a war, the destruction of the country may be the consequence; that therefore, we ought to give the power of taxation to the Government to enable it to protect us. Would not this be another reason for complying with requisitions, to prevent the country from being destroyed? You tell us, that unless requisitions be complied with, your commerce is gone. The prevention of this also, will be an additional reason to comply.

He tells us, that responsibility is secured by direct taxation. Responsibility instead of being increased, will be lost for ever by it. In our State Government, our Representatives may be severally instructed by their constituents. There are no persons to counteract their operations. They can have no excuse for deviating from our instructions. In the General Government other men have power over the business. When oppressions may take place, our Representatives may tell us, *We contended for your interest, but we could not carry our point, because the Representatives from Massachusetts, New Hampshire, Connecticut, &c. were against us.* Thus, Sir, you may see, that there is no real responsibility. He further said, that there was such a contrariety of interests, as to hinder a consolidation. I will only make one remark—There is a variety of interests—Some of the States owe a great deal on account of paper money—Others very little—Some of the Northern States have collected and barrelled up paper money. Virginia has sent thither her cash long

ago. There is little or none of the Continental paper money retained in this State. Is it not their business to appreciate this money? Yes,—and it will be your business to prevent it. But there will be a majority against you, and you will be obliged to pay your share of this money in its nominal value. It has been said by several Gentlemen, that the freeness of elections would be promoted by throwing the country into large districts. I contend, Sir, that it will have a contrary effect. It will destroy that connection that ought to subsist between the electors and the elected. If your elections be by districts instead of counties, the people will not be acquainted with the candidates. They must therefore be directed in the elections by those who know them. So that instead of a confidential connection between the electors and the elected, they will be absolutely unacquainted with each other. A common man must ask a man of influence how he is to proceed, and for whom he must vote. The elected, therefore, will be careless of the interest of the electors. It will be a common job to extort the suffrages of the common people for the most influential characters. The same men may be repeatedly elected by these means. This, Sir, instead of promoting the freedom of elections, leads us to an Aristocracy. Consider the mode of elections in England. Behold the progress of an election in an English shire. A man of an enormous fortune will spend 30,000 l. or 40,000 l. to get himself elected. This is frequently the case. Will the Honorable Gentleman say, that a poor man, as enlightened as any man in the island, has an equal chance with a rich man, to be elected? He will stand no chance though he may have the finest understanding of any man in the shire. It will be so here. Where is the chance that a poor man can come forward with the rich? The Honorable Gentleman [Edmund Pendleton] will find that instead of supporting Democratical principles, it goes absolutely to destroy them. The State Governments, says he, will possess greater advantages than the General Government, and will consequently prevail. His opinion and mine are diametrically opposite. Bring forth the Federal allurements, and compare them with the poor contemptible things that the State Legislatures can bring forth. On the part of the State Legislatures, there are Justices of Peace and militia officers—And even these Justices and officers, are bound by oath in favour of the Constitution. A constable is the only man who is not obliged to swear paramount allegiance to this beloved Congress. On the other hand, there are rich, fat Federal emoluments—your rich, snug, fine, fat Federal offices—The number of collectors of taxes and excises will outnumber any thing from the States. Who can cope with the excisemen and taxmen? There are none in this country, that can cope with this class of men alone. But, Sir, is this the only

danger? Would to Heaven that it were. If we are to ask which will last the longest—the State or the General Government, you must take an army and a navy into the account. Lay these things together, and add to the enumeration the superior abilities of those who manage the General Government. Can then the State Governments look it in the face? You dare not look it in the face now, when it is but in *embryo*. The influence of this Government will be such, that you never can get amendments; for if you propose alterations, you will affront them. Let the Honorable Gentleman consider all these things and say, whether the State Governments will last as long as the Federal Government. With respect to excises, I can never endure them. They have been productive of the most intolerable oppressions every where. Make a probable calculation of the expence attending the Legislative, Executive, and Judiciary. You will find that there must be an immense increase of taxes. We are the same mass of people we were before.—In the same circumstances—The same pockets are to pay—The expences are to be increased—What will enable us to bear this augmentation of taxes? The mere form of the Government will not do it. A plain understanding cannot conceive how the taxes can be diminished, when our expences are augmented, and the means of paying them not increased.

With respect to our tax-laws, we have purchased a little knowledge by sad experience upon the subject. Reiterated experiments have taught us what can alleviate the distresses and suit the convenience of the people. But we are now to throw away that system, by which we have acquired this knowledge, and send ten men to legislate for us.

The Honorable Gentleman was pleased to say, that the representation of the people was the vital principle of this Government. I will readily agree that it ought to be so.—But I contend that this principle is only nominally, and not substantially to be found there. We contended with the British about representation; they offered us such a representation as Congress now does. They called it a virtual representation. If you look at that paper you will find it so there. Is there but a virtual representation in the upper House? The States are represented *as States*, by two Senators each. This is virtual, not actual. They encounter you with Rhode-Island and Delaware. This is not an actual representation. What does the term representation signify? It means that a certain district—a certain association of men should be represented in the Government for *certain ends*. These ends ought not to be impeded or obstructed in any manner. Here, Sir, this populous State has not an adequate share of legislative influence. The two petty States of Rhode-Island and Delaware, which together are infinitely

inferior to this State, in extent and population, have double her weight, and can counteract her interest. I say, that the representation in the Senate, as applicable to States, is not actual. Representation is not therefore the vital principle of this Government—So far it is wrong.

Rulers are the servants and agents of the people—The people are their masters—Does the new Constitution acknowledge this principle? Trial by jury is the best appendage of freedom—Does it secure this? Does it secure the other great rights of mankind? Our own Constitution preserves these principles. The Honorable Gentleman contributed to form that Constitution: The applauses so justly due to it, should, in my opinion, go to the condemnation of that paper.

With respect to the failures and errors of our Government, they might have happened in any Government.—I do not justify what merits censure, but I shall not degrade my country. As to deviations from justice, I hope they will be attributed to the errors of the head, and not to those of the heart.

The Honorable Gentleman did our Judiciary honour in saying, that they had firmness to counteract the Legislature in some cases.³⁰ Yes, Sir, our Judges opposed the acts of the Legislature. We have this land mark to guide us.—They had fortitude to declare that they were the Judiciary and would oppose unconstitutional acts. Are you sure that your Federal Judiciary will act thus? Is that Judiciary so well constructed and so independent of the other branches, as our State Judiciary? Where are your land-marks in this Government? I will be bold to say you cannot find any in it. I take it as the highest encomium on this country, that the acts of the Legislature, if unconstitutional, are liable to be opposed by the Judiciary.

Then the Honorable Gentleman said, that the two Judiciaries and Legislatures, would go in a parallel line and never interfere—That as long as each was confined to its proper objects, that there would be no danger of interference—That like two parallel lines as long as they continued in their parallel direction they never would meet. With submission to the Honorable Gentleman's opinion, I assert, that there is danger of interference, because no line is drawn between the powers of the two Governments in many instances; and, where there is a line, there is no check to prevent the one from encroaching upon the powers of the other. I therefore contend that they must interfere, and that this interference must subvert the State Government, as being less powerful. Unless your Government have checks, it must inevitably terminate in the destruction of your privileges. I will be bold to say, that the British Government has real checks. I was attacked by Gentlemen, as if I had said that I loved the British Government better than

our own. I never said so. I said that if I were obliged to relinquish a Republican Government, I would chuse the British Monarchy. I never gave the preference to the British or any other Government, when compared to *that* which the Honorable Gentleman assisted to form. I was constrained to say what I said. When two disagreeable objects present themselves to the mind, we choose that which has the least deformity.

As to the Western Country, notwithstanding our representation in Congress, and notwithstanding any regulation that may be made by Congress, it may be lost. The seven Northern States are determined to give up the Mississippi. We are told that in order to secure the navigation of that river, it was necessary to give it up twenty-five years to the Spaniards, and that thereafter we should enjoy it forever without any interruption from them. This argument resembles that which recommends adopting first and then amending. I think the reverse of what the Honorable Gentleman [Edmund Pendleton] said on this subject. Those seven States are decidedly against it. He tells us, that it is the policy of the whole Union to retain it. If men were wise, virtuous, and honest, we might depend on an adherence to this policy.—Did we not know of the fallibility of human nature, we might rely on the present structure of this Government.—We might depend that the rules of propriety, and the general interest of the Union would be observed. But the depraved nature of man is well known. He has a natural bias towards his own interest, which will prevail over every consideration, unless it be checked. It is the interest and inclination of the seven Northern States to relinquish this river. If you enable them to do so, will the mere propriety of consulting the interest of the other six States, refrain them from it? Is it imagined, that Spain will, after a peaceable possession of it for thirty years, give it up to you again? Can credulity itself hope, that the Spaniards who wish to have it for that period, wish to clear the river for you? What is it they wish?—To clear the river?—For whom? America saw the time when she had the reputation of common sense at least. Do you suppose they will restore it to you after thirty years? If you do, you depart from that rule. Common observation tells you, that it must be the policy of Spain to get it first, and then retain it forever. If you give it up, in my poor estimation, they will never voluntarily restore it. Where is the man who will believe that after clearing the river, strengthening themselves, and increasing the means of retaining it, the Spaniards will tamely surrender it?

With respect to the concurrent collections of parochial, county, and State taxes, which the Honorable Gentleman [James Madison] has instanced as a proof of the practicability of the concurrent collection

of taxes by the General and State Governments, the comparison will not stand examination. As my honorable friend has said, these concurrent collections come from one power. They irradiate from the same center. They are not co-equal or co-extensive. There is no clashing of powers between them. Each is limited to its own particular objects, and all subordinate to one supreme controuling power—The Legislature.—The County Courts have power over the county and parish collections, and can constantly redress any injuries or oppressions committed by the collectors. Will this be the case in the Federal Courts? I hope they will not have Federal Courts in every county. If they will, the State Courts will be debased and stripped of their cognizance, and utterly abolished. Yet, if there be no power in the county to call them to account, they will more flagrantly trample on your rights. Does the Honorable Gentleman mean that the Thirteen States will have thirteen different tax-laws? Is this the expedient which is to be substituted to the unequal and unjust one of uniform taxes? If so, many horrors present themselves to my mind. They may be imaginary, but it appears to my mind to be the most abominable system that could be imagined. It will destroy every principle of responsibility: It will be destructive of that fellow-feeling, and consequent confidence, which ought to subsist between the Representatives and the represented. We shall then be taxed by those who bear no part of the taxes themselves, and who consequently will be regardless of our interest in imposing them upon us. The efforts of our ten men will avail very little when opposed by the Northern majority. If our ten men be disposed to sacrifice our interests, we cannot detect them. Under the colour of being outnumbered by the Northern Representatives, they can always screen themselves. When they go to the General Government, they may make a bargain with the Northern Delegates. They may agree to tax our citizens in any manner which may be proposed by the Northern members; in consideration of which the latter may make them some favorite concessions. The Northern States will never assent to regulations promotive of the Southern aggrandisement. Notwithstanding what Gentlemen say of the probable virtue of our Representatives, I dread the depravity of human nature. I wish to guard against it by proper checks, and trust nothing to accident or chance. I will never depend on so slender a protection as the possibility of being represented by virtuous men.

Will not thirteen different objects of taxation in the thirteen different States, involve us in an infinite number of inconveniences and absolute confusion? There is a striking difference, and great contrariety of interests between the States. They are naturally divided into carrying

and productive States. This is an actual existing distinction which cannot be altered. The former are more numerous, and must prevail. What then will be the consequence of their contending interests, if the taxation of America is to go on in thirteen different shapes? This Government subjects every thing to the Northern majority. Is there not then a settled purpose to check the Southern interest? We thus put unbounded power over our property in hands not having a common interest with us. How can the Southern members prevent the adoption of the most oppressive mode of taxation in the Southern States, as there is a majority in favor of the Northern States? Sir, this is a picture so horrid, so wretched, so dreadful, that I need no longer dwell upon it.—Mr. *Henry* then concluded by remarking, that he dreaded the most iniquitous speculation and stock-jobbing, from the operation of such a system.

Mr. *Madison*.—Mr. Chairman.—Pardon me for making a few remarks on what fell from the Honorable Gentleman last up:—I am sorry to follow the example of Gentlemen in deviating from the rule of the House:—But as they have taken the utmost latitude in their objections, it is necessary that those who favor the Government should answer them.—But I wish as soon as possible to take up the subject regularly. I will therefore take the liberty to answer some observations which have been irregularly made, though they might be more properly answered when we came to discuss those parts of the Constitution to which they respectively refer.—I will, however, postpone answering some others till then.—If there be that terror in direct taxation, that the States would comply with requisitions to guard against the Federal Legislature; and if, as Gentlemen say, this State will always have it in her power to make her collections speedily and fully, the people will be compelled to pay the same amount as quickly and punctually as if raised by the General Government. It has been amply proved, that the General Government can lay taxes as conveniently to the people as the State Governments, by imitating the State systems of taxation.—If the General Government have not the power of collecting its own revenues, in the first instance, it will be still dependent on the State Governments in some measure; and the exercise of this power after refusal, will be inevitably productive of injustice and confusion, if partial compliances be made before it is driven to assume it.—Thus, Sir, without relieving the people in the smallest degree, the alternative proposed will impair the efficacy of the Government, and will perpetually endanger the tranquillity of the Union.

The honorable member's objection with respect to requisitions of troops will be fully obviated at another time.—Let it suffice now to

say, that it is altogether unwarrantable, and founded upon a misconception of the paper before you. But the honorable member, in order to influence our decision, has mentioned the opinion of a citizen who is an ornament to this State.³¹ When the name of this distinguished character was introduced, I was much surprised.—Is it come to this then, that we are not to follow our own reason?—Is it proper to introduce the opinions of respectable men not within these walls?—If the opinion of an important character were to weigh on this occasion, could we not adduce a character equally great on our side?—Are we who (in the Honorable Gentleman's opinion) are not to be governed by an *erring world*, now to submit to the opinion of a citizen beyond the Atlantic? I believe that were that Gentleman now on this floor, he would be *for* the adoption of this Constitution. I wish his name had never been mentioned.—I wish every thing spoken here relative to his opinion may be suppressed if our debates should be published. I know that the delicacy of his feelings will be wounded when he will see in print what has, and may be said, concerning him on this occasion. I am in some measure acquainted with his sentiments on this subject. It is not right for me to unfold what he has informed me. But I will venture to assert, that the clause now discussed, is not objected to by Mr. Jefferson:—He approves of it, because it enables the Government to carry on its operations. He admires several parts of it, which have been reprobated with vehemence in this House. He is captivated with the equality of suffrage in the Senate, which the Honorable Gentleman (Mr. *Henry*) calls the rotten part of this Constitution.³² But whatever be the opinion of that illustrious citizen, considerations of personal delicacy should dissuade us from introducing it here.

The honorable member has introduced the subject of religion.—Religion is not guarded—There is no Bill of Rights declaring that religion should be secure.—Is a Bill of Rights a security for religion? Would the Bill of Rights in this State exempt the people from paying for the support of one particular sect, if such sect were exclusively established by law? If there were a majority of one sect, a Bill of Rights would be a poor protection for (~~religion~~) (*liberty*). Happily for the States, they enjoy the utmost freedom of religion. This freedom arises from that multiplicity of sects, which pervades America, and which is the best and only security for religious liberty in any society. For where there is such a variety of sects, there cannot be a majority of any one sect to oppress and persecute the rest. Fortunately for this Commonwealth, a majority of the people are decidedly against any exclusive establishment—I believe it to be so in the other States. There is not a shadow of right in the General Government to intermeddle with

religion.—Its least interference with it would be a most flagrant usurpation.—I can appeal to my uniform conduct on this subject, that I have warmly supported religious freedom.—It is better that this security should be depended upon from the General Legislature, than from one particular State. A particular State might concur in one religious project.—But the United States abound in such a vast variety of sects, that it is a strong security against religious persecution, and is sufficient to authorise a conclusion, that no one sect will ever be able to out number or depress the rest.

I will not travel over that extensive tract, which the honorable member has traversed.—I shall not now take notice of all his desultory objections.—As occasions arise I shall answer them.

It is worthy of observation on this occasion, that the Honorable Gentleman himself, seldom fails to contradict the arguments of Gentlemen on that side of the question.—For example, he strongly complains that the Federal Government from the number of its members will make an addition to the public expence, too formidable to be borne; and yet he and other Gentlemen on the same side, object that the number of Representatives is too small, though ten men are more than we are entitled to under the existing system! How can these contradictions be reconciled? If we are to adopt any efficient Government at all, how can we discover or establish such a system, if it be thus attacked?—Will it be possible to form a rational conclusion upon contradictory principles? If arguments of a contradictory nature were to be brought against the wisest and most admirable system, to the formation of which human intelligence is competent, it never could stand them.

He has accrimoniously inveighed against the Government, because such transactions as Congress think require secrecy, may be concealed—and particularly those which relate to treaties. He admits that when a treaty is forming, secrecy is proper; but urges that when actually made, the public ought to be made acquainted with every circumstance relative to it. The policy of not divulging the most important transactions, and negotiations of nations, such as those which relate to warlike arrangements and treaties, is universally admitted. The Congressional proceedings are to be occasionally published, including *all receipts and expenditures* of public money, of which no part can be used, but in consequence of appropriations made by law. This is a security which we do not enjoy under the existing system.—That part which authorises the Government to withhold from the public knowledge what in their judgment may require secrecy, is imitated from the Confederation—that very system which the Gentleman advocates.

No treaty has been formed, and I will undertake to say, that none *will* be formed under the old system, which will secure to us the actual enjoyment of the navigation of the Mississippi. Our weakness precludes us from it. We *are* entitled to it. But it is not under an inefficient Government that we shall be able to avail ourselves fully of that right.—I most conscientiously believe, that it will be far better secured under the new Government, than the old, as we will be more able to enforce our right. The people of Kentucky will have an additional safe-guard from the change of system. The strength and respectability of the Union will secure them in the enjoyment of that right, till that country becomes sufficiently populous. When this happens they will be able to retain it in spite of every opposition.

I never can admit that seven States are disposed to surrender that navigation.—Indeed it never was the case.—Some of their most distinguished characters are decidedly opposed to its relinquishment. When its cession was proposed by the Southern States, the Northern States opposed it. They still oppose it. New-Jersey directed her Delegates to oppose it, and is strenuously against it.³³ The same sentiments pervade Pennsylvania:³⁴—At least I am warranted to say so, from the best information which I have. Those States, added to the Southern States, would be a majority against it.

The Honorable Gentleman [Patrick Henry], to obviate the force of my observations with respect to concurrent collections of taxes under different authorities, said, that there was no interference between the concurrent collections of parochial, county, and State taxes, because they all irradiated from the same centre; but that this was not the case with the General Government.—To make use of the Gentleman's own term, the concurrent collections under the authorities of the General Government and State Governments, all irradiate from the people at large. The people is their common superior. The sense of the people at large is to be the predominant spring of their actions. This is a sufficient security against interference.

Our attention was called to our commercial interest, and at the same time the landed interest was said to be in danger. If those ten men who are to be chosen, be elected by landed men, and have land themselves, can the electors have anything to apprehend?—If the commercial interest be in danger, why are we alarmed about the carrying trade?—Why is it said, that the carrying States will preponderate, if commerce be in danger?—With respect to speculation, I will remark that stock-jobbing has more or less prevailed in all countries, and ever will in some degree, notwithstanding any exertions to prevent it. If

you judge from what has happened under the existing system, any change would render a melioration probable.

The Convention then rose—And on motion, *Resolved*, That this Convention will, to-morrow, again resolve itself into a Committee of the whole Convention, to take into farther consideration, the proposed Constitution of Government.

And then the Convention adjourned untill to-morrow morning, ten o'clock.³⁵

1. See James Madison's speech, Convention Debates, 11 June (RCS:Va., 1149).

2. The ninth article of the Act of Union (1707) provided that Scotland pay a land tax of £48,000 for approximately every £1,998,000 paid in England, to be raised or lowered in the same proportion.

3. The "Belgic Republic" (also "Belgic Confederacy") refers to the seven northern provinces of The Netherlands that came together in the Union of Utrecht in 1579. Madison made a similar point in *The Federalist* 20 (CC:340. For Madison's notes on the "Belgic Confederacy" that he used to write *The Federalist* 20, see Rutland, *Madison*, IX, 11-18.).

4. See James Madison's speech, Convention Debates, 11 June (RCS:Va., 1147-48).

5. See Madison's speech, Convention Debates, 11 June (RCS:Va., 1143).

6. See Patrick Henry's speech, Convention Debates, 9 June (RCS:Va., 1052-53).

7. For taxation and Shays's Rebellion, see CC:18.

8. See Convention Debates, 6 June, note 13, and 11 June, note 4 (both above).

9. The Hanseatic League, a federation of north German towns that dominated the Baltic trade, came into being in the thirteenth century, although it was not formally organized until the next century. Merchants admitted to membership received almost monopolistic trading privileges. The Hanse towns negotiated agreements that granted members special trading privileges and political rights in a number of foreign nations, including England, Flanders, and Russia.

From the thirteenth century until the reign of Henry VII (1485-1509), the Cinque Ports, an association of maritime towns in the south of England, received extensive privileges in return for furnishing the Crown with nearly all of the ships and sailors that it needed. Beginning with Henry's reign, however, the Cinque Ports began a long period of extensive assistance to the permanent fleet.

10. See Henry Lee's speech, Convention Debates, 9 June (RCS:Va., 1077).

11. See Convention Debates, 5 June (above).

12. See Patrick Henry's speech, Convention Debates, 7 June (RCS:Va., 1044-45).

13. See George Mason's speech, Convention Debates, 11 June (RCS:Va., 1158).

14. Two laws, for example, applied public lands or funds to support two private schools. In June 1784, Hampden-Sydney College petitioned the state legislature for a grant of 412 acres of land adjoining the college's property in Prince Edward County because that land would provide firewood and income, both badly needed by the college. The sale of part of the land would also help the college to pay the debt brought on by the purchase of a library. In the same month, the legislature granted the land to Hampden-Sydney College in order to prevent "a dissolution of that seminary" for lack of money and because "the interest and happiness of every people, as well as the duration of every free government, greatly depend on the cultivation of literature" (Hening, XI, 392-93).

In November 1787, the trustees of Transylvania Seminary petitioned the legislature, requesting that it grant the seminary "the one sixth part of all legal Fees received by [Kentucky] Surveyors" which by law went to the College of William and Mary. Although the trustees "greatly" respected that college, it was "too remote" from the inhabitants

of Kentucky for them "to derive any immediate Advantage." On 13 December, the legislature passed an act granting Transylvania Seminary one-sixth of the surveyors' fees in Kentucky (Hening, XII, 642).

15. An adaptation of Job 38:11, which reads: "And [God] said, Hitherto shalt thou come, but no further: and here shall thy proud waves be stayed?"

16. Pendleton refers to the attainder of Josiah Philips. See the speeches of Edmund Randolph, Patrick Henry, and Benjamin Harrison, Convention Debates, 6, 7, and 10 June (RCS:Va., 972, 1038, 1127).

17. For example, in May 1788 Pendleton himself, as President of the Court of Appeals, sent Governor Edmund Randolph the court's remonstrance which asserted that the act for establishing district courts (passed in January 1788) was unconstitutional. (See Charles Lee to George Washington, 14 May, note 2, RCS:Va., 797-98.) For the case of *Commonwealth v. Caton* (1782), also concerned with the principle of judicial review, see Bernard Schwartz, ed., *The Roots of the Bill of Rights: An Illustrated Source Book of American Freedom* (5 vols., New York, 1980), II, 404, 410-16.

18. See Convention Debates, 10 June (RCS:Va., 1109).

19. See George Mason's speech, Convention Debates, 11 June (RCS:Va., 1161).

20. Patrick Henry made the first reference to Thomas Jefferson's opinion on the Constitution which Jefferson expressed in a 7 February 1788 letter to Alexander Donald. See Convention Debates, 9 June (RCS:Va., 1051-52).

21. Madison is replying to William Grayson's speech delivered earlier in the day (RCS:Va., 1188).

22. For Madison's notes on the government of Holland, see note 3 (above), and for the recent disturbances in Holland, see Convention Debates, 9 June, note 8 (above).

23. See Convention Debates, 10 June (RCS:Va., 1131).

24. See Convention Debates, 9 June (RCS:Va., 1057).

25. Henry refers to Edmund Randolph's assertion that "The security of public justice, Sir, is what I most fervently wish—as I consider that object to be the primary step to the attainment of public happiness." Randolph then criticized the attainder of Josiah Philips (Convention Debates, 6 June, RCS:Va., 971-72). In his 10 October 1787 letter to the speaker of the House of Delegates giving his reasons for not signing the Constitution, Randolph stressed that he favored ratification to preserve the Union (RCS:Va., 260-75).

26. See James Madison's speech, Convention Debates, 6 June (RCS:Va., 995).

27. Henry refers to Edmund Pendleton's effort earlier in the day (RCS:Va., 1201-2) to explain what Thomas Jefferson wrote in his 7 February 1788 letter to Alexander Donald, upon which Henry himself had commented earlier in the Convention (Convention Debates, 9 June, RCS:Va., 1051-52).

28. See Edmund Randolph's speech, Convention Debates, 10 June (RCS:Va., 1100-1).

29. See Randolph's speech, Convention Debates, 10 June, (RCS:Va., 1093-94).

30. See Edmund Pendleton's speech earlier in the day (RCS:Va., 1197).

31. See Patrick Henry's speech, Convention Debates, 9 June (RCS:Va., 1051-52).

32. Thomas Jefferson did not discuss equal representation in the Senate in his 7 February 1788 letter to Alexander Donald, which Henry brought to the attention of the Convention on 9 June. On 20 December 1787, however, Jefferson had written Madison that he was "captivated by the compromise of the opposite claims of the great & little states, of the latter to equal, and the former to proportional influence" (RCS:Va., 250).

33. In August 1786, New Jersey had three delegates in Congress—Lambert Cadwalader, Josiah Hornblower, and John Cleves Symmes. On 29 August Cadwalader and Hornblower voted in the majority with the Northern States to repeal Secretary Jay's instructions of August 1785 which insisted upon the free navigation of the Mississippi River. Symmes, who was in Congress at least as late as 23 August, was not present when

this vote was taken. Because of his growing interest in owning and settling land in the western country, he probably would have voted against Cadwalader and Hornblower (JCC, XXXI, 593-96, 696, 697; and LMCC, VIII, 439. In August 1787, Symmes petitioned Congress for the purchase of a large parcel of land in Ohio between the Miamis, and in October Congress authorized a contract with him, although the contract was not finalized until the following October. On 19 February 1788 Congress, upon the nomination of Abraham Clark of New Jersey, elected Symmes a judge of the Northwest Territory.).

In September 1786, Virginia delegate to Congress James Monroe wrote to James Madison (then attending the Annapolis Convention), requesting him to use his influence with Abraham Clark (also attending the convention) to alter that state's position on the Mississippi. In particular, Monroe wanted to oust Hornblower. Monroe believed that Clark had "put Hornblower in Congress & may turn him out agn." Clark, who was not a member of the legislature in the fall of 1786, apparently used his influence with that body. On 7 November the legislature reappointed Cadwalader and replaced Hornblower and Symmes with Clark and James Schureman. More important, on 24 November the legislature accepted the report of a committee chaired by Jonathan Dayton (a Clark ally), in which the state's congressional delegates were instructed to oppose any attempt to surrender the navigation of the Mississippi. (Dayton eventually became involved with John Cleves Symmes in the Miami scheme.) The instructions stated that "We believe that the Value of the western Country, on the Sales of which we rely for the Discharge of our numerous Debts, is in some Degree dependant upon the free Navigation of this important River. The Cession of a disputed Right, when once made, is not easily reclaimed. And whether the Court of Madrid asks or intends it for the Benefit of its own Subjects, or to barter with Britain, the Step will be equally imprudent, and the Inconvenience equally great" (Monroe to Madison, 12 September and 7 October, and Clark to Madison, 23 November, Rutland, *Madison*, IX, 122-23, 142-43, 177-78; and *Votes and Proceedings of the Eleventh General Assembly of the State of New-Jersey* . . . [24 October-24 November 1786, Trenton, 1786], 74-75 [Evans 1984]).

34. There was strong sentiment in Pennsylvania for free navigation, but in March 1787 the state legislature postponed action on the Mississippi question.

35. The manuscript Journal of the Convention indicates that the Convention adjourned to nine o'clock the next day, but the printed Journal gives the time as ten o'clock.

The Virginia Convention

Friday

13 June 1788

Debates

The Convention met according to adjournment.

Mr. *Nicholas* urged that the Convention should either proceed according to the original determination, clause by clause, or rescind that order and go into the Constitution at large.

Mr. *Henry* opposed the motion as to taking up the subject clause by clause. He thought it ought to be considered at large. He observed, that among a great variety of subjects, the business of the Mississippi had taken up a great deal of time. He wished before they should take

leave of that subject, that the transactions of Congress relative to the navigation of that river should be communicated to the Convention, in order that they might draw their conclusion from the best source. For this purpose he hoped that those Gentlemen who had been then in Congress, and the present members of Congress who were in Convention, would communicate what they knew on the subject. He declared, that he did not wish to hurt the feelings of the Gentlemen who had been in Congress, or to reflect on any private character: But that for the information of the Convention, he was desirous of having the most authentic account, and a faithful statement of facts.

Mr. *Nicholas* had no objection to Mr. *Henry's* proposal.

Mr. *Madison* then declared that if the Honorable Gentleman thought that *he* had given an incorrect account of the transactions relative to the Mississippi, he would, on a thorough and complete investigation, find himself mistaken. That he had his information from his own knowledge, and from a perusal of the documents and papers which related to those transactions. That it had always been his opinion, that the policy which had for its object the relinquishment of that river, was unwise, and that the mode of conducting it, was still more exceptionable.—He added, that he had no objection to have every light on the subject that could tend to elucidate it.

Mr. *Nicholas* hoped, that after the information should be given respecting that river, they would confine themselves to the order of the House.

The Convention then resolved itself into a Committee of the whole Convention, to take into further consideration the proposed Constitution, and more particularly for the purpose of receiving information concerning the transactions of Congress relative to the Mississippi.—Mr. *Wythe* in the chair.

On motion,—The acts and resolutions of Assembly relative to the Mississippi were read.¹—

Mr. *Lee of Westmoreland*, then in a short speech related several Congressional transactions respecting that river, and strongly asserted, that it was the inflexible and determined resolution of Congress never to give it up.—That the Secretary of Foreign Affairs [John Jay], who was authorised to form a treaty with Gardoqui, the Spanish Ambassador, had positive directions not to assent to give up that navigation, and that it never had been their intention or wish to relinquish it.—That on the contrary, they earnestly wished to adopt the best possible plan of securing it.

After some desultory conversation, Mr. *Monroe* spoke as follows: Mr. Chairman,—My conduct respecting the transactions of Congress, upon

this interesting subject, since my return to the State, has been well known to many worthy Gentlemen here.—I have been often called upon before this, in a public line, and particularly in the last Assembly, whilst I was present, for information of these transactions; but have heretofore declined it, and for reasons that were held satisfactory. Being amenable upon the principles of the Federal compact, to the Legislature for my conduct in Congress, it cannot be doubted, if required, it were my duty to obey their directions; but that honorable body thought it best to dispense with such demand.—The right in this Assembly is unquestionably more complete, having powers paramount to that;—but even here I could wish it had not been exerted as I understand it to be, by going into Committee for that purpose.—Before, however, I enter into this subject, I cannot but observe, it has given me pain to hear it treated by Honorable Gentlemen in a manner that has appeared not altogether free from exception. For they have not gone into it fully, and given a proper view of the transaction in every part, but of those only which preceded and were subsequent to that, which has been the particular object of enquiry; a conduct that has seemed too much calculated to make an impression favorable to their wishes in the present instance. But in making this observation, I owe it to those Gentlemen to declare, that it is my opinion such omission has proceeded not from intention, but their having forgotten facts, or to some cause not obvious to me, and which I make no doubt they will readily explain.

The policy of this State respecting this river has always been the same. It has contemplated but one object, the opening it for the use of the inhabitants, whose interest depended on it—and in this, she has, in my opinion, shewn her wisdom and magnanimity. I may, I believe, with propriety say, that all the measures that have at any time been taken by Congress for that purpose, were adopted at the instance of this State.—There was a time, it is true, Sir, when even this State, in some measure abandoned the object, by authorising its cession to the Court of Spain. But let us take all circumstances into view, as they were at that time, and I am persuaded it will by no means shew a departure from this liberal and enlightened system of policy, although it may manifest an accommodation to the exigencies which pressed on us at the time.—The Southern States were overrun and in possession of the enemy.—The Governments of South-Carolina and Georgia were prostrate, and opposition there at an end.—North-Carolina made but a feeble resistance; and Virginia herself was greatly harrassed by the enemy in force at that time in the heart of the country, and by impressions for her own and the defence of the Southern States.—In

addition to this, the finances of the United States were in a deplorable condition, if not totally exhausted; and France our ally seemed anxious for peace; and as the means of bringing the war to a more happy and speedy conclusion; the object of this cession was the hopes of uniting Spain in it with all her forces. If I recollect aright too at this moment, the Minister of the United States at the Court of Madrid, informed Congress of the difficulty he found in prevailing upon that Court to acknowledge our independence, or take any measure in our favor, suggested the jealousy with which it viewed our settlements in the Western Country, and the probability of better success, provided we would cede the navigation of this river, as the consideration. The latter circumstances were made known to the Legislature, and they had their weight. All inferior objects must yield to the safety of the society itself. A resolution passed to that effect. An act of Congress likewise passed, and the Minister of the United States had full authority to relinquish this valuable right to that Court, upon the condition above stated. But what was the issue of this proposition? Was any treaty made with Spain that obtained an acknowledgment of our independence, although at war with Great-Britain, and such acknowledgment would have cost her nothing? Was a loan of money accomplished? In short, does it appear that even Spain herself thought it an object of any importance? So soon as the war ended, this resolution was rescinded. The power to make such a treaty was revoked. So that this system of policy was departed from, only for a short time, for the most important object that can be conceived, and resumed again as soon as it possibly could be.

After the peace, it became the business of Congress to investigate the relation of these States to the different powers of the earth, in a more extensive view than they had hitherto done, and particularly in the commercial line; and to make arrangements for entering into treaties with them on such terms as might be mutually beneficial for each party. As the result of the deliberations of that day, it was resolved, "That commercial treaties be formed, if possible, with said powers, those of Europe in particular, Spain included, upon similar principles, and three Commissioners, Mr. Adams, Mr. Franklin, and Mr. Jefferson, be appointed for that purpose."²—So that an arrangement for a treaty of commerce with Spain had already been taken. Whilst these powers were in force, a representative from Spain arrived, authorised to treat with the United States on the interfering claims of the two nations, respecting the Mississippi, and the boundaries and other concerns wherein they were respectively interested.—A similar commission was given to the Honorable the Secretary of Foreign Affairs, on the part

of the United States, with these ultimata, "That he enter into no treaty, compact or convention whatever, with the said representative of Spain, which did not stipulate our right to the navigation of the Mississippi, and the boundaries as established in our treaty with Great-Britain."—And thus the late negotiation commenced, and under auspices, as I supposed, very favorable to the wishes of the United States; for Spain had become sensible of the propriety of cultivating the friendship of these States.—Knowing our claim to the navigation of this river, she had sent a Minister hither principally to treat on that point—and the time would not be remote when, under the increasing population of that country, the inhabitants would be able to open it, without our assistance or her consent.—These circumstances being considered, was it not presumable she intended to make a merit of her concession to our wishes, and to agree to an accommodation upon that subject, that would not only be satisfactory, but highly pleasing to the United States?—But what was the issue of this negotiation?—How was it terminated?—Has it forwarded the particular object in view, or otherwise promoted the interests and the harmony of the States, or any of them?—Eight or ten months elapsed without any communications of its progress to Congress: At length a letter was received from the Secretary, stating that difficulties had arisen in his negotiation with the representative of Spain, which, in his opinion, should be so managed, as that even their existence should remain a secret for the present, and proposing that a Committee be appointed with full power to direct and instruct him in every case relative to the proposed treaty. As the only ultimata in his instructions respected the Mississippi and the boundaries, it readily occurred that these occasioned the difficulties alluded to, and were those he wished to remove. And for many reasons this appeared at least to me an extraordinary proposition. By the Articles of Confederation nine States are necessary to enter into treaties.—The instruction is the foundation of the treaty; for if it is formed agreeable thereto, good faith requires that it be ratified.—The practice of Congress hath also been always, I believe, in conformity to this idea.—The instructions under which our commercial treaties have been made were carried by nine States.—Those under which the Secretary now acted were passed by nine States.—The proposition then would be, that the powers which under the Constitution nine States only were competent to, should be transferred to a Committee, and the object thereby to disengage himself from the ultimata already mentioned in his existing instructions.—In this light the subject was taken up, and on these principles discussed.—The Secretary, Mr. Jay, being at length called before Congress to explain the difficulties mentioned in his

letter, presented to their view the project of a treaty of commerce, containing, as *he* supposed, advantageous stipulations in our favor, in that line; in consideration for which we were to contract to forbear the use of the navigation of the river Mississippi for the term of twenty-five or thirty years, and earnestly advised our adopting it. The subject now took a decided form—there was no further ambiguity in it—and we were surprised for reasons that have been already given, that he had taken up the subject of commerce at all.—We were greatly surprised it should form the principal object of the project, and that a partial or temporary sacrifice of that interest, for the advancement of which the negotiation was set on foot, should be the consideration proposed to be given for it. But the Honorable Secretary urged, that it was necessary to stand well with Spain;—that the commercial project was a beneficial one, and should not be neglected;—that a stipulation to forbear the use contained an acknowledgement, on her part, of the right in the United States; that we were in no condition to take the river, and therefore gave nothing for it; with other reasons which perhaps I have forgotten; for the subject in detail has nearly escaped my memory. We differed with the Honorable Secretary, almost in every respect. We admitted indeed the propriety of standing well with Spain, but supposed we might accomplish that end at least on equal terms. We considered the stipulation to forbear the use, as a species of barter, that should never be countenanced in the councils of the American States, since it might tend to the destruction of the society itself; for a forbearance of the use of one river, might lead unto more extensive consequences—to that of the Chesapeake, the Potowmack, or any other of the rivers that emptied into it.—In short, that the councils of the confederacy should be conducted with more magnanimity and candour, should contemplate the benefit of all parts upon common principles, and not the sacrifice of one part for that of another. There appeared to us a material difference between stipulating by treaty to forbear the use, and not being able to open the river: The former would be considered by the inhabitants of the Western Country as an act of hostility; the latter might be justified by our inability.—And with respect to the commercial part of the project, we really thought it an ill advised one, on its own merits solely.

Thus was this project brought before Congress, and so far as I recollect, in this form, and upon these principles.—It was the subject of tedious and lengthy discussion in that honorable body.—Every distinct measure that was taken I do not now remember, nor do I suppose it of consequence. I have shewn the outlines of the transaction, which is, if I apprehend rightly, all that the Committee wish to possess. The

communications of the Secretary were referred to a Committee of the whole House. The Delegates of the seven easternmost States voted that the ultimata in the Secretary's instructions, be repealed; which was reported to the House, and entered on the journal by the Secretary of Congress, that the question was carried. Upon this entry, a constitutional question arose to this effect: "Nine States being necessary, by the Federal Constitution, to give an instruction, and seven having repealed a part of an instruction so given, for the formation of a treaty with a foreign power, so as to alter its import, and authorise, under the remaining part thereof, the formation of a treaty, on principles altogether different from what the said instruction originally contemplated—can such remaining part be considered as in force and constitutionally obligatory?" We pressed on Congress for a decision on this point often, but without effect. Notwithstanding this, I understood it was the intention of the Secretary to proceed and conclude a treaty, in conformity to his project, with the Minister of Spain. In this situation I left Congress—What I have since heard, belongs not to me to discover.—Other Gentlemen have more complete information of this business, in the course it has taken, than I can possibly have been able to obtain: For having done my duty whilst there, I left it for others who succeeded me to perform theirs, and I have made but little further enquiry respecting it. The animated pursuit that was made of this object, required, and I believe received, as firm an opposition.—The Southern States were on their guard, and warmly opposed it. For my part, I thought it my duty to use every effort in Congress for the interest of the Southern States. But so far as it depended on me, with my official character, it ceased. With many of those Gentlemen, to whom I always considered it as my particular misfortune to be opposed, I am now in habits of correspondence and friendship; and I am concerned for the necessity which has given birth to this relation.

Whether the Delegates of those States spoke the language of their constituents; whether it may be considered as the permanent interest of such States to depress the growth and increasing population of the Western Country, are points which I cannot pretend to determine. I must observe, however, that I always supposed it would, for a variety of reasons, prove injurious to every part of the Confederacy. These are well understood and need not be dilated on here. If, however, such should be the interest of seven States, let Gentlemen contemplate the consequences in the operation of the Government, as it applies to this subject. I have always been of opinion, Sir, that the American States to all national objects, had in every respect a common interest. Few persons would be willing to bind them together by a stronger or

more indissoluble bond, or give the national Government more powers than myself. I only wish to prevent it from doing harm, either to States or individuals; and the rights and interests of both, in a variety of instances, in which they are now left unprotected, might, *in my opinion*, be better guarded. If I have mistaken any facts, Honorable Gentlemen will correct me. If I omitted any, as it has not been intentional, so I shall be happy with their assistance to supply the defect.

Mr. *Monroe* added several other observations, the purport of which was, that the interest of the Western Country would not be as secure under the proposed Constitution, as under the Confederation; because under the latter system, the Mississippi could not be relinquished without the consent of nine States, whereas by the former, he said, a majority, or seven States, could yield it. His own opinion was, that it would be given up by a majority of the Senators present in the Senate, with the President, which would put it in the power of less than seven States to surrender it. That the Northern States were inclined to yield it. That it was their interest to prevent an augmentation of the Southern influence and power; and that as mankind in general, and States in particular, were governed by interest, the Northern States would not fail of availing themselves of the opportunity given them by the Constitution, of relinquishing that river, in order to depress the Western Country, and prevent the Southern interest from preponderating.

Mr. *Grayson*,—Mr. Chairman.—The Honorable Gentleman [Edmund Pendleton] was mistaken when he supposed that I said seven States had absolutely voted to surrender the navigation of the Mississippi. I only spoke of the general disposition of the States, which I alledged to be actuated by interest.—That consequently the carrying States were necessarily inclined against the extension of the interest and influence of the productive States, and that therefore they would not favor any measure to extend the settlements to the Westward.

I wished not to enter into this discussion, for the reasons mentioned by my honorable friend [James Monroe]. Secrecy was required on this subject. I told Congress, that imposing secrecy, on such a great occasion, was unwarrantable.³ However, as it was not given up, I conceived myself under some restraint. But since it has come before the Committee, and they desire to develop the subject, I shall stand excused for mentioning what I know of it. My honorable friend gave a very just account of it when he said that the Southern States were on their guard, and opposed every measure tending to relinquish or wa[i]ve that valuable right. They would not agree to negotiate, but on condition, that no proposition whatever should be made to surrender that great right.—There was a dispute between this country and Spain,

who claimed one half of Georgia, and one half of Kentucky, or if not that proportion, a very considerable part, as well as the absolute and exclusive navigation of the Mississippi.—The Southern States thought that the navigation of the Mississippi should not be trusted to any hands, but those in which the Confederation had placed the right of making treaties. That system required the consent of nine States for that purpose. The Secretary for Foreign Affairs was empowered to adjust the interfering claims of Spain and the United States, with the Spanish Minister, but as my honorable friend said, with an express prohibition of entering into any negotiation that would lead to the surrender of that river.—Affairs continued in this state for some time. At length a proposition was made to Congress, not directly, but by a side wind. The first proposal was to take off the fetters of the Secretary. When the whole came out, it was found to be a proposal to cede the Mississippi to Spain for 25 or 30 years, (for it was in the disjunctive) in consideration of certain commercial stipulations. In support of this proposal, it was urged, that the right was in him who surrendered, and that their acceptance of a temporary relinquishment, was an acknowledgment of our right, which would revert to us at the expiration of that period;—that we could not take it by war;—that the thing was useless to us, and that it would be wise and politic to give it up, as we were to receive a beneficial compensation for that temporary cession. Congress, after a great deal of animosity, came to a resolution, which, in my opinion, violated the Confederation. It was resolved by seven States, that the prohibition in the Secretary's instructions should be repealed; whereby the unrepealed part of his instructions authorised him to make a treaty, yielding that inestimable navigation, although by the Confederation, nine States were necessary to concur in the formation of a treaty! How then could seven States constitutionally adopt any measure, to which, by the Constitution, nine States were only competent?—It was entered on the journals, and transmitted to the Secretary of Foreign Affairs, for his direction in his negotiation with the Spanish Minister.

If I recollect rightly, by the law of nations, if a negotiator makes a treaty, in consequence of a power received from a sovereign authority, non-compliance with his stipulations is a just cause of war. The opposition suggested (whether wrong or not let this House determine) that this was the case:—That the proceeding was repugnant to the principles and express letter of the Constitution, and that if the compact which the Secretary might form with the Spanish Minister should not be complied with, it would be giving Spain a just cause of quarrel. So that we should be reduced to the dilemma of either violating the

Constitution by a compliance, or involving us in war by a non-compliance. The opposition remonstrated against these transactions (and their remonstrance was entered on the journal)⁴ and took every step for securing this great national right. In the course of the debates in Congress on this subject, which were warm and animated, it was urged that Congress, by the law of nations, had no right, even with the consent of nine States, to dismember the empire, or relinquish any part of the territory appertaining to the aggregate society, to *any* foreign power. Territorial dismemberment, or the relinquishment of any other privilege, is the highest act of a sovereign power. The right of territory has ever been considered as most sacred, and ought to be guarded in the most particular and cautious manner. Whether that navigation be secure on this principle, by the new Constitution, I will not pretend to determine. I will, however, say one thing. It is not well guarded under the old system. A majority of seven States are disposed to yield it. I speak not of any particular characters. I have the charity to suppose that all mankind act on the best motives. Suffice it for me to tell direct and plain facts, and leave the conclusion with this Honorable House.

It has been urged by my honorable friend on the other side (Mr. *Madison*) that the Eastern States were averse to surrender it during the war, and that the Southern States proposed it themselves, and wished to yield it. My honorable friend last up has well accounted for this disgraceful offer, and I will account for the refusal of the Eastern States to surrender it. Mr. Chairman, it is no new thing to you to discover these reasons. It is well known, that the Newfoundland fisheries and the Mississippi are balances for one another;—that the possession of one tends to the preservation of the other. This accounts for the Eastern policy.—They thought that if the Mississippi was given up, the Southern States would give up the rights of the fishery, on which their very existence depends. It is not extraordinary therefore, while these great rights of the fishery depend on such a variety of circumstances, the issue of war, the success of negotiations, and numerous other causes, that they should wish to preserve this great counterbalance.—What has been their conduct since the peace? When relieved from the apprehensions of losing that great advantage, they became solicitous of securing a superiority of influence in the national councils. They look at the true interest of nations. Their language has been—“*Let us prevent any new States from rising in the Western world, or they will out-vote us—We will lose our importance, and become as nothing in the scale of nations. If we do not prevent it, our countrymen will remove to those places, instead of going to sea, and we will receive no particular*

tribute or advantage from them.”—This, Sir, *has been* the language and spirit of their policy, and I suppose ever will. The Mississippi is not secured under the old Confederation; but it is better secured by that system, than by the new Constitution. By the existing system, nine States are necessary to yield it. A few States can give it away by the paper on your table. But I hope it will never be put in the power of a less number than nine States. Jersey, we are told, changed her temper on that great occasion. I believe that that mutability depended on characters. But we have lost another State—*Maryland*.—For, from fortuitous circumstances, those States deviated from their natural character—Jersey in not giving up the right of the Mississippi, and Maryland in giving it up.⁵—Whatever be their object, each departed from her natural disposition. It is with great reluctance I have said any thing on this subject, and if I have misrepresented facts, I wish to be corrected.

Mr. *Henry* then arose, and requested that the Honorable Gentleman (Mr. *Monroe*) would discover the rest of the project, and what Spain was to do on her part, as an equivalent for the cession of the Mississippi.

Mr. *Monroe*.—Mr. Chairman.—I do not thoroughly recollect *every* circumstance relative to this project. But there was to be a commercial intercourse between the United States and Spain. We were to be allowed to carry our produce to the ports of Spain, and the Spaniards to have an equal right of trading hither. It was stipulated, that there should be a reciprocity of commercial intercourses and benefits between the subjects of Spain, and the citizens of the United States. The manufactures of Spain were to be freely imported and vended in this country, and our manufactures to be carried to Spain, &c. without obstruction, and both parties were to have mutual privileges in point of commercial intercourse and connection. This, Sir, is the amount of the project of Spain, which was looked upon as advantageous to us. I thought myself, that it was not. I considered Spain as being without manufactures—as the most slow in the progress of arts, and the most unwise with respect to commerce, of all nations under the sun, (in which respect I thought Great-Britain the wisest). Their Gentlemen and Nobles look on commerce with contempt. No man of character among them will undertake it. They make little discrimination with any nation. Their character is to shut out all nations, and exclude every intercourse with them, and this would be the case with respect to us. Nothing is given to us by this project, but what is given to all other nations. It is bad policy and unjustifiable on such terms to yield that valuable right. Their merchants have great stocks in trade. It is not so

with our merchants. Our people require encouragement. Mariners must be encouraged. On a review of these circumstances, I thought the project unwise and impolitic.

Mr. *Madison*,—Mr. Chairman.—It is extremely disagreeable to me to enter into this discussion, as it is foreign to the object of our deliberations here, and may, in the opinion of some, lead to sully the reputation of our public councils.—As far as my memory will enable me, I will develop the subject. We will not differ with one another with respect to facts; perhaps we may differ with respect to principles. I will take the liberty to observe, that I was led before to make some observations, which had no relation to the subject under consideration, as relative to the Western Country, to obviate suggestions of Gentlemen, which seemed to me to be groundless. I stated that there was a period when the Southern States were advocates for the alienation or suspension of the right to the Mississippi, (I will not say which) and the Eastern States were against both. I mentioned this to shew, that there was no disposition in that part, to surrender that right or dispose of that country. I do suppose that the fishery had its influence on those States.—No doubt it was the case. For that, and other reasons, they still continue against the alienation. For it might lessen the security of retaining the fishery. From the best information, it never was the sense of the people at large, or the prevailing characters of the Eastern States, to approve of the measure. If interest, Sir, should continue to operate on them, I humbly conceive, that they will derive more advantage from holding the Mississippi, than even the Southern States: For, if the carrying business be their natural province, how can it be so much extended and advanced, as by giving encouragement to agriculture in the Western Country, and having the emolument of carrying their produce to market? The carrying trade must depend on agriculture for its support in a great measure. In what place is agriculture so capable of improvement and great extension, as in the Western Country? But whatever considerations may prevail in that quarter, or any other, respecting their interest, I think we may fairly suppose that the consideration which the honorable member mentioned, and which has been repeated, I mean the emigrations which are going on to the Westward, must produce the same effect as to them, which it may produce with respect to us.—Emigrations are now going on from that quarter as well as from this State.

I readily confess that neither the old Confederation, nor the new Constitution, involves a right to give up the navigation of the Mississippi. It is repugnant to the law of nations. I have always thought and said so. Although the right be denied, there may be emergencies which

will make it necessary to make a sacrifice. But there is a material difference between emergencies of safety in time of war, and those which may relate to mere commercial regulations.—You might on solid grounds deny in time of peace, what you give up in time of war. I do not conceive, however, that there is that extreme aversion in the minds of the people of the Eastern States, to emigrate to the Westward, which was insinuated by my honorable friend.⁶ Particular citizens, it cannot be doubted, may be averse to it. But it is the sense of the people at large, which will direct the public measures. We find from late arrangements made between Massachusetts and New-York, that a very considerable country to the Westward of New-York, was disposed of to Massachusetts, and by Massachusetts to some individuals, to conduct emigrants to that country.⁷

There were seven States who thought it right to give up the navigation of the Mississippi for 25 years, for several reasons which have been mentioned. As far as I can recollect, it was nearly as my honorable friend [James Monroe] said. But they had no idea of absolutely alienating it. I think one material consideration which governed them was, that there were grounds of serious negotiation between Great-Britain and Spain, which might bring on a coalition between those nations, which might enable them to bind us on different sides, permanently withhold that navigation from us, and injure us in other respects materially. The temporary cession, it was supposed would fix the permanent right in our favor, and prevent that dangerous coalition. It is but justice to myself to say, that however plausible the reasons urged for its temporary cession may have been, they never convinced me of its utility. I have uniformly disapproved of it, and do now.

With respect to the Secretary of Foreign Affairs, I am intimately connected with him. I shall say nothing of his abilities and attachment to his country. His character is established in both respects. He has given a train of reasoning which governed him in his project. If he was mistaken, his integrity and probity more than compensate for the error.

I am led to think there is no settled disposition in seven States to give up that object, because New-Jersey on a further consideration of the subject, actually gave instructions to her Delegates to oppose it.⁸ And what was the ground of this? I do not know the extent and particular reasons of her instructions. But I recollect, that a material consideration was, that the cession of that river would diminish the value of the Western Country, which was a common fund for the United States, and would consequently tend to impoverish their public treasury. These, Sir, were rational grounds.

Give me leave, Sir, as I am up on this subject, and as the Honorable Gentleman [James Monroe] has raised a question, whether it be not more secure under the old than the new Constitution—to differ from him. I shall enter into the reasoning which, in my mind, renders it more secure under the new system—Two-thirds of the Senators present, (which will be nine States, if all attend to their duty) and the President, must concur in every treaty which can be made. Here are two distinct and independent branches, which must agree to every treaty. Under the existing system two thirds of the States must concur to form a treaty. But it is but one body. Gentlemen may reason and conclude differently on this subject. I own that as far as I have any rights, which are but trivial, I would rather trust them to the new than the old Government. Besides, let me observe, that the House of Representatives will have a material influence on the Government, and will be an additional security in this respect: But there is one thing which he mentioned, which merits attention. If commercial policy be a source of great danger, it will have less influence in the new system, than in the old. For in the House of Representatives, it will have little or no influence. They are drawn from the landed interest; taken from the States at large, and many of them from the Western Country. Whereas the present members of Congress have been taken from the Atlantic side of the Continent. When we calculate the dangers that may arise in any case, we judge from the rules of proportion, and chances of numbers. The people at large choose those who elect the President. The weight of population will be to the Southward, if we include the Western Country. There will then be a majority of the people in favor of this right. As the President must be influenced by the sense and interest of his electors, as far as it depends on him (and his agency in making treaties is equal to that of the Senate) he will oppose the cession of that navigation. As far as the influence of the Representatives goes, it will also operate in favor of this right. The power of treaties is not lodged in the Senators of particular States. Every State has an equal weight. If ten Senators can make a treaty, ten Senators can prevent one from being made. It is from a supposition, that all the Southern Delegates will be absent, that ten Senators, or two-thirds of a majority, can give up this river. The possibility of absence operates equally as much against the Northern States. If one-fifth of the members present think the measure erroneous, the votes of the States are to be taken upon it, and entered on the journals. Every Gentleman here ought to recollect, that this is some security, as the people will thereby know those who advocate iniquitous measures. If we consider the number of changes in the members of the Government, we will find it another

security. But after all, Sir, what will this policy signify, which tends to surrender the navigation of the Mississippi? *Resolutions* of Congress to retain it, may be repeated, and re-echoed from every part of the United States. It is not *resolutions* of this sort, which the people of this country wish for. They want an actual possession of the right, and protection in its enjoyment. Similar resolutions have been taken under the existing system, on many occasions. But they have been heretofore, and will be hereafter, in my opinion, nugatory and fruitless, unless a change takes place which will give energy to the acts of the Government.

I will take the liberty to touch once more on the several considerations which produced the question, because perhaps the Committee may not yet thoroughly comprehend it. In justice to those Gentlemen who concluded in favor of the temporary cession, I mention their reasons, although I think the measure wrong. The reasons for so doing under the old system, will be done away by the new system. We could not, without national dishonor, assert our right to the Mississippi, and suffer any other nation to deprive us of it. This consideration, with others before mentioned, influenced them. I admit it was wrong. But it is sufficient to prove that they acted on principles of integrity. Will they not be bound by honor and conscience, when we are able to enjoy and retain our right, not to give it up, or suffer it to be interrupted? A weak system produced this project. A strong system will remove the inducement. For may we not suppose it will be reversed by a change of system? I was called up to say what was its present situation. There are some circumstances within my knowledge which I am not at liberty to communicate to this House. I will not go farther than to answer the objections of Gentlemen. I wish to conceal no circumstance which I can relate consistently with my duty. As to matters of fact, I have advanced nothing which I presume will be contradicted. On matters of opinion, we may differ. Were I at liberty, I could develop some circumstances, which would convince this House, that this project will never be revived in Congress, and that therefore no danger is to be apprehended.

Mr. *Grayson*.—Mr. Chairman.—The Honorable Gentleman last up concluded, by leaving impressions, that there were some circumstances, which, were he at liberty to communicate, would induce this House to believe that the matter would never be revived. Were we to conclude from facts and opinions, or were we to appeal to the resolutions of Congress, a very different conclusion would result. When I was in Congress last, there was a resolution to apologize to his Catholic Majesty for not making the treaty, and intimating that when the situation of things were altered, it might be done.⁹ Had it not been for one

particular circumstance, it would have been concluded on the terms my honorable friend mentioned. When I was last in Congress, the project was not given over. Its friends thought it would be renewed.

With respect to the Mississippi and back-lands, the Eastern States are willing to relinquish that great and essential right. For they consider the consequences of governing the Union, as of more importance than those considerations which he mentioned should induce them to favor it.

But says the Honorable Gentleman, there is a great difference between actually giving it up altogether, and a temporary cession.—If the right was given up for 25 years, would this country be able to avail herself of her right, and resume it at the expiration of that period? If ever the House of Bourbon should be at war with all Europe, then would be the golden opportunity of regaining it. Without this, we never could wrest it from the House of Bourbon, the branches of which always support each other. If things continue as they are now, emigrations will continue to that country. The hope that this great national right will be retained, will induce them to go thither. But take away that hope, by giving up the Mississippi for 25 years, and the emigrations will cease. As interest actuates mankind, will they go thither when they know they cannot enjoy the privilege of navigating that river, or find a ready market for their produce? There is a majority of States which look forward with anxiety to the benefits of the commercial project with Spain. In the course of the Spanish negotiation, our Delegation thought of a project which would be accommodated to their particular interest. It was proposed by way of compromise, as being suitable to the interest of all the States,—That the Spanish crown should make New-Orleans a general depository, and that the growth of the American States should be sent down for the use of the Spanish troops; Spain being obliged to foreign nations for provisions.—This was throwing out a lure to the Eastern States, to carry the produce of that whole country.—But this temptation did not succeed.—It was thought no object in their view, when greater objects presented themselves.

It was alledged, that the emigrations from the Eastern States will have the same effect as emigrations from this country. I know every step will be taken to prevent emigrations from thence; as it will be transferring their population to the Southern States.—They will coincide in no measure that will tend to increase the weight or influence of the Southern States.—There is therefore a wide line of distinction between migrations from thence and from hence.

But we are told, in order to make that paper acceptable to the Kentucky people, that this high act of authority cannot, by the law of

nations, be warrantable, and that this great right cannot be given up.—I think so also.—But how will the doctrine apply to America?—After it is actually given away, can it be reclaimed?—If nine States give it away, what will the Kentucky people do?—Will Grotius and Puffendorff relieve them?¹⁰—If we reason from what was done—if seven States attempted to do what nine States ought to have done, you may judge of the attention which will be paid to the law of nations.—Should Congress make a treaty to yield the Mississippi; that people will find no redress in the law of nations.

But says he [James Madison], Massachusetts is willing to protect emigrations.—When the act of Congress passed, respecting the settlement of the Western Country, and establishing a State there, it passed in a lucky moment.—I was told that that State was extremely uneasy about it, and that in order to retain her inhabitants, lands, in the province of Maine, were lowered to the price of one dollar per acre. As to the tract of country conveyed by New-York to Massachusetts, neither of them had a right to it.¹¹—Perhaps that great line of policy of keeping the population on that side of the Continent, in contradistinction to the emigrations to the Westward of us, actuated Massachusetts in that transaction. There is no communication between that country and the Mississippi. The two great northern communications are by the North River,¹² and by the River St. Lawrence, to the Mississippi. But there is no communication between that country where the people of Massachusetts emigrate, and the Mississippi; nor do I believe there ever will be one traveller from it thither.

I have a great regard for the Secretary of Foreign Affairs.—In my opinion, all America is under great obligations to him.—But I differed in opinion with him.

But the Mississippi is said to be more secure under the new, than the old Government.—It is infinitely more secure under the latter than the former:—How is the fact?—Seven States wished to pass an affirmative act ceding it.—They repealed part of the instructions given the Secretary, to enable him to conclude a compact for its cession, and wished to get nine States to agree to it.—Nine States by the Confederation, must concur in the formation of treaties.—This saved it.—Only seven States were willing to yield it.—But by this Constitution, two-thirds of the Senators present, with the President, can make any treaty.—A quorum is fourteen—two-thirds of which are ten.—We find then, that ten members can at any time surrender that great and valuable right.—As seven States are willing to yield it now, how the Gentleman [James Madison] can reason in the manner he does, I cannot conceive.

Mr. *Henry*,—Mr. Chairman.—I hope, Sir, that as the Honorable Gentleman on my left set the example of debating the merits, that whatever may result as consequences of that example, may not be attributed to me. I hope that I shall be indulged in offering a few words in addition to what has been said. Gentlemen may do what they will.—Their reflections will have no influence on me.—It is said that we are scuffling for Kentucky votes, and attending to local circumstances. But if you consider the interest of this country, you will find that the interest of Virginia and Kentucky are most intimately and vitally connected. When I see the great rights of the community in real danger, the ideal dangers which Gentlemen speak of, dissipate. An union with our Western brethren, is highly desirable almost on any terms; an union with them alone can lessen or annihilate the dangers arising from that species of population, of which we have been reminded in the catalogue of dangers which were dwelt upon. They are at present but few in number, but may be very numerous hereafter. If that fatal policy shall take place, you throw them into the arms of Spain. If Congress should, for a base purpose, give away this dearest right of the people, your Western brethren will be ruined. We ought to secure to them that navigation which is necessary to their very existence. If we do not, they will look upon us as betrayers of their interest. Shall we appear to care less for their interest than for that of distant people. When Gentlemen tell us that the change of system will render our Western brethren more secure, and that this system will not betray them, they ought to prove it. When a matter which respects the great national interests of America is concerned, we expect the most decided proofs. Have they given any? Unless you keep open the Mississippi, you never can increase in number. Although your population should go on to an infinite degree, you will be in the minority in Congress; and although you should have a right to be the majority, yet so unhappily is this system of politics constituted, that you will ever be a contemptible minority. To preserve the balance of American power, it is essentially necessary that the right to the Mississippi should be secured.

But said the Honorable Gentleman [James Madison], the Eastern States will wish to secure their fishery, and will therefore favour this right. How does he draw the inference? Is it possible that they can act on that principle? The principle which led the Southern States to admit of the cession, was to avoid the most dreadful perils of the war. But their difficulties are now ended by peace. Is there any thing like this that can influence the minds of the people of the North? Since the peace, those States have discovered a determined resolution to give

it away. There was no similar danger to compel them to yield it? No, Sir, they wished to relinquish it. Without any kind of necessity, they acted in conformity to their natural disposition, with respect to emigrations going on in that quarter. This, though improbable, may be so. But to say, that because some settlements are going on in New-York, Massachusetts, will form a connection with the Mississippi, is to my mind most wonderful indeed. The great balance will be in the Southern parts of America. There is the most extensive and fertile territory.—There is the happiest geographical position, situated contiguously to that valuable and inestimable river. But the settlement of that country will not be warranted by the New Constitution, if it will not be forbidden by it. No Constitution under Heaven, founded on the principles of justice, can warrant the relinquishment of the most sacred rights of the society, to promote the interest of one part of it. Do you not see the danger into which you are going to throw one of your dearest and most valuable rights? The people of that country now receive great and valuable emoluments from that right being protected by the existing Government. But they must now abandon them. For is there any actual security? Shew me any clause in that paper which secures that great right: What was the calculation which told you that they would be safer under the New than the Old Government? In my mind, it was erroneous. The Honorable Gentleman [James Madison] told you that there were two bodies or branches which must concur to make a treaty. Sir, the President as distinguished from the Senate, is nothing. They will combine and be as one. My Honorable friend [William Grayson] said that ten men, the Senators of five States, could give it up. The present system requires the consent of nine States. Consequently their security will be much diminished. The people of Kentucky, though weak now, will not let the President and Senate take away this right. Look right and see this abominable policy—consider seriously its fatal and pernicious tendency. Have we not that right guaranteed to us by the most respectable power in Europe? France has guaranteed to us our sovereignty and all its appendages?¹³ What are its appendages? Are not the rivers and waters that wash the shores of the country appendages, inseparable from our right of sovereignty? France has guaranteed this right to us in the most full and extensive manner. What would have been the consequences had this project with Spain been completed and agreed to? France would have told you, “You have given it up yourselves,—you have put it on a different footing, and if your bad policy has done this, it is your own folly.—You have drawn it on your own heads, and as you have bartered away this valuable right, neither policy nor justice will call on me to guar-

antee what you gave up yourselves."—This language would satisfy the most sanguine American.

Is there any opinion, that any future projects will better secure you?—If this strong Government contended for, be adopted, seven States will give it up forever.—For a temporary cession, is, in my opinion, perfectly the same thing.—The thing is so obviously big with danger, that the blind man himself might see it.

As to the American Secretary [John Jay], the goodness of his private character is not doubted.—It is public conduct which we are to inspect. The public conduct of this Secretary goes against the express authority of nine States.—Although he may be endowed with the most brilliant talents, I have a right to consider his politics as abandoned. Yet his private virtues may merit applause.—You see many attempts made, which, when brought into actual experiment, are found to result from abandoned principles.—The States are geographically situated so and so.—Their circumstances are well known.—It is suggested this expedient was only to temporize till a more favorable opportunity. Will any Gentleman tell me, that the business was taken up hastily, when that vote was taken in Congress?—When you consider the ability of the Gentlemen who voted in Congress on that question, you must be persuaded that they knew what they were about. American interest was fully understood.—New-Jersey called her Delegates from Congress for having voted against this right.¹⁴—Delegates may be called and instructed under the present system; but not by the new Constitution.—The measure of the Jersey Delegates was adverse to the interest of that State, and they were recalled for their conduct.

The Honorable Gentleman [James Madison] has said, that the House of Representatives would give some curb to this business of treaties, respecting the Mississippi.—This to me is incomprehensible.—He will excuse me, if I tell him, he is exercising his imagination and ingenuity.—Will the Honorable Gentleman say, that the House of Representatives will break through their balances and checks, and break into the business of treaties?—He is obliged to support this opinion of his, by supposing, that the checks and balances of this Constitution are to be an impenetrable wall for some purposes, and a mere cobweb for some other purposes. What kind of Constitution then can this be?—I leave Gentlemen to draw the inference. I may have misunderstood the Gentleman, but my notes tell me, that he said the House of Representatives might interfere and prevent the Mississippi from being given away. They have no power to do this by the Constitution. There will be a majority against it there also. Can you find on the journals, the names of those who sacrifice your interest? Will they act so im-

prudently as to discover their own nefarious project? At present you may appeal to the voice of the people, and send men to Congress positively instructed to obey your direction. You can recall them if their system of policy be ruinous.—But can you in this Government recal your Senators?—Or can you instruct them?—You *cannot* recal them.—You may instruct them, and offer your opinions;—but if they think them improper, they may disregard them.—If they give away or sacrifice your most valuable rights, can you impeach or punish them?—If you should see the Spanish Ambassador bribing one of your senators with gold, can you punish him?—Yes—You can impeach him before the Senate—A majority of the Senate may be sharers in the bribe.—Will they pronounce him guilty who is in the same predicament with themselves?—Where then is the security?—I ask not this out of triumph, but anxiously to know if there be any real security. The Gentleman here observed, what I would not give a single pin for.—The doctrine of chances it seems, will operate in our favor.—This ideal figurative doctrine will satisfy no rational people. I have said enough to answer the Gentleman as to retaining the navigation.

Give me leave to tell you that when the great branch of the House of Bourbon has guaranteed to us this right, I wish not to lean on American strength, which may be employed to sacrifice it. This present despised system alone has reserved it. It rests on strong grounds,—on the arms of France. The Honorable Member [James Madison] then told us, that he thought the project would not be revived. Here again the doctrine of chances is introduced. I will admit that the Honorable Gentleman can calculate as to future events. But it is too much for him to say that it will not be taken up again. The same disposition may again revive that nefarious abandoned project. I can inform him of this, that the American Ambassador advises, *to let it rest for the present*, which insinuates that it will be resumed at a more favorable opportunity.¹⁵ If this be the language or spirit which causes its suspension, this nefarious abominable project will be again introduced the first favorable opportunity. We cannot fortify the Atlantic Ocean. The utmost we can do, is to become formidable to the Westward. This will be prevented, if this abominable project be adopted. Mr. *Henry* then added, that in treating the subject at large he followed the example of other Gentlemen, and that he trusted he should be permitted to consider it generally again.

Mr. *Madison* arose and observed, that the particular ground, on which the abandonment of that project was founded, was, that it was repugnant to the wishes of a great part of America. This reason says he, becomes stronger and stronger every day, and the sense of America

will be more and more known, and more and more understood. The project therefore will, in all probability, never be revived. He added some other observations which could not be heard.

Mr. *Nicholas*,—Mr. Chairman.—The arguments used to day on this occasion astonish me exceedingly.—The most valuable right of a part of the community has been invaded. By whom?—By Congress, under the existing system,—the worthy Member's favorite confederation. Is this an argument to continue that confederation? Does it not prove that that confederation is not sufficient for the purposes for which it was instituted? It was doubtful what proportion had a right on that occasion, to repeal the prohibitory part of the Secretary's instructions. The confederation which makes it a doubt, whether they had a right to sacrifice this right,—whether seven States and not nine, had a right to make the temporary cession, is the system which merits censure. Yet by an ingenious and subtle deviation, this instance is brought against this Constitution. We have been alarmed about the loss of the Mississippi in and out of doors. What does it all amount to? It amounts to an attempt under the present Confederation to yield it up! Why have we been told of the great importance of this valuable right? Every man knows it. No man has a greater regard for it than I have. But what is the question which the Honorable Gentleman ought to ask himself? *Is this right better secured under the present Confederation, than the New Government?*—This is the sole question. I beg leave to draw the attention of the Committee to this subject. It is objected by my friend to my left [Patrick Henry], that two-thirds of the Senate present may advise the President to give up this right by treaty, by which five States may relinquish it. It is provided in the first article, That a majority of each House shall constitute a quorum to do business; and then in the second article, That the President, by and with the advice and consent of the Senate, shall have power to make treaties. What part of the Senate? It adds, "Provided two thirds of the Senators concur." What is the inference? That there must be quorum, and *two-thirds of the whole* must agree.—I shall be told perhaps, that this construction is not natural, nor the positive construction of the clause. If the right construction be, that two-thirds of a *quorum*, or ten Senators, *may*, with the President, make a treaty—to justify the conclusion, that the Mississippi may be given away by five States, two most improbable things must concur: First, that on the important occasion of treaties, ten Senators will neglect to attend; and in the next place, that the Senators whose States are most interested in being fully represented, will be those who will fail to attend. I mean those from the Southern States. How natural this supposition is, I refer to the candour of the Committee. But we

are told, that we have every thing to fear from the Northern States, because they will prevent an accession of States to the South. The policy of States will sometimes change. This is the case with those States, if indeed they were enemies to the right. And therefore, as I am informed, by very good authority, Congress has admitted Kentucky, as a State, into the Union.¹⁶ Then the law of nations will secure it to them, as the deprivation of territorial rights is obviously repugnant to that law.

But we are told, that we may not trust them because self-interest will govern them. To that interest I will appeal. You have been told, that there was a difference between the States—that they were naturally divided into carrying and non-carrying States. Is it not reasonable to presume, that the advancement of population and agriculture in the Western Country, will mostly operate in favor of those States, who from their situation are best calculated to carry the produce of America to foreign markets?—Besides, as members of the Union, they will be materially affected by the sale of the back-lands, which will be greatly diminished in case of the relinquishment of that right. The same reason which induced them to erect States there, will also actuate them on every future occasion. But Congress has violated the Confederation. Shall we continue then under a Government which warrants, or cannot prevent, violations? Shall we hesitate to embrace a Government which will check them? But says the Honorable Gentleman over the way (Mr. *Grayson*) the Eastern States were interested during the war in retaining the Mississippi.—But now they have nothing to fear. Will war not return? A great part of his argument turns upon that supposition.—*We will always have peace, and need make no provision against wars.* Is not this deceiving ourselves? Is it not fallacious? Did there ever exist a nation which at some period or other was not exposed to war? As there is no security against future wars, the New-England States will be as much interested in the possession of the Mississippi hereafter, as they were during the war. But says he, the Confederation affords greater security to the Western Country, than the New Government. Consider it maturely, and you will find the contrary to be a fact. The security arising from the Confederation is said to be this, that nine States must concur in the formation of a treaty. If then hereafter 30 States should come into the Union, yet nine States will still be able to make a treaty. Where then is your boasted security, if nine States can make a treaty, although ever so many States should come into the Union? On the other hand, how is this guarded under the New Constitution?—No *certain limited number* of States is required to form a treaty. As the number of States will be increasing into the Union, the

security will be increased. Every new State will bring an accession of security, because two-thirds of the Senators must concur. Let the number of States increase ever so much, two-thirds of the Senators must concur. According to the present system, nine States may make a treaty. It will therefore take five States to prevent a treaty from being made. If five States oppose a treaty, it cannot be made. Let us see how it is in the New Constitution.—Two-thirds of the Senators must agree. Kentucky, added to the other States, will make fourteen States. Twenty-eight Senators will be the representation of the States, two-thirds of which will be nineteen; and if nine members concur in opposition, the Senate can do no act. Five States you are told, have concurred in opposing the relinquishment of that right. Kentucky has come into the Union. She will oppose it naturally. It may be naturally concluded then, that that there will be at least twelve members in the Senate against it. So that there will be several persons in the Senate more than will be sufficient to prevent the alienation or suspension of that river. From this true representation it will at least be as secure under the new, as under the old Government.

But says he [Patrick Henry], the concurrence of the President to the formation of treaties will be no security. Why so? Will he not injure himself, if he injures the States, by concurring in an injudicious treaty? How is he elected? Where will the majority of the people be? He told you that the great weight of population will be in the Southern part of the United States. Their numbers will weigh in choosing the President; as he is elected by electors chosen by the people in proportion to their numbers. If the Southern States be interested in having the Mississippi, and have weight in choosing the President, will he not be a great check in favor of this right? Another thing is treated with great contempt. The House of Representatives it seems, can have no influence in making treaties. What is the House of Representatives? Where, says he, are your checks and balances—your rope dancers, &c? How is this business done in his favorite Government? The King of Great-Britain can make what treaties he pleases. But, Sir, do not the House of Commons influence them? Will he make a treaty manifestly repugnant to their interests?—Will they not tell him, he is mistaken in that respect as in many others? Will they not bring the Minister, who advises a bad treaty, to punishment? This gives them such influence that they can dictate in what manner they shall be made. But the worthy member says, that this strong Government is such a one, as Kentucky ought to dread.—Is this just, Mr. Chairman? Is it just by general assertions, without arguments or proofs, to cast aspersions on it?—What is the situation of that country? If she has a right, and is in possession of

the river, I ask the Gentlemen why she does not enjoy the fruits of her right? I wish, if she has the river, she would give the people passports to navigate it. What do they want? They want a Government which will force from Spain the navigation of that river.—I trust, Sir, that let the situation, Government and politics, of America be what they may, I shall live to see the time when the inhabitants of that country will wrest from that nation, that right which she is so justly entitled to. If we have that Government which we ought to have, they will have ability to enforce their right. But he treats with ridicule the situation of the territory settled by Massachusetts.—They can have no connection with the Mississippi. Sir, they are materially affected by the navigation of that river. The facility of disposing of their produce, and intercourse with other people, are essential interests.

But, Sir, we have the guarranty of France under the existing system. What avails this guarranty? If dependence be put upon it, why did they not put us in possession, and enable us to derive benefits from it? Our possession of it is such, that we dare not use it. But the opinions and characters of private men ought to have nothing to do in our discussion. I wish the Gentleman had always thought so. If he had, these debates would not have been thus lengthened. But we are not to calculate any thing on New-Jersey. You are told she gave instruction to her Delegates to vote against the cession of that right. Will not the same principles continue to operate upon the minds of the people of that State?

We cannot recal our Senators. We can give them instructions, and if they manifestly neglect our interest, we have sufficient security against them. The dread of being recalled would impair their independence and firmness.

I think that Kentucky has nothing to expect from any one State alone in America. She can expect support and succour alone from a strong efficient Government, which can command the resources of the Union when necessary. She can receive no support from the old Confederation. Consider the present state of that country. Declared independent of Virginia, to whom is she to look up for succour? No sister State can help her. She may call on the present General Government, but whatever may be the wish of Congress, they can give them no relief. That country contains all my wishes and prospects. There is my property, and there I intend to reside.¹⁷ I should be averse to the establishment of any system which would be injurious to it. I flatter myself that this Government will secure their happiness and liberty.

Governor *Randolph*.—Since I have seen so many attempts made, and so many wrong inducements offered, to influence the delegation from Kentucky, I must, from a regard to justice and truth, give my opinion on the subject. If I have no interest in that country, I hope they will consider what I have to say, as proceeding from an impartial mind. That the people of Kentucky have an unequivocal right to the navigation of the Mississippi, by the law of nature and nations, is clear and undoubted; though, to my own knowledge, a question has arisen, whether the former connection of America with Great-Britain, has not taken it away from them. There was a dispute respecting the right of Great-Britain to that river, and the United States can only have the same right which the original possessor had, from whom it was transferred. I am willing to declare that the right is complete; but where is the danger of loosing it by the operation of the New Government? The Honorable Gentleman [Patrick Henry] tells us, that France has guarranteed to us the possession of that river. *We* need not trouble ourselves about it,—France, he supposes, will do every thing for us! Does this pretended security enable us to make use of it? Is there any reasonable motive to induce the Government to give it up? If it be not given up, if the guarrantee of France be any security now, it will be so then. I wish an Honorable Gentleman over the way had known certain facts. If he had, they must have operated on his mind to refrain from making such observations.—(Here his Excellency read the treaty of peace with Great-Britain, defining the boundaries of the United States.)—He then declared, that from the most liberal interpretation, it would never give the inhabitants a right to pass through the middle of New-Orleans.¹⁸ I appeal to what the French Ambassador said, in 1781, in Congress, that America had no right to the Mississippi. If the opinion of the Ambassador of his Most Christian Majesty, and the treaty, have any influence, why are we told such things? There is not a greater or less degree of power, given by this Constitution, than is necessary to be given; but whether the power of treaties be improper to be given or not to the General Government, I only now ask, whether there be any real danger of loosing this right? How many Senators are there? Twenty-six, supposing the United States remain as they are. We are told, that there were never more than seven States willing to give it up. So that there were six States against it. There can be little danger then of the loss of that navigation. Pennsylvania is interested to maintain the Mississippi. Her interest will stimulate her to do it. She has settlements near Fort Pitt, on the Ohio, which must be affected greatly by that cession. If his own arguments be credited, New-Jersey

is against it. There is no danger of her voting the alienation of that right, as she instructed her Delegates to oppose it. The Southern States are naturally opposed to it. There will therefore be a majority in favor of the Mississippi; a majority that does not depend on the doctrine of chances. There will be 14 Senators against 12, admitting the States to remain as they are. It will moreover be contrary to the law of nations, to relinquish territorial rights. To make a treaty to alienate any part of the United States, will amount to a declaration of war against the inhabitants of the alienated part, and general absolution from allegiance. They will never abandon this great right. Are not the States interested in the back-lands, as has been repeatedly observed? Will not the connection between the emigrants and those they leave behind them, serve to strengthen opposition to it? The Gentleman [Patrick Henry] wishes us to shew him a clause which shall preclude Congress from giving away this right. It is first incumbent upon him to shew where the right is given up. There is a prohibition naturally resulting from the nature of things, it being contradictory and repugnant to reason, and the law of nature and nations, to yield the most valuable right of a community, for the exclusive benefit of one particular part of it. But there is an expression which clearly precludes the General Government from ceding the navigation of this river. In the 2d clause of the 3d section, of the 4th article, Congress is empowered "to dispose of, and make all *needful* rules and regulations respecting the *territory* or *other property* belonging to the United States." But it goes on and provides, that "*Nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.*" Is this a claim of the particular State of Virginia? If it be, there is no authority in this Constitution to prejudice it. If it be not, then we need not be told of it. This is a sufficient limitation and restraint. But it has been said, that there is no restriction with respect to making treaties. The various contingencies which may form the object of treaties, are in the nature of things, incapable of definition. The Government ought to have a power to provide for every contingency. The territorial rights of the States are sufficiently guarded by the provision just recited. If you say, that notwithstanding the most express restriction, they may sacrifice the rights of the States, then you establish *another doctrine*, that the creature can destroy the creator, which is the most absurd and ridiculous of all doctrines.

The Honorable Gentleman has warned us from taking rash measures that may endanger the rights of that country. Sir, if this navigation be given up, the country adjacent will also be given up to Spain; for the possession of the one must be inseperable from that of the other. Will not this be a sufficient check on the General Government? This you

will admit to be true, unless you carry your suspicion to such an unlimited length, as to imagine that they will, among their iniquitous acts, destroy and dismember the Union. As to the objection of my friend over the way, (Mr. *Monroe*) that so few States could by treaty yield that navigation, it has been sufficiently answered, and its futility fully detected by the Gentleman who spoke last [George Nicholas].

Another mistake, which my friend over the way [James Monroe] has committed, is, that the temporary forbearance of the use of the Mississippi might lead to the absolute cession of the Chesapeake. The Gentleman has a mind to make up his climax of imaginary objections, or he never would have suffered such an idea to obtrude on his mind. Were the Mississippi, as he says, in danger of being ceded, which I deny, yet it could not be a precedent for the relinquishment of the Chesapeake. It never can be put in such a jeopardy. All the atlantic States will oppose a measure of this sort, lest it should destroy their commerce.

The consanguinity between the Western people and the inhabitants of the other States, would alone have a powerful operation to prevent any measure injurious to them, from being adopted.

Let me, in a few words, endeavor to obviate the strong observations made to the Gentlemen from that country. I contend that there is no power given the General Government, to surrender that navigation. There is a positive prohibition in the words I have already mentioned, against it. I consider that the policy of the States, and disposition of the people, make it impossible; and I conclude, that their safety is at least as great under the new as under the old Government. Let me intreat those Gentlemen, whose votes will be scuffled for, to consider in what character they are here. For what have they come hither? To deliberate on a Constitution, which some have said will secure the liberty and happiness of America, and which others represent as not calculated for that purpose. They are to decide on a Constitution for the collective society of the United States. Will they, as honest men, not disdain all applications made to them from local interests? Have they not far more valuable rights to secure? The present General Government has much higher powers than that which has been so long contested. We allow them to make war, and requisitions without any limitation. That paper contains much higher powers. Let it not be said, that we have been actuated from local interests. I wish it may not be said, that partial considerations governed any Gentleman here, when we are investigating a system for the general utility and happiness of America. I know such narrow views will not influence the Gentlemen from that country, because I know their characters. I hope this subject is sufficiently discussed, and that we shall proceed regularly.

Mr. *Corbin*,—Mr. Chairman.—All attempts made to bias the opinion of any Gentleman on this great occasion, are, in my opinion, very reprehensible. No member of this Committee can be a more zealous supporter of the right of navigating the Mississippi, and the other rights of the aggregate community, than I am. But that right, Sir, is in no danger. This has been proven with much ability by my friend to the left, and other Gentlemen. We are told, that five States may make a treaty. I say, that five States can prevent a treaty from being made. Will not my argument be of equal force with theirs? How can five States make a treaty? This presupposes that the members from every other State will be absent when the important subject of treaties will be on the carpet. Is this plausible? Or does it not amount to an impossibility? He says that the House of Representatives can have no influence in the formation of treaties.—I say they can. Treaties are generally of a commercial nature, being a regulation of commercial intercourse between different nations. In all commercial treaties it will be necessary to obtain the consent of the Representatives.—(Here a storm arose, which was so violent as to compel Mr. *Corbin* to desist, and the Committee to rise.)¹⁹

The Committee then rose—And on motion, *Resolved*, That this Convention will, to-morrow, again resolve itself into a Committee of the whole Convention, to take into farther consideration, the proposed Constitution of Government.

And then the Convention adjourned until to-morrow morning, ten o'clock.

1. The legislature adopted resolutions respecting the Mississippi River in November 1779, January 1781, November 1784, and December 1786; while in November 1787, the House of Delegates considered resolutions instructing the state's congressional delegates.

2. Monroe refers to the instructions for negotiating treaties of amity and commerce that were adopted by Congress in October 1783 and supplemented by additional instructions in May 1784 (Boyd, VII, 265–71; and JCC, XXV, 753–57; XXVI, 357–62; XXVII, 367–74.)

3. When discussing the Jay-Gardoqui treaty negotiations, Congress sat in secret session, a practice sanctioned by Article IX of the Articles of Confederation (CDR, 92). On 28 September 1786, Congress rejected a motion by Charles Pinckney of South Carolina (seconded by Edward Carrington of Virginia) to have the injunction of secrecy lifted to allow the delegates to communicate with their state executives and legislatures on the matter of the negotiations with Spain (JCC, XXXI, 697; and LMCC, VIII, 473–74). Grayson's comments regarding the injunction have not been found. He was not in Congress on 28 September, having become ill earlier in the month (LMCC, VIII, xcvi, 465, 473, 510–11. Grayson returned to Congress on 20 November.). Each of the Virginia delegates present on 28 September—Carrington, Henry Lee, and James Monroe—voted to lift the injunction.

4. Grayson probably refers to Charles Pinckney's August and September 1786 resolutions questioning the constitutionality of the action of Congress on 29 August 1786 repealing a part of Secretary for Foreign Affairs John Jay's instructions.

5. For New Jersey and the question of the Mississippi, see Convention Debates, 12 June, note 33 (above). With respect to Maryland, congressional delegate Grayson had reported on 30 April 1787 "that it is said confidently that So. Carolina and Maryland when they get on the floor [of Congress] will be against us" (to Monroe, LMCC, VIII, 592-93). On 11 May, the Maryland delegates voted against two motions (one introduced by Grayson) that would have prevented Secretary Jay from relinquishing the right of navigation of the Mississippi in any treaty negotiations with Spain (JCC, XXXII, 288-90. South Carolina's lone delegate voted against Grayson's motion and in favor of the other motion.). Evidently commenting upon these votes, Grayson wrote James Madison on 24 May that "Maryl'd has openly declared agt. the Mississippi" (LMCC, VIII, 600).

6. See William Grayson's speech, Convention Debates, 12 June (RCS:Va., 1191-92).

7. When Massachusetts ceded its western lands to Congress in 1784, it retained its colonial charter rights to western New York, although New York disputed its right to the territory. In December 1786, commissioners from the two states, meeting in Hartford, Conn., settled the dispute. New York retained jurisdiction over all land within its borders, but Massachusetts was given title to more than six million acres in western New York. In April 1788, Massachusetts sold the land to a group headed by Oliver Phelps and Nathaniel Gorham, both of Massachusetts.

8. See Convention Debates, 12 June, note 33 (above).

9. Grayson refers to the report of a five-man committee (of which he was a member), which was read in Congress on 4 July 1787, the same day that he was elected chairman of Congress in the absence of the President (JCC, XXXII, 299-300).

10. Hugo Grotius and the Baron Samuel von Pufendorf were the authors of two classic works on international law: *De Jure Belli et Pacis* (1625) and *De Jure Naturae et Gentium* (1672), respectively.

11. See note 7 (above).

12. Grayson refers to the Hudson River in New York.

13. Article 11 of the Treaty of Alliance with France (1778) guaranteed "the United States their liberty, Sovereignty, and Independence absolute, and unlimited, as well in Matters of Government as commerce and also their Possessions, and the additions or conquests that their Confederation may obtain during the war, from any of the Dominions now or heretofore possessed by Great Britain in North America . . . the whole as their Possessions shall be fixed and assured to the said States at the moment of the cessation of their present War with England."

14. See Convention Debates, 12 June, note 33 (above).

15. The "American Ambassador" probably refers to Thomas Jefferson, who, after learning that James Madison had introduced a resolution in Congress (18 April 1787) transferring the negotiations with Spain to Madrid, with Jefferson as negotiator, indicated that he was unwilling to pursue the negotiations. Congress had turned the resolution over to Secretary Jay who also advised against such an action (Rutland, *Madison*, IX, 320, 388-90, 400-1, 402-3; and JCC, XXXII, 210, 216-20).

On 20 June 1787 Thomas Jefferson wrote Madison: "*But this affair of the Missisipi by shewing that Congress is capable of hesitating on a question which proposes a clear sacrifice of the western to the maritime states will with difficulty be obliterated. The proposition of my going to Madrid to try to recover there the ground which had been lost at New York by the concession of the vote of seven states I should think desperate. With respect to myself, weighing the pleasure of the journey and bare possibility of success in one scale, and the strong probability of failure and the public disappointment directed on me in the other, the latter preponderates. Add to this that jealousy might be excited in the breast of a person who could find occasions of making me uneasy*" (Boyd, XI, 481-82. The text in italics was in cipher.).

In May 1788 Jefferson was still opposed to reopening negotiations with Spain. He wrote congressman John Brown of Kentucky that "I should think it proper for the Western country to defer pushing their right to that navigation to extremity as long as they can do without it tolerably; but that the moment it becomes absolutely necessary for them, it will become the duty of the maritime states to push it to every extremity to which they would their own right of navigating the Chesapeake, the Delaware, the Hudson or any other water. a time of peace will not be the surest for obtaining this object. Those therefore who have influence in the new country would act wisely to endeavor to keep things quiet till the Western parts of Europe shall be engaged in war" (28 May, Boyd, XIII, 211-12).

16. Congress had not yet admitted Kentucky as a state, but Nicholas had probably learned that on 2 June Congress had resolved that Kentucky should be admitted as a state and that the next day it had appointed a grand committee to draft an act admitting Kentucky as a state. On 5 June congressman John Brown had informed one of the Kentucky delegates in the Convention about the action of Congress and two days later he wrote Madison, stating that Cyrus Griffin, the President of Congress, told him that he had sent Madison "a Copy of a Resolution which Congress passed relative to the Separation of Kentucky" (V below; and Rutland, *Madison*, XI, 89).

17. Nicholas moved to Danville, Kentucky, early in 1789.

18. Article 2 of the Treaty of Peace of 1783 defined the western boundary of the United States as "a Line to be drawn along the Middle of the said River Mississippi until it shall intersect the Northernmost Part of the thirty first Degree of North Latitude." The thirty-first parallel strikes the river about fifty miles south of Natchez, Mississippi.

19. For more on the storm, see William Heth Diary, 13 June; Edmund Pendleton to Richard Henry Lee, 14 June; and the *Virginia Gazette and Weekly Advertiser*, 19 June (all in V below).

The Virginia Convention Saturday 14 June 1788

Debates

A letter from the Honorable the President to the Convention was read, stating his inability to attend his duty in the House to-day;¹

Whereupon the Honorable *John Tyler*² was *unanimously* elected Vice-President, to preside during the inability of the President.

The Convention then, according to the order of the day, again resolved itself into a Committee of the whole Convention, to take into farther consideration the proposed plan of Government.—Mr. *Wythe* in the chair.

Mr. *Corbin* thought the Mississippi subject had been amply discussed.—He hoped that the Committee would enter into the discussion of the proposed Constitution regularly—but that if any Gentleman would continue the enquiry relative to that river, he would answer him. He moved, that they should debate it clause by clause.

Mr. *Grayson*.—Mr. Chairman.—I conceive the investigation of this subject, which materially concerns the welfare of this country, ought not to wound the feelings of any Gentleman. I look upon this as a contest for empire.—Our country is equally affected with Kentucky.—The Southern States are deeply interested in this subject. If the Mississippi be shut up, emigrations will be stopped entirely. There will be no new States formed on the Western Waters. This will be a Government of seven States. This contest of the Mississippi involves this great national contest—That is, whether one part of the Continent shall govern the other. The Northern States have the majority, and will endeavor to retain it. This is therefore a contest for dominion—for empire. I apprehend that God and nature have intended, from the extent of territory and fertility of soil, that the weight of population should be on this side of the Continent. At present, for various reasons, it is on the other side. This dispute concerns every part of Kentucky. A particular investigation ought to offend no Gentleman.—Mr. *Grayson* then declared, he hoped the subject would be further continued.

Mr. *Alexander White* wished the further discussion of that subject to be postponed till they came to that part which enables the Senate to make treaties.—He seconded Mr. *Corbin's* motion, to proceed clause by clause.

(The third section of the first article, was then read.)

Mr. *Tyler* hoped, that when amendments should be brought forward, they should be at liberty to take a general view of the whole Constitution. He thought that the power of trying impeachments, added to that of making treaties, was something enormous, and rendered the Senate too dangerous.

Mr. *Madison* answered, that it was not possible to form any system to which objections might not be made; that the junction of these powers might be in some degree objectionable, but that it could not be amended. He agreed with the Gentleman, that when amendments were brought on, a collective view of the whole system might be taken.

(The 4th and 5th sections read.)

Mr. *Monroe* wished that the Honorable Gentleman, who had been in the Federal Convention, would give information respecting the clause concerning elections. He wished to know why Congress had an ultimate controul over the time, place, and manner of elections of Representatives, and the time and manner of that of Senators; and also why there was an exception as to the *place* of electing Senators.

Mr. *Madison*.—Mr. Chairman.—The reason of the exception was, that if Congress could fix the *place* of choosing the Senators, it might compel the State Legislatures to elect them in a different place from that of their usual sessions, which would produce some inconvenience, and

was not necessary for the object of regulating the elections. But it was necessary to give the General Government a controul over the time and manner of choosing the Senators, to prevent its own dissolution.

With respect to the other point, it was thought that the regulation of time, place, and manner of electing the Representatives, should be uniform throughout the Continent. Some States might regulate the elections on the principles of equality, and others might regulate them otherwise. This diversity would be obviously unjust. Elections are regulated now unequally in some States; particularly South-Carolina, with respect to *Charleston*, which is represented by 30 Members.³ Should the people of any State, by any means be deprived of the right of suffrage, it was judged proper that it should be remedied by the General Government. It was found impossible to fix the time, place, and manner, of the election of Representatives in the Constitution. It was found necessary to leave the regulation of these, in the first place, to the State Governments, as being best acquainted with the situation of the people, subject to the controul of the General Government, in order to enable it to produce uniformity, and prevent its own dissolution. And considering the State Governments and General Government as distinct bodies, acting in different and independent capacities for the people, it was thought the particular regulations should be submitted to the former, and the general regulations to the latter. Were they exclusively under the controul of the State Governments, the General Government might easily be dissolved. But if they be regulated properly by the State Legislatures, the Congressional controul will very probably never be exercised. The power appears to me satisfactory, and as unlikely to be abused as any part of the Constitution.

Mr. *Monroe* wished to hear an explanation of the clause, which prohibits either House, during the session of Congress, from adjourning for more than three days without the consent of the other. He asked if it was proper or right, that the Members of the lower House should be dependent on the Senate? He considered that it rendered them in some respect dependent upon the Senators, as it prevented them from returning home, or adjourning, without their consent, and as this might increase their influence unduly, he thought it improper.

Mr. *Madison* wondered that this clause should meet with a shadow of objection. It was possible, he observed, that the two branches might not agree concerning the time of adjourning, and that this possibility suggested the power given the President of adjourning both Houses to such time as he should think proper, in case of their disagreement.— That it would be very exceptionable to allow the Senators, or even the Representatives, to adjourn without the consent of the other House,

at *any* season whatsoever, without any regard to the situation of public exigencies. That it was possible, in the nature of things, that some inconvenience might result from it; but that it was as well secured as possible.

Governor *Randolph* observed, that the Constitution of Massachusetts was produced as an example, in the Grand Convention, in favor of this power given to the President.⁴ If, said his Excellency, he be honest, he will do what is right. If dishonest, the Representatives of the people will have power of impeaching him.

(*The 6th section read.*)

Mr. *Henry*,—Mr. Chairman.—Our burden should, if possible, be rendered more light. I was in hopes some other Gentleman would have objected to this part. The pay of the Members is, by the Constitution, to be fixed by themselves, without limitation or restraint. They may therefore indulge themselves in the fullest extent. They may make their compensations as high as they please. I suppose, if they be good men, their own delicacy will lead them to be satisfied with moderate salaries. But there is no security for this, should they be otherwise inclined. I really believe that if the State Legislatures were to fix their pay, no inconvenience would result from it, and the public mind would be better satisfied. But in the same section there is a defect of a much greater consequence. There is no restraint on corruption. They may be appointed to offices without any material restriction. And the principal source of corruption in Representatives, is the hopes and expectations of offices and emoluments. After the first organization of offices, and the Government is put in motion, they may be appointed to any existing offices which become vacant, and they may create a multiplicity of offices, in order thereafter to be appointed to them. What says the clause? “No Senator or Representative, shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time.” This is an idea strangely expressed. He shall not accept of any office created during the time he is elected for, or to any office whereof the emoluments have been increased in that time! Does not this plainly say, that if an office be not created during the time for which he is elected, or if its emoluments be not increased during such time, that he may accept of it? I can see it in no other light. If we wish to preclude the incitement to getting offices, there is a clear way of expressing it. If it be better that Congress should go out of their representative offices, by accepting other offices, then it ought to be so. If not, we require an amendment to the clause, that it shall not be so. I may be

wrong. Perhaps the Honorable Member may be able to give a satisfactory answer on this subject.

Mr. *Madison*.—Mr. Chairman.—I most sincerely wish to give a proper explanation on this subject, in such a manner as may be to the satisfaction of every one. I shall suggest such considerations as led the Convention to approve of this clause. With respect to the right of ascertaining their own pay, I will acknowledge, that their compensations, if practicable, should be fixed in the Constitution itself, so as not to be dependent on Congress itself, or on the State Legislatures. The various vicissitudes, or rather the gradual diminution of the value of all coins and circulating medium, is one reason against ascertaining them immutably; as what may be now an adequate compensation, might, by the progressive reduction of the value of our circulating medium, be extremely inadequate at a period not far distant.

It was thought improper to leave it to the State Legislatures, because it is improper that one Government should be dependent on another: And the great inconveniencies experienced under the old Confederation, shew, that the States would be operated upon by local considerations, as contradistinguished from general and national interests.—Experience shews us, that they have been governed by such heretofore, and reason instructs us, that they would be influenced by them again. This theoretic inconvenience of leaving to Congress the fixing their compensations, is more than counterbalanced by this in the Confederation; that the State Legislatures had a right to determine the pay of the Members of Congress, which enabled the States to destroy the General Government. There is no instance where this power has been abused. In America, Legislative bodies have reduced their own wages lower rather than augmented them. This is a power which cannot be abused without rousing universal attention and indignation. What would be the consequence of the Virginian Legislature raising their pay to four or five pounds each per day? The universal indignation of the people. Should the General Congress annex wages disproportionate to their service, or repugnant to the sense of the community, they would be universally execrated. The certainty of incurring the general detestation of the people will prevent abuse. It was conceived, that the great danger was in creating new offices, which would increase the burdens of the people; and not in an uniform admission of all meritorious characters to serve their country in the old offices. There is no instance of any State Constitution which goes as far as this. It was thought to be a mean between two extremes. It guards against abuse by taking away the inducement to create new offices, or increase the emoluments of old offices. And it gives them an opportunity of en-

joying, in common with other citizens, any of the existing offices which they may be capable of executing. To have precluded them from this, would have been to exclude them from a common privilege to which every citizen is intitled, and to prevent those who had served their country with the greatest fidelity and ability from being on a par with their fellow-citizens. I think it as well guarded as reason requires: More so than the Constitution of any other nation.

Mr. *Nicholas* thought it sufficiently guarded, as it prevented the Members of the General Government from holding offices which they created themselves, or of which they increased the emoluments; and as they could not enjoy any office during their continuance in Congress. To admit them to old offices when they left Congress, was giving them no exclusive privilege, but such as every citizen had an equal right to.

Mr. *Tyler* was afraid, that as their compensations were not fixed in the Constitution, Congress might fix them so low, that none but rich men could go; by which the Government might terminate in an Aristocracy. The States might choose men noted for their wealth and influence, and that State influence would govern the Senate. This, though not the most capital objection, he thought was considerable, when joined to others of greater magnitude. He thought the Gentleman's account of it, was by no means satisfactory. A parallel had been drawn between this power in Congress, of fixing their compensations, and that of our Assembly fixing the quantum of their salaries. He was of opinion, the comparison did not apply, as there was less responsibility in the former than in the latter case. He dreaded that great corruption would take place, and wished to have it amended so as to prevent it.

Mr. *Grayson*,—Mr. Chairman.—It strikes me that they may fix their wages very low. From what has happened in Great-Britain, I am warranted to draw this conclusion. I think every Member of the House of Commons formerly had a right to receive twenty shillings, or a guinea, a day. But, I believe, that this salary is taken away since the days of corruption. The Members of the House of Commons, if I recollect rightly, get nothing for their services as such.⁵ But there are some noble emoluments to be derived from the Minister, and some other advantages to be obtained. Those who go to Parliament form an idea of emoluments. They expect something besides wages. They go in with the wishes and expectations of getting offices.—This, Sir, may be the case in this Government. My fears are increased from the inconveniencies experienced under the Confederation.

Most of the great officers have been taken out of Congress; such as Ambassadors to foreign Courts, &c. A number of offices have been

unnecessarily created, and Ambassadors have been unnecessarily sent to foreign countries—to countries with which we have nothing to do. If the present Congress exceeded the limits of propriety, though extremely limited with respect to power in the creation of offices; what may not the future Congress do, when they have by this system a full scope of creating what offices, and annexing what salaries they please? There are but few Members in the Senate and lower House. They may all get offices at different times, as they are not excluded from being appointed to existing offices, for the time for which they shall have been elected. Considering the corruption of human nature, and the general tendency of mankind to promote their own interest, I think there is great danger. I am confirmed in my opinion from what I have seen already in Congress, and among other nations. I wish this part therefore to be amended, by prohibiting any Senator, or Representative, from being appointed to any office during the time for which he was elected, and by fixing their emoluments. Though I would not object to the Constitution on this account solely, were there no other defect.

Mr. *Madison*,—Mr. Chairman.—Let me ask those who oppose this part of the system, whether any alteration would not make it equally, or more liable to objections? Would it be better to fix their compensations? Would not this produce inconveniencies? What authorises us to conclude, that the value of coins will continue always the same?—Would it be prudent to make them dependent on the State Governments for their salaries—On those who watch them with jealous eyes, and who consider them as encroaching, not on the people, but on themselves? But the worthy Member [John Tyler] supposes, that Congress will fix their wages so low, that only the rich can fill the offices of Senators and Representatives. Who are to appoint them? The rich? No, Sir, the people at large are to choose them. If the Members of the General Government were to reduce their compensations to a trifle, before the evil suggested could happen, the people could elect other Members in their stead, who would alter that regulation. The people do not choose them for their wealth. If the State Legislatures choose such men as Senators, it does not influence the people at large in their election of Representatives. They can choose those who have the most merit and least wealth. If Congress reduce their wages to a trifle, what shall prevent the States from giving a man of merit, so much as will be an adequate compensation? I think the evil very remote, and if it were now to happen, the remedy is in our own hands, and may by ourselves be applied.

Another Gentleman seems to apprehend infinite mischief from a

possibility that any Member of Congress may be appointed to an office, although he ceases to be a Member the moment he accepts it! What will be the consequence of precluding them from being so appointed? If you have in your country one man whom you could in time of danger trust above all others, with an office of high importance, he cannot undertake it till the two years expire if he be a Representative; or till the six years elapse, if a Senator.—Suppose America was engaged in war, and the man of the greatest military talents and approved fidelity, was a Member of either House—would it be right that this man who could lead us to conquer, and who could save his country from destruction, could not be made General till the term of his election expired? Before that time we might be conquered by our enemies. This will apply to civil as well as military offices. It is impolitic to exclude from the service of his country, in any office, the man who may be most capable of discharging its duties, when they are most wanting.

The Honorable Gentleman [William Grayson] said, that those who go to Congress will look forward to offices as a compensation for their services, rather than salaries. Does he recollect that they shall not fill offices created by themselves? When they go to Congress the old offices will be filled. They cannot make any probable calculation that the men in offices will die, or forfeit their offices. As they cannot get any new offices, one of these contingencies must happen before they can get any office at all. The chance of getting an office is therefore so very remote, and so very distant, that it cannot be considered as a sufficient reason to operate on their minds to deviate from their duty. Let any man calculate in his own mind, the improbability of a Member of the General Government getting into an office, when he cannot fill any office newly created, and when he finds all the old offices filled at the time he enters into Congress. Let him view the danger and impolicy of precluding a Member of Congress from holding existing offices, and the danger of making one Government dependent on another, and he will find that both clauses deserve applause.

The observations made by several Honorable Members illustrate my opinion, that it is impossible to devise any system agreeable to all. When objections so contradictory are brought against it, how shall we decide? Some Gentlemen object because they may make their wages too high—Others object to it, because they may make them too low! If it is to be perpetually attacked by principles so repugnant, we may cease to discuss. For what is the object of our discussion? Truth, Sir. To draw a true and just conclusion.—Can this be done without rational premises, and syllogistic reasoning.

As to the British Parliament, it is nearly as he says.⁶ But how does it apply to this case? Suppose their compensations had been appointed by the State Governments, or fixed in the Constitution—Would it be a safe Government for the Union, if its Members depended on receiving their salaries from other political bodies at a distance, and fully competent to withhold them? Its existence would at best be but precarious. If they were fixed in the Constitution, they might become extremely inadequate, and produce the very evil which Gentlemen seem to fear. For then a man of the highest merit could not act unless he were wealthy. This is the most delicate part in the organization of a Republican Government. It is the most difficult to establish on unexceptionable grounds. It appears to me most eligible as it is. The Constitution has taken a medium between the two extremes, and perhaps with more wisdom than either the British or the State Governments, with respect to their eligibility to offices. They can fill no new offices created by themselves, nor old ones of which they increased the salaries. If they were excluded altogether, it is possible that other disadvantages might accrue from it, besides the impolicy and injustice of depriving them of a common privilege. They will not relinquish their Legislative in order to accept other offices. They will more probably confer them on their friends and connections. If this be an inconvenience, it is incident to all Governments. After having heard a variety of principles developed, I thought that on which it is established the least exceptionable, and it appears to me sufficiently well guarded.

Mr. *Grayson*.—Mr. Chairman.—I acknowledge that the Honorable Gentleman has represented the clause rightly as to their exclusion from new offices: But is there any clause to hinder them from giving offices to uncles, nephews, brothers, and other relations and friends? I imagine most of the offices will be created the first year, and then Gentlemen will be tempted to carry on this accommodation.

A worthy Member [*James Madison*] has said, what had been often said before, that suppose a war took place, and the most experienced and able man was unfortunately in either House, he could not be made General, if the proposed amendment was adopted. Had he read the clause, he would have discovered that it did not extend to military offices, and that the restriction extends to civil offices only. No case can exist with respect to civil offices, that would occasion a loss to the public if the Members of both Houses were precluded from holding any office during the time for which they were elected. The old Confederation is so defective, in point of power, that no danger can result from creating offices under it; because those who hold them cannot be paid. The power of making paper money will not be exercised. This

country is so thoroughly sensible of the impropriety of it, that no attempt will be made to make any more. So that no danger can arise, as they have not power to pay, if they appoint, officers. Why not make this system as secure as that, in this respect? A great number of offices will be created to satisfy the wants of those who shall be elected. The worthy Member says, the electors can alter them. But have the people the power of making honest men be elected? If he be an honest man, and his wages so low that he could not pay for his expences, he could not serve them if elected. But there are many thirsting after offices, more than public good. Political adventurers go up to Congress solely to advance their own particular emoluments. It is so in the British House of Commons. There are two sets always in that House. One, the landed interest, the most patriotic and respectable. The other a set of dependents and fortune-hunters, who are elected for their own particular interest, and are willing to sell the interest of their constituents to the Crown. The same division may happen among our Representatives. This clause might as well not be guarded at all, as in this flimsy manner. They cannot be elected to offices for the terms for which they were elected, and continue to be Members of Congress. But as they can create as many offices as they please, for the particular accommodation of their friends, it might as well not be guarded at all. Upon the whole I consider it entirely imperfect.

(*The 7th section read.*)

Mr. *Grayson* objected to the power of the Senate to propose or concur with amendments to money bills. He looked upon the power of proposing amendments to be equal in principle to that of originating, and that they were in fact the same. As this was, in his opinion, a departure from that great principle which required that the immediate Representatives of the people only should interfere with money bills; he wished to know the reasons on which it was founded. The Lords in England had never been allowed to intermeddle with money bills.⁷ He knew not why the Senate should. In the lower House, said he, the people are represented according to their numbers. In the upper House, the States are represented in their political capacities. Delaware or Rhode-Island has as many Representatives here as Massachusetts. Why should the Senate have a right to intermeddle with money, when the representation is neither equal or just?

Mr. *Madison*,—Mr. Chairman.—The criticism made by the Honorable Member, is, that there is an ambiguity in the words, and that it is not clearly ascertained where the origination of money bills may take place. I suppose the first part of the clause is sufficiently expressed to exclude all doubts. The Gentlemen who composed the Convention divided in

opinion, concerning the utility of confining this to any particular branch. Whatever it be in Great-Britain, there is a sufficient difference between us and them to render it inapplicable to this country. It always appeared to me to be a matter of no great consequence, whether the Senate had a right of originating, or proposing amendments to money bills or not. To withhold it from them would create disagreeable disputes. Some American constitutions make no difference. Virginia and South-Carolina, are, I think, the only States where this power is restrained. In Massachusetts, and other States, the power of proposing amendments is vested unquestionably in their Senates.⁸ No inconvenience has resulted from it. On the contrary, with respect to South-Carolina, this clause is continually a source of disputes. When a bill comes from the other House, the Senate entirely rejects it, and this causes contentions. When you send a bill to the Senate, without the power of making any alteration, you force them to reject the bill altogether, when it would be necessary and advantageous that it should pass. The power of proposing alterations removes this inconvenience, and does not appear to me at all objectionable. I should have no objection to their having a right of originating such bills. People would see what was done, and it would add the intelligence of one House to that of the other. It would be still in the power of the other House to obstruct any injudicious measure proposed by them. There is no land-mark or constitutional provision in Great-Britain, which prohibits the House of Lords from intermeddling with money bills; but the House of Commons have established this rule.⁹ Yet the Lords insist on their having a right to originate them, as they possess great property, as well as the Commons, and are taxed like them. The House of Commons object to their claim, least they should too lavishly make grants to the Crown, and increase the taxes. The Honorable Member [William Grayson] says, that there is no difference between the right of originating bills, and proposing amendments. There is some difference, though not considerable. If any grievances should happen in consequence of unwise regulations in revenue matters, the odium would be divided, which will now be thrown on the House of Representatives. But you may safely lodge this power of amending with the Senate. When a bill is sent with proposed amendments to the House of Representatives, if they find the alterations defective, they are not conclusive. The House of Representatives are the judges of their propriety, and the recommendation of the Senate is nothing. The experience of this State justifies this clause.—The House of Delegates has employed weeks in forming a money bill; and because the Senate had no power of proposing amendments, the bill was lost altogether;

and a new bill obliged to be again introduced, when the insertion of one line by the Senate would have done. Those Gentlemen who oppose this clause will not object to it, when they recollect that the Senators are appointed by the States, as the present Members of Congress are appointed. For, as they will guard the political interests of the States in other respects, they will attend to them very probably in their amendments to money bills. I think this power, for these considerations, is useful and necessary.

Mr. *Grayson* still considered the power of proposing amendments to be the same in effect, as that of originating. The Senate could strike out every word of the bill, except the word *Whereas*, or any other introductory word, and might substitute new words of their own. As the State of Delaware was not so large as the county of Augusta, and Rhode-Island was still less, and yet had an equal suffrage in the Senate, he could not see the propriety of giving them this power; but referred it to the judgment of the House.

(*The 8th section read.*)

Mr. *Clay*¹⁰ wished to be informed, why the Congress were to have power to provide for calling forth the militia, to put the laws of the Union in execution.

Mr. *Madison* supposed the reasons of this power to be so obvious that they would occur to most Gentlemen. If resistance should be made to the execution of the laws, he said, it ought to be overcome. This could be done only two ways; either by regular forces, or by the people. By one or the other it must unquestionably be done. If insurrections should arise, or invasions should take place, the people ought unquestionably to be employed to suppress and repel them, rather than a standing army. The best way to do these things, was to put the militia on a good and sure footing, and enable the Government to make use of their services when necessary.

Mr. *George Mason*.—Mr. Chairman.—Unless there be some restrictions on the power of calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions, we may very easily see that it will produce dreadful oppressions. It is extremely unsafe, without some alterations. It would be to use the militia to a very bad purpose, if any disturbance happened in New-Hampshire, to call them from Georgia. This would harass the people so much that they would agree to abolish the use of militia, and establish a standing army. I conceive the General Government ought to have power over the militia, but it ought to have some bounds. If Gentlemen say, that the militia of a neighbouring State is not sufficient, the Government ought to have power to call forth those of other States, the most

convenient and contiguous. But in this case the consent of the State Legislatures ought to be had. On *real* emergencies this consent will never be denied; each State being concerned in the safety of the rest. This power may be restricted without any danger. I wish such an amendment as this, that the militia of any State should not be marched beyond the limits of the adjoining State, and if it be necessary to draw them from one end of the Continent to the other, I wish such a check as the consent of the State Legislature, to be provided. Gentlemen may say, that this would impede the Government; and that the State Legislatures would counteract it, by refusing their consent. This argument may be applied to all objections whatsoever.—How is this compared to the British Constitution?—Though the King may declare war, the Parliament has the means of carrying it on. It is not so here. Congress can do both. Were it not for that check in the British Government, the Monarch would be a despot. When a war is necessary for the benefit of the nation, the means of carrying it on are never denied. If any unjust requisition be made on Parliament, it will be, as it ought to be, refused. The same principle ought to be observed in our Government. In times of real danger, the States will have the same enthusiasm in aiding the General Government, and granting its demands, which is seen in England, when the King is engaged in a war apparently for the interest of the nation.—This power is necessary, but we ought to guard against danger. If ever they attempt to harass and abuse the militia, they may easily abolish them, and raise a standing army in their stead. There are various ways of destroying the militia. A standing army may be perpetually established in their stead. I abominate and detest the idea of a Government, where there is a standing army. The militia may be here destroyed by that method which has been practised in other parts of the world before. That is, by rendering them useless, by disarming them. Under various pretences, Congress may neglect to provide for arming and disciplining the militia, and the State Governments cannot do it, for Congress has an exclusive right to arm them, &c. Here is a line of division drawn between the State and General Governments.—The power over the militia is divided between them. The national Government has an exclusive right to provide for arming, organizing, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States. The State Governments have the power of appointing the officers, and of training the militia according to the discipline prescribed by Congress, if they should think proper to prescribe any. Should the national Government wish to render the militia useless, they may ne-

glect them, and let them perish, in order to have a pretence of establishing a standing army.

No man has a greater regard for the military Gentlemen than I have. I admire their intrepidity, perseverance, and valour. But when once a standing army is established, in any country, the people lose their liberty. When against a regular and disciplined army, yeomanry are the only defence—yeomanry unskilful and unarmed, what chance is there for preserving freedom? Give me leave to recur to the page of history, to warn you of your present danger.—Recollect the history of most nations of the world. What havock, desolation, and destruction, have been perpetrated by standing armies? An instance within the memory of some of this House, will shew us how our militia may be destroyed. Forty years ago, when the resolution of enslaving America was formed in Great-Britain, the British Parliament was advised by an artful man,^(a) who was Governor of Pennsylvania, to disarm the people.—That it was the best and most effectual way to enslave them.—But that they should not do it openly; but to weaken them and let them sink gradually, by totally disusing and neglecting the militia.—(Here Mr. *Mason* quoted sundry passages to this effect.)¹¹—This was a most iniquitous project. Why should we not provide against the danger of having our militia, our real and natural strength, destroyed? The General Government ought at the same time to have some such power. But we need not give them power to abolish our militia. If they neglect to arm them, and prescribe proper discipline, they will be of no use. I am not acquainted with the military profession. I beg to be excused for any errors I may commit with respect to it. But I stand on the general principles of freedom, whereon I dare to meet any one. I wish, that in case the General Government should neglect to arm and discipline the militia, that there should be an express declaration, that the State Governments might arm and discipline them. With this single exception I would agree to this part, as I am conscious the Government ought to have the power.

They may effect the destruction of the militia, by rendering the service odious to the people themselves, by harassing them from one end of the Continent to the other, and by keeping them under martial law.

The English Parliament never pass a mutiny bill but for one year.¹² This is necessary, for otherwise the soldiers would be on the same footing with the officers, and the army would be dissolved. One mutiny bill has been here in force since the revolution. I humbly conceive there is extreme danger of establishing cruel martial regulations. If at any time our rulers should have unjust and iniquitous designs against

our liberties, and should wish to establish a standing army, the first attempt would be to render the service and use of militia odious to the people themselves; subjecting them to unnecessary severity of discipline in time of peace, confining them under martial law, and disgusting them so much, as to make them cry out, *Give us a standing army*.—I would wish to have some check to exclude this danger; as, that the militia should never be subject to martial law, but in time of war. I consider and fear the natural propensity of rulers to oppress the people. I wish only to prevent them from doing evil. By these amendments, I would give necessary powers, but no unnecessary power. If the clause stands as it is now, it will take from the State Legislatures what Divine Providence has given to every individual;—the means of self-defence. Unless it be moderated in some degree, it will ruin us and introduce a standing army.

Mr. *Madison*,—Mr. Chairman.—I most cordially agree with the Honorable Member last up, that a standing army is one of the greatest mischiefs that can possibly happen. It is a great recommendation for this system, that it provides against this evil more than any other system known to us, and particularly more than the old system of Confederation. The most effectual way to guard against a standing army, is to render it unnecessary. The most effectual way to render it unnecessary, is to give the General Government full power to call forth the militia, and exert the whole natural strength of the Union when necessary. Thus you will furnish the people with sure and certain protection, without recurring to this evil; and the certainty of this protection from the whole, will be a strong inducement to individual exertion. Does the organization of this Government warrant a belief, that this power will be abused? Can we believe that a Government of a federal nature, consisting of many co-equal sovereignties, and particularly having one branch chosen from the people, would drag the militia unnecessarily to an immense distance? This, Sir, would be unworthy the most arbitrary despot. They have no temptation whatever to abuse this power; such abuse could only answer the purpose of exciting the universal indignation of the people, and drawing on themselves the general hatred and detestation of their country.

I cannot help thinking that the Honorable Gentleman [George Mason] has not considered in all its consequences, the amendment he has proposed. Would this be an equal protection, Sir? Or would it not be a most partial provision? Some States have three or four States in contact. Were this State invaded, as it is bounded by several States, the militia of three or four States would, by this proposition, be obliged to come to our aid; and those from some of the States would come

a far greater distance than those of others. There are other States, which if invaded, could be assisted by the militia of one State only, there being several States which border but on one State. Georgia and New-Hampshire would be infinitely less safe than most of the other States. Were we to adopt this amendment, we should set up those states as butts for invasions, invite foreign enemies to attack them, and expose them to peculiar hardships and dangers. Were the militia confined to any limited distance from their respective places of abode, it would produce equal, nay more, inconveniencies. The principles of equality and reciprocal aid would be destroyed in either case.

I cannot conceive that this Constitution, by giving the General Government the power of arming the militia, takes it away from the State Governments. The power is concurrent, and not exclusive. Have we not found from experience, that while the power of arming and governing of the militia has been solely vested in the State Legislatures, they were neglected and rendered unfit for immediate service? Every State neglected too much this most essential object.—But the General Government can do it more effectually. Have we not also found, that the militia of one State were almost always insufficient to succour its harassed neighbour? Did all the States furnish their quotas of militia with sufficient promptitude? The assistance of one State will be of little avail to repel an invasion. But the general head of the whole Union can do it with effect, if it be vested with power to use the aggregate strength of the Union. If the regulation of the militia were to be committed to the Executive authority alone, there might be reason for providing restrictions. But, Sir, it is the Legislative authority that has this power. They must make a law for the purpose.

The Honorable Member is under another mistake. He wishes martial law to be exercised only in time of war, under an idea that Congress can establish it in time of peace. The States are to have the authority of training the militia according to the Congressional discipline; and of governing them at all times, when not in the service of the Union.—Congress is to govern such part of them as may be employed in the actual service of the United States; and such part only can be subject to martial law. The Gentlemen in opposition have drawn a most tremendous picture of the Constitution in this respect. Without considering that the power was absolutely indispensable, they have alarmed us with the possible abuse of it; but have shewn no inducement or motive to tempt them to such abuse. Would the Legislature of this State drag the militia of the Eastern Shore to the Western frontiers, or those of the Western frontiers to the Eastern Shore, if the local militia were sufficient to effect the intended purpose? There is some-

thing so preposterous, and so full of mischief in the idea of dragging the militia unnecessarily from one end of the Continent to the other, that I think there can be no ground of apprehension. If you limit their power over the militia, you give them a pretext for substituting a standing army. If you put it in the power of the State Governments to refuse the militia, by requiring their consent, you destroy the General Government, and sacrifice particular States. The same principles and motives which produced disobedience to requisitions, will produce refusal in this case. The restrictions which the Honorable Gentleman [George Mason] mentioned to be in the British Constitution, are all provisions against the power of the Executive Magistrate. But the House of Commons *may*, if they be so disposed, sacrifice the interest of their constituents in all those cases. They may prolong the duration of mutiny-bills, and grant supplies to the King to carry on an impolitic war. But they have no motives to do so. For they have strong motives to do their duty. We have more ample security than the people of Great-Britain. The powers of the Government are more limited and guarded, and our Representatives are more responsible than the Members of the British House of Commons.

Mr. *Clay* apprehended that by this power, our militia might be sent to the Mississippi. He observed that the sheriff might raise the *posse comitatus* to execute the laws.—He feared it would lead to the establishment of a military Government, as the militia were to be called forth to put the laws in execution. He asked why this mode was preferred to the old established custom of executing the laws?

Mr. *Madison* answered, that the power existed in all countries, that the militia might be called forth for that purpose, under the laws of this State and every other State in the Union. That public force must be used, when the resistance to the laws required it, otherwise the society itself must be destroyed. That the mode referred to by the Gentleman might not be sufficient on every occasion, as the sheriff must be necessarily restricted to the *posse* of his own county. If the *posse* of one county were insufficient to overcome the resistance to the execution of the laws, this power must be resorted to. He did not by any means admit, that the old mode was superseded by the introduction of the new one. And it was obvious to him, that when the civil power was sufficient, this mode would never be put in practice.

Mr. *Henry*,—Mr. Chairman.—In my judgment the friends of the opposition have to act cautiously. We must make a firm stand before we decide. I was heard to say, a few days ago, that the sword and purse were the two great instruments of Government,¹³ and I professed great repugnance at parting with the purse, without any controul to the

proposed system of Government. And now when we proceed in this formidable compact, and come to the national defence, the sword; I am persuaded, we ought to be still more cautious and circumspect; for I feel still more reluctance to surrender this most valuable of rights. The Honorable Member [James Madison] who has risen to explain several parts of the system, was pleased to say, that the best way of avoiding the danger of a standing army, was, to have the militia in such a way as to render it unnecessary, and that as the new Government would have power over the militia, we should have no standing army, it being unnecessary. This argument destroys itself. It demands a power, and denies the probability of its exercise. There are suspicions of power on the one hand, and absolute and unlimited confidence on the other. I hope to be one of those who have a large portion of suspicion. I leave it to this House, if there be not too small a portion on the other side; by giving up too much to that Government, you can easily see which is the worst of two extremes. Too much suspicion may be corrected. If you give too little power to-day, you may give more to-morrow. But the reverse of the proposition will not hold. If you give too much power to-day, you cannot retake it to-morrow: For to-morrow will never come for *that* purpose. If you have the fate of other nations, you will never see it. It is easier to supply deficiencies of power, than to take back excess of power. This no man can deny.—But, says the Honorable Member, Congress will keep the militia armed, or in other words, they will do their duty.—Pardon me, if I am too jealous and suspicious to confide in this remote possibility. My honorable friend went on a supposition that the American rulers, like all others, will depart from their duty without bars and checks. No Government can be safe without checks. Then he told us, they had no temptation to violate their duty, and that it would be their interest to perform it. Does he think you are to trust men who cannot have separate interests from the people? It is a novelty in the political world (as great a novelty as the system itself) to find rulers without private interests, and views of personal emoluments and ambition. His supposition, that they will not depart from their duty, as having no interest to do so, is no satisfactory answer to my mind. This is no check. The Government may be most intolerable and destructive, if this be our only security. My honorable friend [George Mason] attacked the Honorable Gentleman [James Madison] with universal principles. That, in all nations and ages, rulers have been actuated by motives of individual interests, and private emoluments, and that in America it would be so also. I hope, before we part with this great bulwark, this noble palladium of safety, we will have such checks interposed as will render

us secure. The militia, Sir, is our ultimate safety. We can have no security without it. But then, he [James Madison] says, that the power of arming and organizing the militia is concurrent, and to be equally exercised by the General and State Governments. I am sure, and I trust in the candour of that Gentleman, that he will recede from that opinion, when his recollection will be called to the particular clause which relates to it. As my worthy friend [George Mason] said, there is a positive partition of power between the two Governments. To Congress is given the power of "arming, organizing, and disciplining the militia, and governing such part of them as may be employed in the service of the United States." To the State Legislatures is given the power of "appointing the officers and training the militia according to the discipline prescribed by Congress." I observed before, that if the power be concurrent as to arming them, it is concurrent in other respects. If the States have the right of arming them, &c. concurrently, Congress has a concurrent power of appointing the officers and training the militia. If Congress have that power, it is absurd. To admit this mutual concurrence of powers will carry you into endless absurdity:—That Congress has nothing exclusive on the one hand, nor the States on the other!—The rational explanation is, that Congress shall have exclusive power of arming them, &c. and that the State Governments shall have exclusive power of appointing the officers, &c. Let me put it in another light. May *we* not discipline and arm them as well as Congress, if the power be concurrent? So that our militia shall have two sets of arms, double sets of regimentals, &c. and thus, at a very great cost, we shall be doubly armed. The great object is, that every man be armed. But can the people afford to pay for double sets of arms, &c? Every one who is able may have a gun. But have we not learned by experience, that necessary as it is to have arms, and though our Assembly has, by a succession of laws for many years, endeavoured to have the militia completely armed,¹⁴ it is still far from being the case? When this power is given up to Congress without limitation or bounds, how will your militia be armed? You trust to chance; for sure I am, that that nation which shall trust its liberties in other hands, cannot long exist. If Gentlemen are serious when they suppose a concurrent power, where can be the impolicy to amend it? Or in other words, to say that Congress shall not arm or discipline them, till the States shall have refused or neglected to do it? This is my object. I only wish to bring it to what they themselves say is implied. Implication is to be the foundation of our civil liberties, and when you speak of arming the militia by a concurrence of power, you use implication. But implication will not save you, when a strong army of veterans

comes upon you. You would be laughed at by the whole world, for trusting your safety implicitly to implication—The argument of my honorable friend [George Mason], was, that rulers *might* tyrannize. The answer he received, was, that they *will not*. In saying that they *would not*, he [James Madison] admitted they *might*. In this great, this essential part of the Constitution, if you are safe, it is not from the Constitution, but from the virtues of the men in Government. If Gentlemen are willing to trust themselves and posterity to so slender and improbable a chance, they have greater strength of nerves than I have.

The Honorable Gentleman [James Madison] in endeavouring to answer the question, why the militia were to be called forth to execute the laws, said that the civil power would probably do it. He is driven to say, that the civil power *may* do it instead of the militia. Sir, the military power ought not to interpose till the civil power refused. If this be the spirit of your new Constitution, that the laws are to be enforced by military coercion, we may easily divine the happy consequences which will result from it. The civil power is not to be employed at all. If it be, shew me it. I read it attentively, and could see nothing to warrant a belief, that the civil power can be called for. I would be glad to see the power that authorises Congress to do so. The sheriff will be aided by military force. The most wanton excesses may be committed under colour of this. For every man in office, in the States, is to take an oath to support it in all its operations. The Honorable Gentleman said, in answer to the objection, that the militia might be marched from New-Hampshire to Georgia, that the Members of the Government would not attempt to excite the indignation of the people. Here again we have the general unsatisfactory answer, that they will be virtuous, and that there is no danger. Will Gentlemen be satisfied with an answer which admits of dangers and abuses, if they be wicked? Let us put it out of their power to do mischief: I am convinced there is no safety in the paper on the table as it stands now. I am sorry to have an occasion to pass an eulogium on the British Government, as Gentlemen may object to it. But how natural it is, when comparing deformity to beauty, to be struck with the superiority of the British Government to that system? In England, self-love—self-interest, powerfully stimulates the Executive Magistrate to advance the prosperity of the nation. In the most distant part he feels the loss of his subjects. He will see the great advantage of his posterity inseparably from the felicity of his people.—Man is a fallen creature, a fallible being, and cannot be depended on without self-love. Your President will not have the same motives of self-love to impel him to favor your interests. His

political character is but transient, and he will promote as much as possible, his own private interests. He will conclude, the constant observation has been, that he will abuse his power, and that it is expected. The King of England has a more permanent interest. His stock—his family is to continue in possession of the same emoluments. The more flourishing his nation, the more formidable and powerful is he. The sword and purse are not united in that Government in the same hands, as in this system. Does not infinite security result from their separation?

But it is said, that our Congress are more responsible than the British Parliament. It appears to me there is no *real*, though there may be some *specious* responsibility. If Congress, in the execution of their unbounded powers, shall have done wrong, how will you come at them to punish them, if they are at the distance of 500 miles? At such a great distance they will evade responsibility altogether. If you have given up your militia, and Congress shall refuse to arm them, you have lost every thing. Your existence will be precarious, because you depend on others, whose interests are not affected by your infelicity. If Congress are to arm us exclusively, the man of New-Hampshire may vote for or against it, as well as the Virginian. The great distance and difference between the two places, render it impossible that the people of that country can know, or pursue what will promote our convenience. I therefore contend, that if Congress do not arm the militia, we ought to provide for it ourselves.

Mr. *Nicholas*.—Mr. Chairman.—The great object of Government in every country, is security and public defence. I suppose therefore that what we ought to attend to here, is, what is the best mode of enabling the General Government to protect us? One of three ways *must* be pursued for this purpose. We must either empower them to employ, and rely altogether on a standing army, or depend altogether on militia; or else we must enable them to use the one or the other of these two ways, as may be found most expedient. The least reflection will satisfy us, that the Convention has adopted the only proper method. If a standing army were alone to be employed, such an army must be kept up in time of peace, as would be sufficient in war. The dangers of such an army are so striking, that every man would oppose the adoption of this Government, had it been proposed by it, as the only mode of defence. Would it be safe to depend on militia alone, without the agency of regular forces even in time of war? Were we to be invaded by a powerful disciplined army, would we be safe with militia? Could men unacquainted with the hardships, and unskilled in the discipline of war,—men only inured to the peaceable occupations of domestic life, encounter with success, the most skilful veterans, inured to the

fatigues and toils of campaigns? Although some people are pleased with the theory of reliance on militia as the sole defence of a nation, yet I think it will be found in practice to be by no means adequate. Its inadequacy is proved by the experience of other nations. But were it fully adequate, it would be unequal. If war be supported by militia, it is by personal service. The poor man does as much as the rich. Is this just? What is the consequence when war is carried on by regular troops?—They are paid by taxes raised of the people, according to their property; and, then the rich man pays an adequate share. But if you confine yourselves to militia alone, the poor man is oppressed. The rich man exempts himself by furnishing a substitute. And, although it be oppressive to the poor, it is not advantageous to the rich: For what he gives would pay regular troops. It is therefore neither safe nor just to depend entirely on militia. As these two ways are ineligible, let us consider the third method. Does this Constitution put this on a proper footing? It enables Congress to raise an army when necessary, or to call forth the militia when necessary. What will be the consequence of their having these two powers? Till there be a necessity for an army to be raised, militia will do. And when an army will be raised, the militia will still be employed, which will render a less numerous army sufficient. By these means there will be a sufficient defence for the country, without having a standing army altogether, or oppressing the people. The worthy Member [George Mason] has said, that it ought to be a part of the Constitution that the militia ought not to go out of the State without the consent of the State Legislature. What would be the consequence of this? The general defence is trusted to the General Government. How is it to protect the Union? It must apply to the State Governments before it can do it. Is this right? Is it not subjecting the general will to the particular will, and exposing the general defence to the particular caprice of the Members of the State Governments? This would entirely defeat the power given to Congress, to provide for the general defence; and unless the militia were to aid in the execution of the laws, when resisted, the other powers of Congress would be nugatory. But he has said, that this idea is justified by the English history—For that the King has the power of the sword, but must apply to the Commons for the means of using it—for the purse. This is not a similar case. The King and Commons are parts of the same Government. But the General Government is separate and perfectly distinct from the individual Governments of the States. Should Congress be obliged to apply to the particular States for the militia, they may be refused, and the Government overturned. To make the case similar, he ought to shew us, that the King and Parliament

were obliged to call on some other power to raise forces, and provide for the means of carrying on war; for, otherwise there is no similitude. If the General Government be obliged to apply to the States, a part will be thereby rendered superior to the whole. What are to be the effects of the amendment proposed? To destroy one of the most beneficial parts of the Constitution; put an obstacle in the way of the General Government, and put it in the power of the State Governments to take away the aid of the militia. Who will be most likely to want the aid of the militia?—The Southern States from their situation. Who are the most likely to be called for? The Eastern States from their strength, &c. Should we put it in the power of particular States to refuse the militia, it would operate against ourselves. It is the height of bad policy to alter this part of the system. But it is said, the militia are to be disarmed. Will they be worse armed than they are now? Still, as my honorable friend [James Madison] said, the States would have power to arm them. The power of arming them is concurrent, between the General and State Governments. For the power of arming them rested in the State Governments before, and although the power be given to the General Government, yet it is not given exclusively. For, in every instance, where the Constitution intends that the General Government shall exercise any power exclusively of the State Governments, words of exclusion are particularly inserted. Consequently in every case where such words of exclusion are not inserted, the power is concurrent to the State Governments and Congress, unless where it is impossible that the power should be exercised by both. It is therefore not an absurdity to say, that Virginia may arm the militia should Congress neglect to arm them. But it would be absurd to say, that we should arm them after Congress had armed them, when it would be unnecessary; or that Congress should appoint the officers and train the militia when it is expressly excepted from their powers.

But his [George Mason] great uneasiness is, that the militia may be under martial law when not under duty. A little attention will be sufficient to remove this apprehension. The Congress is to have power “To provide for arming, organizing, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States.” Another part tells you, that they are to provide for calling them forth, to execute the laws of the Union, suppress insurrections, and repel invasions. These powers only amount to this; that they can only call them forth in these three cases; and that they can only govern such part of them as may be in the actual service of the United States. This causes a sufficient security, that they will not be under martial law but when in actual service. If, Sir, a mutiny-bill has

continued since the revolution, recollect that this is done under the *present happy Government*. Under the new Government, no appropriation of money, to the use of raising or supporting an army, shall be for a longer term than two years. The President is to command. But the regulation of the army and navy is given to Congress. Our Representatives will be a powerful check here. The influence of the Commons in England in this case is very predominant. But the worthy Member on the other side of the House [Patrick Henry], has said, that the militia are the great bulwark of the nation, and wishes to take no step to bring them into disuse. What is the inference? He wishes to see the militia employed. The Constitution provides what he wants: That is, to bring them frequently into use. If he expects that by depriving the General Government of the power of calling them into more frequent use, they will be rendered more useful and expert, he is greatly deceived.—We ought to part with the power to use the militia to some body. To whom? Ought we not to part with it for the general defence? If you give it not to Congress, it may be denied by the States. If you withhold it, you render a standing army absolutely necessary. For if they have not the militia, they must have such a body of troops as will be necessary for the general defence of the Union.

It was said by the Gentleman [Patrick Henry], that there was something singular in this Government, in saying, that the militia shall be called forth to execute the laws of the Union. There is a great difference between having the power in three cases, and in all cases. They cannot call them forth for any other purpose than to execute the laws, suppress insurrections, and repel invasions. And can any thing be more demonstrably obvious, than that the laws ought to be enforced if resisted, and insurrections quelled, and foreign invasions repelled? But it is asked, why has not the Constitution declared, that the civil power shall be employed to execute the laws? Has it said that the civil power shall not be employed? The civil officer is to execute the laws on all occasions; and if he be resisted, this auxiliary power is given to Congress, of calling forth the militia to execute them, when it shall be found absolutely necessary.

From his [Patrick Henry] argument on this occasion, and his eulogium on the Executive Magistrate of Britain, it might be inferred, that the Executive Magistrate here, was to have the power of calling forth the militia. What is the idea of those Gentlemen who heard his argument on this occasion? Is it not that the President is to have this power,—that President who he tells us, is not to have those high feelings, and that fine sensibility, which the British Monarch possesses? No, Sir, the President is not to have this power. God forbid we should

ever see a public man in this country who should have this power. Congress only are to have the power of calling forth the militia. And will the worthy Member say, that he would trust this power to a Prince governed by the dictates of ambition, or mere motives of personal interest, sooner than he would trust it in the hands of Congress? I will trust Congress, because they will be actuated by motives of fellow-feeling. They can make no regulations but what will affect themselves, their friends, and relations. But I would not trust a Prince whose ambition and private views would be the guide of his actions. When the Government is carried on by Representatives, and persons of my own choice, whom I can follow when far removed, who can be displaced at stated and short periods, I can safely confide the power to them. It appears to me that this power is essentially necessary. For, as the general defence is trusted to Congress, we ought to intrust fully the means. This cannot be fully done without giving the power of calling forth the militia; and this power is sufficiently guarded.

Mr. *Madison*.—Mr. Chairman.—The Honorable Gentleman [Patrick Henry] has laid much stress on the maxim, that the purse and sword ought not to be put in the same hands; with a view of pointing out the impropriety of vesting this power in the General Government. But it is totally inapplicable to this question. What is the meaning of this maxim? Does it mean that the sword and purse ought not to be trusted in the hands of the same Government? This cannot be the meaning. For there never was, and I can say there never will be, an efficient Government, in which both are not vested. The only rational meaning, is, that the sword and purse are not to be given to the same member. Apply it to the British Government which has been mentioned. The sword is in the hands of the British King. The purse in the hands of the Parliament. It is so in America, as far as any analogy can exist. Would the Honorable Member say, that the sword ought to be put in the hands of the Representatives of the people, or in other hands independent of the Government altogether? If he says so, it will violate the meaning of that maxim. This would be a novelty hitherto unprecedented. The purse is in the hands of the Representatives of the people. They have the appropriation of all monies.—They have the direction and regulation of land and naval forces. They are to *provide* for calling forth the militia—And the President is to have the command; and, in conjunction with the Senate, to appoint the officers.—The means ought to be commensurate to the end. The end is general protection. This cannot be effected without a general power to use the strength of the Union. We are told that both sides are distinguished by these great traits, *confidence* and distrust. Perhaps there may be a

less or greater tincture of suspicion on one side, than the other. But give me leave to say, that where power can be safely lodged, if it be necessary, reason commands its cession. In such case it is imprudent and unsafe to withhold it. It is universally admitted that it must be lodged in some hands or other. The question then is, in what part of the Government it ought to be placed; and not whether any other political body independent of the Government should have it or not. I profess myself to have had an uniform zeal for a Republican Government. If the Honorable Member, or any other person, conceives that my attachment to this system arises from a different source, he is greatly mistaken. From the first moment that my mind was capable of contemplating political subjects, I never, till this moment, ceased wishing success to a well regulated Republican Government. The establishment of such in America was my most ardent desire. I have considered attentively (and my consideration has been aided by experience) the tendency of a relaxation of laws, and licentiousness of manners.

If we review the history of all Republics, we are justified by the supposition, that if the bands of the Government be relaxed, confusion will ensue. Anarchy ever has, and I fear ever will, produce despotism. What was the state of things that preceded the wars and revolutions in Germany? Faction and confusion. What produced the disorders and commotions of Holland? The like causes.¹⁵ In this Commonwealth, and every State in the Union, the relaxed operation of the Government has been sufficient to alarm the friends of their country. The rapid increase of population in every State is an additional reason to check dissipation and licentiousness. Does it not strongly call for the friends of Republican Government to endeavour to establish a Republican organization? A change is absolutely necessary. I can see no danger in submitting to practice an experiment which seems to be founded on the best theoretic principles. But the Honorable Member [Patrick Henry] tells us, there is not an equal responsibility delineated on that paper, to that which is in the English Government. Calculations have been made here, that when you strike off those entirely elected by the influence of the Crown, the other part does not bear a greater proportion to the number of their people, than the number fixed in that paper, bears to the number of inhabitants in the United States. If it were otherwise, there is still more responsibility in this Government. Our Representatives are chosen for two years. In Great Britain they are chosen for seven years. Any citizen may be elected here. In Great-Britain no one can be elected to represent a county, without having an estate of the value of 600 l. sterling, a year; nor to represent a

corporation without an annual estate of 300 l.¹⁶ Yet we are told, there is no sympathy or fellow-feeling between the people here, and their Representatives; but that in England they have both. A just comparison will shew, that if confidence be due to the Government there, it is due ten-fold here.—(Mr. *Madison* made many other observations, but spoke so very low that he could not be distinctly heard.)

Mr. *Henry*,—Mr. Chairman.—It is now confessed that this is a national Government. There is not a single federal feature in it. It has been alledged within these walls, during the debates, to be national and federal, as it suited the arguments of Gentlemen. But now when we have heard the definition of it, it is purely national. The Honorable Member [James Madison] was pleased to say, that the sword and purse included every thing of consequence. And shall we trust them out of our hands without checks and barriers? The sword and purse are essentially necessary for the Government. Every essential requisite must be in Congress. Where are the purse and sword of Virginia? They must go to Congress. What is become of your country? The Virginian Government is but a name. It clearly results from his last argument that we are to be consolidated. We should be thought unwise indeed to keep 200 Legislators in Virginia, when the Government is in fact gone to Philadelphia or New-York. We are as a State to form no part of the Government. Where are your checks? The most essential objects of Government are to be administered by Congress. How then can the State Governments be any check upon them? If we are to be a Republican Government it will be consolidated, not confederated. The means, says the Gentleman, must be commensurate to the end. How does this apply?—All things in common are left with this Government. There being an infinitude in the Government, there must be an infinitude of means to carry it on. This is a sort of mathematical Government that may appear well on paper, but cannot sustain examination, or be safely reduced to practice. The delegation of power to an adequate number of Representatives; and an unimpeded reversion of it back to the people at short periods, form the principal traits of a Republican Government. The idea of a Republican Government in that paper, is something superior to the poor people. The governing persons are the servants of the people. There the servants are greater than their masters; because it includes infinitude, and infinitude excludes every idea of subordination. In this the creature has destroyed, and soared above the creator. For if its powers be infinite, what rights have the people remaining? By that very argument despotism has made way in all countries, where the people unfortunately have been enslaved by it. We are told the sword and purse are necessary for the

national defence. The junction of these without limitation in the same hands, is, by logical and mathematical conclusions, the description of despotism. The reasons adduced here to-day, have long ago been advanced in favor of passive obedience and non-resistance. In 1688, the British nation expelled their Monarch for attempting to trample on their liberties. The doctrine of divine right and passive obedience, as said to be commanded by Heaven, was inculcated by his minions and adherents. He wanted to possess without controul, the sword and purse. The attempt cost him his Crown. This Government demands the same powers. I see reason to be more and more alarmed. I fear it will terminate in despotism. As to his objection of the abuse of liberty, it is denied. The political inquiries and promotions of the peasants, is a happy circumstance. A foundation of knowledge is a great mark of happiness. When the spirit of inquiry after political discernment, goes forth among the lowest of the people, it rejoices my heart. Why such fearful apprehensions? I defy him to shew that liberty has been abused.—There has been no rebellion here, though there was in Massachusetts.¹⁷ Tell me of any country which has been so long without a rebellion. Distresses have been patiently borne in this country, which would have produced revolutions in other countries. We strained every nerve to make provisions to pay off our soldiers and officers. They, though not paid, and greatly distressed at the conclusion of the war, magnanimously acquiesced. The depreciation of the circulating currency so very much involved many of them, and thousands of other citizens, in absolute ruin; but the same patient fortitude and forbearance marked their conduct.—What would the people of England have done in such a situation? They would have resisted the Government, and murdered the tyrant. But in this country no abuse of power has taken place. It is only a general assertion unsupported, which suggests the contrary. Individual licentiousness will shew its baneful consequences in every country, let its Government be what it may.

But the Honorable Gentleman says, responsibility will exist more in this, than in the British Government. It exists here more in name than any thing else. I need not speak of the Executive authority. But consider the two Houses—the American Parliament. Are the Members of the Senate responsible? They may try themselves, and if found guilty on impeachment, are to be only removed from office. In England the greatest characters are brought to the block for their sinister administration. They have a power there, not to dismiss them from office, but from life, for mal-practices. The King himself cannot pardon in this case.¹⁸ How does it stand with respect to your lower House? You have but ten; whatever number may be there, six is a majority.—Will

your country afford no temptation, no money to corrupt them? Cannot six fat places be found to accommodate them? They may, after the first Congress, take any place. There will be a multiplicity of places. Suppose they corruptly obtain places. Where will you find them to punish them? At the farthest parts of the Union. In the ten miles square; or within a State where there is a strong hold. What are you to do when these men return from Philadelphia? Two things are to be done. To detect the offender and bring him to punishment. You will find it difficult to do either. In England the proceedings are openly transacted. They deliver their opinions freely and openly.—They do not fear all Europe. Compare it to this. You cannot detect the guilty. The publication from time to time is merely optional in them. They may prolong the period, or suppress it altogether under pretence of its being necessary to be kept secret. The yeas and nays will avail nothing. Is the publication daily? It may be a year, or once in a century. I know this would be an unfair construction in the common concerns of life. But it would satisfy the words of the Constitution. It would be some security were it once a year, or even once in two years. When the new election comes on, unless you detect them, what becomes of your responsibility? Will they discover their guilt when they wish to be re-elected? This would suppose them to be not only bad, but foolish men. In pursuit of responsibility, have you a right to scrutinize into the conduct of your Representatives? Can any man who conceives himself injured, go and demand a sight of their journals? But it will be told that I am suspicious. I am answered to every question, that they will be good men. In England they see daily what is doing in Parliament. They will hear from their Parliament in one thirty-ninth part of the time, that we will hear from Congress in this scattered country. Let it be proposed in England to lay a poll-tax, or enter into any measure that will injure one part, and produce emoluments to another; intelligence will fly quickly as the rays of light to the people—They will instruct their Representatives to oppose it, and will petition against it, and get it prevented or redressed instantly. Impeachment follows quickly a violation of duty. Will it be so here? You must detect the offence, and punish the defaulter. How will this be done when you know not the offender, even though he had a previous design to commit the misdemeanor? Your Parliament will consist of sixty-five. Your share will be ten out of the sixty-five. Will they not take shelter, by saying, they were in the minority—that the men from New-Hampshire and Kentucky out-voted them?—Thus will responsibility, that great pillar of a free Government, be taken away.

The Honorable Gentleman [James Madison] wished to try the ex-

periment. Loving his country as he does, he would not surely wish to trust its happiness to an experiment, from which much harm, but no good may result.

I will speak another time, and will not fatigue the Committee now. I think the friends of the opposition ought to make a pause here; for, I can see no safety to my country, if you give up this power.

Mr. *Madison*.—Mr. Chairman.—The Honorable Member [Patrick Henry] expresses surprise, that I wished to see an experiment made of a Republican Government; or, that I would risk the happiness of my country on an experiment. What is the situation of this country at this moment? Is it not rapidly approaching to anarchy? Are not the bands of the Union so absolutely relaxed as almost to amount to a dissolution? What has produced despotism and tyranny in other parts of the world? Is it not agreed upon all hands, that a reform is necessary? If any takes place, will it not be an experiment as well as this system? He acknowledges the existing system to be defective. He admits the necessity of *some* change. Would not the change he would chuse himself, be also an experiment? He has repeated objections which have been already clearly refuted, and which I will therefore pass over.

With respect to responsibility, still the Honorable Member thinks, that the House of Representatives and Senate will suffer by a comparison with the British Parliament. I will not repeat the contrast made before, which he has not mentioned. He tells us what may be done by our Representatives with respect to the admission to offices, and insinuates that less may be done in Great-Britain by the Members of Parliament. In this country, by this system, no new office can be taken by a Member of the Government, and if he takes an old one, he loses his seat. If the emoluments of any existing office be encreased, he cannot take it. How is it in Great-Britain? Any Member may have any place. For Parliament may create any new offices they please, or increase the emoluments of existing offices, and yet the Members may accept any such places. Any Member may accept any office whatever, and go again into Parliament. Does this comparison militate against this system? He tells us the affairs of our country are not alarming. I wish this assertion was well founded. I concur with him in rejoicing to see the people enlightened and vigilant. I should be happy to see the people paying respect to the laws and magistracy. But is respect paid to our laws? Every mans experience will tell him more perhaps than any thing I could say. Public and private confidence daily and rapidly decrease. Experiments must be made, and in that form which we must find most to the interest of our country.

Governor *Randolph*,—Mr. Chairman.—Our attention is summoned to this clause respecting the militia, and alarms are thrown out to persuade us, that it involves a multiplicity of dangers. It is supposed by the Honorable Gentleman lately up [Patrick Henry], and another Gentleman [Green Clay], that the clause for calling forth the militia to suppress insurrections, repel invasions, and execute the laws of the Union, implies, that instead of using civil force in the first instance, the militia are to be called forth to resist petty offenders against the laws. Ought not common sense to be the rule of interpreting this Constitution? Is there an exclusion of the civil power? Does it provide that the laws are to be enforced by military coercion in all cases? No, Sir. All that we are to infer, is, that when the civil power is not sufficient, the militia must be drawn out. Who are they? He [Patrick Henry] says (and I cheerfully acquiesce in the rectitude of the assertion) that they are the bulwark of our liberties. Shall we be afraid that the people, this bulwark of freedom, shall turn instruments of slavery? The officers are to be appointed by the States. Will you admit that they will act so criminally as to turn against their country? The officers of the General Government are attached to it, because they derive their appointment from it. Admitting the militia officers to be corrupt, what is to make them be in favor of the General Government? Will not the same reason attach them to the State Governments?—But it is feared that the militia are to be subjected to martial law when not in service. They are only to be called out in three cases; and only to be governed by the authority of Congress when in the actual service of the United States.—So that their articles of war can no longer operate upon them, than when in the actual service of the Union.

Can it be presumed that you can vest the supreme power of the United States with the power of defence, and yet take away this natural defence from them? You risk the general defence by withholding this power.

The Honorable Gentleman [Patrick Henry] speaking of responsibility has mistaken facts. He says the King cannot pardon offenders found guilty on impeachment. The King can pardon after impeachment, though not before.¹⁹ He says further, that in America every thing is concealed, whereas in England the operations of the Government are openly transacted.—In England those subjects which produce impeachments are not opinions. No man ever thought of impeaching a man for an opinion. It would be impossible to discover whether the error in opinion, resulted from a wilful mistake of the heart, or an involuntary fault of the head. What are the occasions of impeachments most commonly? Treaties.—Are these previously known? No. Till after they are presented to the public eye, they are not known. Those who

advised a treaty are not known till then. There ought not to be a publication on the subject of negotiations till they are concluded. So that when he thinks there is a greater notoriety in this case in England than here, I say he is mistaken. There will be as much notoriety in America as in England. The spirit of the nation occasions the notoriety of their political operations, and not any constitutional requisition. The spirit of liberty will not be less predominant in America, I hope, than there. With respect to a standing army, I believe there was not a Member in the Federal Convention, who did not feel indignation at such an institution. What remedy then could be provided?—Leave the country defenceless? In order to provide for our defence, and exclude the dangers of a standing army, the general defence is left to those who are the objects of defence. It is left to the militia who will suffer if they become the instruments of tyranny. The General Government must have power to call them forth when the general defence requires it. In order to produce greater security, the State Governments are to appoint the officers. The President, who commands them when in the actual service of the Union, is appointed secondarily by the people.—This is a further security. Is it not incredible, that men who are interested in the happiness of their country, whose friends, relations, and connections, must be involved in the fate of their country, should turn against their country? I appeal to every man, whether, if any of our own officers were called upon to destroy the liberty of their country, he believes they would assent to such an act of suicide? The State Governments having the power of appointing them, may elect men who are the most remarkable for their virtue and attachment to their country.

Mr. *George Mason* after having read the clause which gives Congress power to provide for arming, organizing, and disciplining the militia, and governing those in the actual service of the Union,—declared it as his firm belief, that it included the power of annexing punishments, and establishing necessary discipline; more especially as the construction of this, and every other part of the Constitution, was left to those who were to govern. If so, he asked, if Congress could not inflict the most ignominious punishments on the most worthy citizens of the community? Would freemen submit to such indignant treatment? It might be thought a strained construction, but it was no more than Congress might put upon it. He thought such severities might be exercised on the militia, as would make them wish the use of militia to be utterly abolished; and assent to the establishment of a standing army. He then adverted to the representation, and said it was not sufficiently full, to take into consideration the feelings and sentiments

of all the citizens. He admitted that the nature of the country rendered a full representation impracticable. But he strongly urged that impracticability as a conclusive reason for granting no powers to the Government, but such as were absolutely indispensable, and these to be most cautiously guarded. He then recurred to the power of impeachment. On this subject he entertained great suspicions.—He apologized for being suspicious.—He entered into the world with as few suspicions as any man. Young men, he said, were apt to think well of every one, till time and experience taught them better. After a treaty manifestly repugnant to the interests of the country was made, he asked, how they were to be punished? Suppose it had been made by the means of bribery and corruption.—Suppose they had received 100,000 guineas, or louis d'ors, from a foreign nation, for consenting to a treaty; how was the truth to be come at? Corruption and bribery of that kind had happened in other Governments, and might in this. The House of Representatives were to impeach them. The Senators were to try themselves. If a majority of them were guilty of the crime, would they pronounce themselves guilty? Yet, says he, this is called responsibility.—He wished to know in what court the Members of the Government were to be tried for the commission of indictable offences, or injuries to individuals? He acknowledged himself to be no lawyer; but he thought he could see, that they could neither be tried in the State or Federal Courts. The only means therefore of bringing them to punishment must be by a court appointed by law: And the law to punish them must also be made by themselves. By whom is it to be made, demanded he? By the very men who are interested in not inflicting punishment. Yet, says he, though they make the law, and fix the punishment to be inflicted on themselves, it is called responsibility. If the Senators do not agree to the law, it will not be made, and thus they will escape altogether.—(Mr. *Mason* then animadverted on the ultimate controul of Congress over the elections; and was proceeding to prove that it was dangerous; when he was called to order by Mr. *Nicholas*, for departing from the clause under consideration.—A desultory conversation ensued, and Mr. *Mason* was permitted to proceed. He was of opinion, that the controul over elections tended to destroy responsibility. He declared he had endeavoured to discover whether this power was really necessary, or what was the necessity of vesting it in the Government; but that he could find no good reason for giving it. That the reasons suggested were, that in case the States should refuse or neglect to make regulations; or in case they should be prevented from making regulations by rebellion or invasion, then the General Government should interpose.)—Mr. *Mason* then proceeded

thus.—If there be any other cases I would be glad to know them; for I know them not. If there be *no* other, why not confine them to these cases? But the power here, as in a thousand other instances, is without reason.—I have no power, which any other person can take from me. I have no right of representation, if they can take it from me. I say therefore, that Congress may by this claim, take away the right of representation; or render it nugatory, despicable, or oppressive. It is at least argumentative, that what may be done will be done, and that a favourite point will be done by those who can.

Suppose the State of Virginia should adopt such regulations as Gentlemen say (and in which I accord with all my heart) and divide the State into ten districts. Suppose then that Congress should order instead of this, that the elections should be held in the borough of Norfolk. Will any man say, that any man in Frederick or Berkeley county, would have any share in this Representation, if the Members were chosen in Norfolk? Nay, I might go further and say, that the elections for all the States might be had in New-York, and then we should have to go so far that the privilege would be lost altogether; for but few Gentlemen could afford to go thither. Some of the best friends of the Constitution have advocated that the elections should be in one place. This power is not necessary, and is capable of great abuse. It ought to be confined to the particular cases in which they assert it to be necessary. Whatever Gentlemen may think of the opposition, I will never agree to give any power which I conceive to be dangerous.

I have doubts on another point. The fifth section, of the first article, provides, "That each House shall keep a journal of its proceedings, and *from time to time* publish the same, excepting such parts as may, in their judgment, require secrecy." This enables them to keep the negotiations about treaties secret. Under this veil they may conceal *any* thing and *every* thing. Why not insert words that would exclude ambiguity and danger? The words of the Confederation, that defective system, are, in this respect, more eligible. What are they? In the last clause of the ninth article it provides, "That Congress shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy." The proceedings by that system are to be published monthly, except certain exceptions. These are proper guards. It is not so here. On the contrary they may conceal what they please. Instead of giving information, they will produce suspicion. You cannot discover the advocates of their iniquitous acts. This is an additional defect of responsibility. Neither House can adjourn without the con-

sent of the other for more than three days. This is no Parliamentary rule. It is untrodden ground, and appears to me liable to much exception.

The Senators are chosen for six years. They are not recallable for those six years, and are re-eligible at the end of the six years. It stands on a very different ground from the Confederation. By that system they were only elected for one year, might be recalled, and were incapable of re-election.²⁰ But in the new Constitution, instead of being elected for one, they are chosen for six years. They cannot be recalled in all that time for any misconduct, and at the end of that long term may again be elected. What will be the operation of this? Is it not probable, that those Gentlemen who will be elected Senators will fix themselves in the federal town, and become citizens of that town more than of our State? They will purchase a good seat in or near the town, and become inhabitants of that place.—Will it not be then in the power of the Senate to worry the House of Representatives into any thing? They will be a continually existing body. They will exercise those machinations and contrivances, which the many have always to fear from the few. The House of Representatives is the only check on the Senate, with their enormous powers. But by that clause you give them the power of worrying the House of Representatives into a compliance with any measure. The Senators living at the spot will feel no inconvenience from long sessions, as they will vote themselves handsome pay, without incurring any additional expences. Your Representatives are on a different ground, from their shorter continuance in office. The Gentlemen from Georgia are six or seven hundred miles from home, and wish to go home. The Senate taking advantage of this, by stopping the other House from adjourning, may worry them into any thing. These are my doubts, and I think the provision not consistent with the usual Parliamentary modes.

Mr. *Lee*, of *Westmoreland*.—Mr. Chairman.—I am anxious to know the truth on this great occasion. I was in hopes of receiving true information, but have been disappointed. I have heard suspicions against possibility, and not against probability. As to the distinction which lies between the Gentlemen for and against the Constitution: In the first place most of the arguments the latter use, pay no regard to the necessity of the Union, which is our object. In the next place they use contradictory arguments. It may be remembered, that we were told there was great danger of an Aristocracy governing this country; for that their wages would be so low, that the rich alone could serve. And what does another Gentleman [George Mason] say? That the price will be so high, that they will fix themselves comfortably in office, and

by their power and extravagant emoluments ruin us.—Ought we to adduce arguments like these, which imply a palpable contradiction? We ought to use arguments capable of discussion.

I beg leave to make some reply to what the Honorable Gentleman over the way [Patrick Henry] said. He rose with great triumph and exultation, saying, that we had conceded, that the Government was national. The Honorable Gentleman is so little used to triumph on the grounds of reasoning, that he suffers himself to be quite captivated by the least appearance of victory. What reason had he to say, that we admitted it to be a national Government? We agree that the sword and the purse are in the hands of the General Government for different designated purposes. What had the Honorable Member [James Madison] conceded? That the objects of the Government were general, as designated in that system, equally affecting the interests of the people of every State. This was the sole concession, and which by no means warrants his conclusion. Then why did the Honorable Gentleman seize it as a victory? Does he mean to object to the Constitution by putting words into our mouths which we never uttered? Did that Gentleman say, that the happiness of the people depended on the private virtues of the Members of the Government, and not on its construction? Did any Gentleman admit this, as he insinuated? No, Sir, we never admitted such a conclusion. Why then take up the time of this House in declaiming on words we never said? We say, that it will secure our liberty and happiness, and that it is so constructed and organized, that we need apprehend no danger.

But says he, the creature destroys the creator. How has he proved it? By his bare assertion. By ascribing infinitude to powers clearly limited and defined, for certain designated purposes. I shall not repeat the arguments which have fully refuted this idea of the Honorable Gentleman.

But Gentlemen say, that we must apply to the militia to execute the constitutional laws, without the interposition of the civil power, and that a military officer is to be substituted to the Sheriff in all cases. This unwarrantable objection is urged, like many others, to produce the rejection of this Government, though contrary to reason.—What is the meaning of the clause under debate? Does not their explanation violate the natural meaning of language? Is it to be inferred, that when the laws are not opposed, judgments must be executed by the militia? Is this the right and liberal way of discussing the general national objects? I am astonished that Gentlemen should attempt to impose so absurd a construction upon us.

The Honorable Gentleman last up [George Mason] says, that or-

ganizing the militia gives Congress power to punish them when not in the actual service of the Government. The Gentleman is mistaken in the meaning of the word organization; to explain which would unnecessarily take up time. Suffice it to say, it does not include the infliction of punishments. The militia will be subject to the common regulations of war when in actual service. But not in time of peace.

But the Honorable Gentleman said, there is danger of an abuse of the power, and attempted to exemplify. Any delegated power may be abused. It would be civil and candid in those Gentlemen who inveigh against this Constitution with such malignity, to shew in what manner adequate powers can be given without a possibility of being abused. It appears to me to be as well secured as it can be, and that the alterations he proposes would involve many disadvantages. I cannot then but conclude, that this Government will, in my opinion, secure our liberty and happiness, without any alteration.

Mr. *Clay* made several remarks, but he spoke too low. He admitted that he might be mistaken with respect to the exclusion of the civil power in executing the laws. As it was insinuated that he was not under the influence of common sense in making the objection, his error might result from his deficiency in that respect. But he thought that another Gentleman [Henry Lee] was as deficient in common decency, as he was in common sense. He was not, however, convinced that the civil power would be employed. If it was meant that the militia should not be called out to execute the laws in all cases, why were they not satisfied with the words, "repel invasions, suppress insurrections?" He thought the word insurrection included every opposition to the laws; and if so, it would be sufficient to call them forth to suppress insurrections, without mentioning that they were to execute the laws of the Union. He added, that although the militia officers were appointed by the State Governments, yet as they were sworn to obey the superior power of Congress, no check or security would result from their nomination of them.

Mr. *Madison*,—Mr. Chairman.—I cannot think that the explanation of the Gentleman last up, is founded in reason. It does not say that the militia shall be called out in all cases, but in certain cases. There are cases in which the execution of the laws may require the operation of militia, which cannot be said to be an invasion or insurrection.—There may be a resistance to the laws which cannot be termed an insurrection.

My honorable friend over the way has opened a new source of arguments. He has introduced the assertions of Gentlemen out of

doors.²¹ If we thus depart from regularity, we will never be able to come to a decision.

If there be any Gentleman who is a friend to the Government, and says, that the elections may, or ought to be held in one place, he is an enemy to it on that ground.—With respect to the time, place, and manner of elections, I cannot think, notwithstanding the apprehensions of the Honorable Gentleman, that there is any danger, or if abuse should take place, that there is not sufficient security.—If all the people of the United States should be directed to go to elect in one place, the Members of the Government would be execrated for the infamous regulation. Many would go to trample them under foot for their conduct—and they would be succeeded by men who would remove it. They would not dare to meet the universal hatred and detestation of the people, and run the risk of the certain dreadful consequences. We must keep within the compass of human probability. If a possibility be the cause of objection, we must object to every Government in America. But the Honorable Gentleman may say, that better guards may be provided. Let us consider the objection. The power of regulating the time, place, and manner of elections, must be vested some where. It could not be fixed in the Constitution without involving great inconveniences.—They could then have no authority to adjust the regulations to the changes of circumstances. The question then is, whether it ought to be fixed unalterably in the State Governments, or subject to the controul of the General Government. Is it not obvious, that the General Government would be destroyed without this controul? It has already been demonstrated that it will produce many conveniences. Have we not sufficient security against abuse? Consider fully the principles of the Government. The sum of the powers given up by the people of Virginia is divided into two classes. One to the Federal and the other to the State Government. Each is subdivided in three branches. These may be kept independent of each other in the one as well as the other. In this system they are as distinct as is consistent with good policy. This, in my opinion, instead of diminishing, increases the security of liberty more than any Government that ever was. For the powers of Government which in every other country are given to one body, are here given to two; and are favourable to public liberty. With respect to secrecy, if every thing in which it is necessary, could be enumerated, I would have no objection to mention them. All the State Legislatures can keep secret what they think ought to be concealed. The British House of Commons can do it. They are in this respect under much less restraint than Congress. There never was any Legislative Assembly without a discretionary power of concealing im-

portant transactions, the publication of which might be detrimental to the community. There can be no real danger as long as the Government is constructed on such principles.

He [George Mason] objects also to the clause respecting adjournment, that neither House shall, without the consent of the other, adjourn for more than three days. It was before remarked, that if a difference should take place between the two Houses about the time of adjournment, the President could still determine it: From which no danger could arise, as he is chosen in a secondary degree by the people, and would consequently fix no time which would be repugnant to the sense of the Representatives of the people. Another, and more satisfactory answer is this: Suppose the Senate wished to chain down the House of Representatives, what is to hinder them from going home? How bring them back again? It would be contrary to the spirit of the Constitution to impede the operations of the Government, perhaps at a critical period. I cannot conceive that such difference will often happen. Were the Senate to attempt to prevent an adjournment, it would but serve to irritate the Representatives, without having the intended effect, as the President could adjourn them. There will not be occasion for the continual residence of the Senators at the seat of Government. What business have they more than the House of Representatives? The appointment of officers and treaties. With respect to the appointment of officers, a law may be made to grant it to the President alone. It must be supposed there will be but few and subordinate officers to be appointed, as the principal offices will be filled. It is to be observed, that the President, when vacancies happen during the recess of the Senate, may fill them up till it meets. With respect to treaties, the occasions of forming them will not be many, and will make but a small proportion of their time of session.

Mr. *Clay* wished to know the instances where an opposition to the laws did not come within the idea of an insurrection.

Mr. *Madison* replied, that a riot did not come within the legal definition of an insurrection. There might be riots to oppose the execution of the laws, which the civil power might not be sufficient to quell. This was one case, and there might probably be other cases. He referred to the candour of the Committee, whether the militia could ever be used to destroy themselves.

The Committee then rose—And on motion, *Resolved*, That this Convention will, to-morrow, again resolve itself into a Committee of the whole Convention, to take into farther consideration, the proposed Constitution of Government.

And then the Convention adjourned until to-morrow morning, nine o'clock.

(a) *Sir William Keith.*

1. For the state of Edmund Pendleton's health, which caused him to miss this session, see his 2 June address, note 3 (RCS:Va., 911-12). The manuscript Journal does not mention that he did not attend this day.

2. Tyler (1747-1813), a Charles City County lawyer, served in the House of Delegates, 1778-86 (speaker, 1781-85). He was a judge of the Court of Admiralty, 1776, 1786-88; the General Court, 1788-1808; and the U.S. District Court for Virginia, 1811-13. To accept the federal judgeship, Tyler resigned the governorship which he had held since 1808. His son John became U.S. President on the death of William Henry Harrison in 1841.

3. In 1788, as provided for in the South Carolina constitution of 1778, the city of Charleston (consisting of two parishes) had 30 (or 14.9 percent) of the 202 seats in the state House of Representatives. With only 6.1 percent of the non-slave population (based on the 1790 federal census), Charleston was overrepresented; other lowcountry parishes were also overrepresented. The constitution of 1778, however, provided that reapportionment was to take place "at the expiration of seven years" (and every fourteen years thereafter), "in the most equal and just manner according to the particular and comparative strength and taxable property of the different parts of the same, regard being always had to the number of white inhabitants and such taxable property" (Thorpe, VI, 3251, 3252).

In 1784 the House of Representatives passed a bill calling a constitutional convention, which would, among other things, probably consider reapportionment. The Senate, however, defeated the bill. In 1785 reapportionment, as provided for by the state constitution, did not take place, and the Senate struck down a second bill to call a convention. The Senate defeated a third attempt in 1787, but in 1789 a convention was finally called. The convention adopted a constitution in 1790 which gave Charleston 15 (or 12.1 percent) of the 124 seats in the House (*ibid.*, 3258).

4. Article VI of the Massachusetts constitution (1780) granted the governor the power to adjourn the legislature for up to ninety days if the two houses disagreed over "the necessity, expediency, or time of adjournment" (Thorpe, III, 1901).

5. Since the early days of Parliament, the knights of the shire and the burgesses were entitled to have their expenses paid by their constituents. During the reign of Edward II (1307-1327), compensation was fixed by the writs of *de levandis expensis* (raising expenses) at four shillings a day for knights and two for burgesses. The knights and burgesses, however, could make private arrangements for more or less expenses. For the most part, these writs ceased to be issued after the reign of Henry VIII (1509-1547), although at least one member of the House of Commons received payment as late as 1681. High property qualifications—£600 a year for the county and £300 a year for the borough (1710)—made the payment of expenses unnecessary because the persons who met these qualifications were well-to-do and did not need to be reimbursed (Theodore F. T. Plucknett, *Taswell-Langmead's English Constitutional History from the Teutonic Conquest to the Present Time* [11th ed., London, 1960], 204-5, 578-79).

6. See at note 5 (above).

7. In 1661, and later in 1671 and 1678, the House of Commons reasserted a privilege that it had held since 1407, namely, that it should originate money bills. The Commons also insisted that the House of Lords could neither alter nor amend money bills, but the Commons admitted in 1671 and 1689 that the Lords had a right to reject money bills. In general, however, the Lords were reluctant to reject money bills because the Crown would be deprived of supplies (Plucknett, *Taswell-Langmead's English Constitu-*

tional History, 187–88, 196, 432, 547–48; and W. C. Costin and J. Steven Watson, *The Law and Working of the Constitution: Documents, 1660–1914* [2nd ed., 2 vols., London, 1961–1964], I, 153–54).

8. The constitutions of seven states specifically mention money bills. In South Carolina, Virginia, Maryland, and New Jersey, the Senate or Legislative Council could neither alter nor amend money bills, although they could be rejected. In Massachusetts, New Hampshire, and Delaware, the Senate or Legislative Council could alter or amend money bills (Thorpe, I, 563; III, 1692–93, 1694–95, 1899; IV, 2462; V, 2596; VI, 3252; and RCS:Va., 534). Both the New Hampshire constitution and the U.S. Constitution borrowed the language of the Massachusetts constitution which stated that “the senate may propose or concur with amendments, as on other bills.”

9. See note 7 (above).

10. There were two delegates named Clay in the Convention, Green Clay of Madison County, Kentucky, and Charles Clay of Bedford County, both of whom voted against ratification of the Constitution. The speaker was probably Green Clay (1757–1826), a member of the House of Delegates, 1787–90. As a former Revolutionary officer, Clay’s interest in the militia, the topic under discussion, was understandable. Moreover, Clay had a keen interest in the militia when he sat in the House of Delegates. Charles Clay (c. 1744–c. 1824) was an Anglican minister, and it is likely that stenographer David Robertson would have identified him as the Reverend Clay.

11. In “A Short Discourse on the Present State of the Colonies in America, with Respect to the Interest of Great Britain,” Sir William Keith (1680–1749), the former governor of Pennsylvania (1717–26), questioned “how far it would consist with good Policy, to accustom all the able Men in the Colonies to be well exercised in Arms.” Instead, it was “more adviseable,” Keith argued, “to keep up a small regular Force in each Province, which on Occasion might be readily augmented; so that in Case of a War, or Rebellion, the whole of the regular Troops on the Continent, might without Loss of Time be united or distributed at Pleasure.”

“A Short Discourse” was presented to George II in 1728, the year that Keith returned to England, and it was printed, along with several of Keith’s other reports on colonial matters, in *A Collection of Papers and Other Tracts, Written Occasionally on Various Subjects. To Which is Prefixed, by Way of Preface, An Essay on the Nature of a Publick Spirit* [London, 1740], 180.

12. See “Cassius” III, 23 April, note 3 (RCS:Va., 753).

13. See Convention Debates, 9 June (RCS:Va., 1066).

14. The most recent laws providing for the arming of the militia were enacted in 1782, 1784, and 1786 (Hening, XI, 174, 479–80; XII, 12–13. For a 1787 act amending the 1786 act, see Hening, XII, 432.).

15. See Madison’s “Notes on Ancient and Modern Confederacies” for references to Holland and Germany (Rutland, *Madison*, IX, 11–22).

16. These amounts, which applied to landed estates, were fixed by an act adopted in 1710 (Costin and Watson, *The Law and Working of the Constitution*, I, 117–18). See note 5, above, for the impact of this act.

17. Shays’s Rebellion.

18. Henry was probably referring two well-known cases during the reign of Charles II. In 1667 Edward Hyde, Earl of Clarendon—Lord Chancellor and chief minister to Charles—fled England fearing a charge of impeachment for high treason. Parliament passed an act ordering him to return and surrender himself for trial, within a specified time; otherwise, he would be banished for life. If Clarendon returned after the specified time, he was subject to the penalties of high treason and could not be pardoned, except by an act of Parliament (Plucknett, *Taswell-Langmead’s Constitutional History of England*, 532).

In 1679 both houses of Parliament challenged Charles II for using his pardoning power to prevent the impeachment of Thomas, Earl of Danby, the Lord High Treasurer.

The Act of Settlement (1701) affirmed the position of Parliament. The act, however, did not prevent the King from pardoning after conviction. (For a lengthier discussion of this case, see James Monroe, *Some Observations*, c. 25 May, RCS:Va., 876-77, note 7.)

19. See the second paragraph of note 18 (immediately above).

20. According to Article V of the Articles of Confederation, delegates to Congress were elected for a term of one year, could serve no more than three years during any six-year period, and could be recalled by their state legislatures (CDR, 87).

21. For George Mason's references to Robert Morris and John Adams, see Convention Debates, 11 June (RCS:Va., 1156-57, 1158).

The Virginia Convention Monday 16 June 1788

Debates

The Convention according to the order of the day, again resolved itself into a Committee of the whole Convention, to take into farther consideration, the proposed plan of Government.—Mr. *Wythe* in the Chair.

(The 8th section still under consideration.)

Mr. *Henry* thought it necessary and proper that they should take a collective view of this whole section, and revert again to the first clause. He adverted to the clause which gives Congress the power of raising armies, and proceeded as follows. To me this appears a very alarming power, when unlimited. They are not only to raise, but to support armies; and this support is to go to the utmost abilities of the United States. If Congress shall say, that the general welfare requires it, they may keep armies continually on foot. There is no controul on Congress in raising or stationing them. They may billet them on the people at pleasure. This unlimited authority is a most dangerous power: Its principles are despotic. If it be unbounded, it must lead to despotism. For the power of the people in a free Government, is supposed to be paramount to the existing power.

We shall be told, that in England, the King, Lords, and Commons, have this power—That armies can be raised by the Prince alone, without the consent of the people. How does this apply here? Is this Government to place us in the situation of the English? Should we suppose this Government to resemble King, Lords, and Commons, we of this State, should be like an English county. An English county cannot controul the Government. Virginia cannot controul the Government of Congress no more than the county of Kent can controul that of England. Advert to the power thoroughly. One of our first

complaints under the former Government, was the quartering of troops upon us. This was one of the principal reasons for dissolving the connection with Great-Britain. Here we may have troops in time of peace. They may be billeted in any manner—to tyrannize, oppress, and crush us.

We are told, we are afraid to trust ourselves.—That our own Representatives—Congress, will not exercise their powers oppressively.—That we will not enslave ourselves.—That the militia cannot enslave themselves, &c. Who has enslaved France, Spain, Germany, Turkey, and other countries which groan under tyranny? They have been enslaved by the hands of their own people. If it will be so in America, it will be only as it has been every where else. I am still persuaded that the power of calling forth the militia to execute the laws of the Union, &c. is dangerous.—We requested the Gentleman [James Madison] to shew the cases where the militia would be wanting to execute the laws. Have we received a satisfactory answer? When we consider this part, and compare it to other parts, which declare that Congress may declare war; and that the President shall command the regular troops, militia, and navy, we will find great danger. Under the order of Congress, they shall suppress insurrections.—Under the order of Congress, they shall be called to execute the laws. It will result of course, that this is to be a Government of force. Look at the part which speaks of excises and you will recollect, that those who are to collect excises and duties, are to be aided by military force. They have power to call them out, and to provide for arming, organizing, and disciplining them.—Consequently they are to make militia laws for this State.—The Honorable Gentleman [James Madison] has said, that the militia should be called forth to quell riots. Have we not seen this business go on very well to this day, without military force? It is a long established principle of the common law of England, that civil force is sufficient to quell riots. To what length may it not be carried? A law may be made, that if twelve men assemble, if they do not disperse, they may be fired upon. I think it is so in England.¹ Does not this part of the paper bear a strong aspect? The Honorable Gentleman, from his knowledge, was called upon to shew the instances, and he told us the militia may be called out to quell riots.—They may make the militia travel, and act under a Colonel, or perhaps under a Constable. Who are to determine whether it be a riot or not? Those who are to execute the laws of the union? If they have power to execute their laws in this manner, in what situation are we placed?—Your men who go to Congress are not restrained by a Bill of Rights. They are not restrained from inflicting unusual and severe punishments: Though the Bill of

Rights of Virginia forbids it—What will be the consequence? They may inflict the most cruel and ignominious punishments on the militia, and they will tell you it is necessary for their discipline.

Give me leave to ask another thing. Suppose an exciseman will demand leave to enter your cellar or house, by virtue of his office; perhaps he may call on the militia to enable him to go. If Congress be informed of it, will they give you redress? They will tell you, that he is executing the laws under the authority of the continent at large, which must be obeyed; for that the Government cannot be carried on without exercising severity. If, without any reservation of rights, or controul, you are contented to give up your rights, I am not. There is no principle to guide the Legislature to restrain them from inflicting the utmost severity of punishment. Will Gentlemen voluntarily give up their liberty? With respect to calling the militia to execute every execution indiscriminately, it is unprecedented. Have we ever seen it done in any free country? Was it ever so in the mother country? It never was so in any well regulated country. It is a Government of force, and the genius of despotism expressly. It is not proved that this power is necessary; and if it be unnecessary, shall we give it up?

Mr. *Madison*,—Mr. Chairman.—I will endeavor to follow the rule of the House; but must pay due attention to the observations which fell from the Gentleman. I should conclude, from abstracted reasoning, that they were ill founded. I should think, that if there were any object, which the General Government ought to command, it would be the direction of the national forces. And as the force which lies in militia is most safe, the direction of that part ought to be submitted to, in order to render another force unnecessary. The power objected to is necessary, because it is to be employed for national purposes. It is necessary to be given to every Government. This is not opinion, but fact. The highest authority may be given;—That the want of such authority in the Government protracted the late war, and prolonged its calamities.

He [Patrick Henry] says, that one ground of complaint at the beginning of the revolution, was, that a standing army was quartered upon us. This was not the whole complaint. We complained because it was done without the local authority of this country,—without the consent of the people of America. As to the exclusion of standing armies in the Bills of Rights of the States, we shall find, that though in one or two of them, there is something like a prohibition, yet in most of them it is only provided, that no armies shall be kept up without the Legislative authority; that is, without the consent of the community itself.² Where is the impropriety of saying we shall have

an army if necessary? Does not the notoriety of this constitute security? If inimical nations were to fall upon us when defenceless, what would be the consequence? Would it be wise to say, that we should have no defence? Give me leave to say, that the only possible way to provide against standing armies, is, to make them unnecessary. The way to do this, is to organize and discipline our militia, so as to render them capable of defending the country against external invasions, and internal insurrections. But it is urged, that abuses may happen.—How is it possible to answer objections against possibility of abuses? It must strike every logical reasoner, that these cannot be entirely provided against. I really thought that the objection to the militia was at an end. Was there ever a Constitution, in which, if authority was vested, it must not have been executed by force, if resisted? Was it not in the contemplation of this State, when contemptuous proceedings were expected, to recur to something of this kind? How is it possible to have a more proper resource than this? That the laws of every country ought to be executed, cannot be denied. That force must be used if necessary, cannot be denied. Can any Government be established, that will answer any purpose whatever, unless force be provided for executing its laws? The Constitution does not say that a standing army shall be called out to execute the laws. Is not this a more proper way? The militia ought to be called forth to suppress smugglers. Will this be denied? The case actually happened at Alexandria. There were a number of smugglers, who were too formidable for the civil power to overcome. The militia quelled the sailors, who, otherwise, would have perpetrated their intentions.³ Should a number of smugglers have a number of ships, the militia ought to be called forth to quell them. We do not know but what there may be combinations of smugglers in Virginia hereafter. We all know the use made of the Isle of Man. It was a general depository of contraband goods. The Parliament found the evil so great, as to render it necessary to wrest it out of the hands of its possessor.⁴

The Honorable Gentleman says, it is a Government of force. If he means *military* force, the clause under consideration proves the contrary. There never was a Government without force. What is the meaning of Government? An institution to make people do their duty. A Government leaving it to a man to do his duty, or not, as he pleases, would be a new species of Government, or rather no Government at all. The ingenuity of the Gentleman is remarkable, in introducing the riot-act of Great-Britain.⁵—That act has no connection, or analogy, to any regulation of the militia: Nor is there any thing in the Constitution to warrant the General Government to make such an act. It never was a complaint in Great-Britain, that the militia could be called forth. If

riots should happen, the militia are proper to quell it, to prevent a resort to another mode.—As to the infliction of ignominious punishments, we have no ground of alarm, if we consider the circumstances of the people at large. There will be no punishments so ignominious as have been inflicted already. The militia law of every State to the north of Maryland, is less rigorous than the particular law of this State.⁶ If a change be necessary to be made by the General Government, it will be in our favor. I think that the people of those States would not agree to be subjected to a more harsh punishment than their own militia laws inflict. An observation fell from a Gentleman, on the same side with myself, which deserves to be attended to. If we be dissatisfied with the national Government—If we should choose to renounce it, this is an additional safe-guard to our defence. I conceive that we are peculiarly interested in giving the General Government as extensive means as possible to protect us. If there be a particular discrimination between places in America, the Southern States are, from their situation and circumstances, most interested in giving the national Government the power of protecting its members.—(Here Mr. *Madison* made some other observations; but spoke so very low, that his meaning could not be comprehended.)—An act passed a few years ago, in this State, to enable the Government to call forth the militia to enforce the laws, when a powerful combination should take place to oppose them.⁷ This is the same power which the Constitution is to have. There is a great deal of difference between calling forth the militia, when a combination is formed to prevent the execution of the laws, and the Sheriff or Constable carrying with him a body of militia to execute them in the first instance; which is a construction not warranted by the clause. There is an act also in this State, empowering the officers of the customs to summon *any* persons to assist them when they meet with obstruction in executing their duty.⁸ This shews the necessity of giving the Government power to call forth the militia when the laws are resisted. It is a power vested in every Legislature in the Union, and which is necessary to every Government.—He then moved, that the Clerk should read those acts,—which were accordingly read.

Mr. *George Mason* asked to what purpose these laws were read? The objection was, that too much power was given to Congress,—power that would finally destroy the State Governments, more effectually by insidious under handed means, than such as could be openly practised. This, said he, is the opinion of many worthy men, not only in this Convention, but in all parts of America. These laws could only shew, that the Legislature of this State could pass such acts. He thought they militated against the cession of this power to Congress, because the

State Governments could call forth the militia when necessary, so as to compel a submission to the laws; and as they were competent to it, Congress ought not to have the power. The meeting of three or four persons might be called an insurrection; and the militia might be called out to disperse them. He was not satisfied with the explanation of the word *organization*, by a Gentleman in the military line (Mr. Lee.) He thought they were not confined to the technical explanation. But that Congress could inflict severe and ignominious punishments on the militia, as a necessary incident to the power of organizing and disciplining them. The Gentleman [James Madison] had said there was no danger, because the laws respecting the militia were less rigid in the other States than this. This was no conclusive argument. His fears, as he had before expressed, were, that grievous punishments would be inflicted in order to render the service disagreeable to the militia themselves, and induce them to wish its abolition, which would afford a pretence for establishing a standing army. He was convinced the State Governments ought to have the controul of the militia, except when they were absolutely necessary for general purposes. The Gentleman had said, that they would be only subject to martial law, when in actual service. He demanded what was to hinder Congress from inflicting it always, and making a general law for the purpose? If so, said he, it must finally produce, most infallibly, the annihilation of the State Governments. These were his apprehensions; but he prayed God they might be groundless.

Mr. *Madison* replied, that the obvious explanation was, that the States were to appoint the officers, and *govern all* the militia except that part which was called into the actual service of the United States. He asked, if powers were given to the General Government, if we must not give it executive power to use it? The vice of the old system was, that Congress could not execute the powers nominally vested in them. If the contested clause were expunged, this system would have nearly the same defect.

Mr. *Henry* wished to know what authority the State Governments had over the militia?

Mr. *Madison* answered, that the State Governments might do what they thought proper with the militia, when they were not in the actual service of the United States.—That they might make use of them to suppress insurrections, quell riots, &c. and call on the General Government for the militia of any other State to aid them if necessary.

Mr. *Henry* replied, that as the clause expressly vested the General Government with power to call them out to suppress insurrections, &c. it appeared to him most decidedly, that the power of suppressing

insurrections was *exclusively* given to Congress. If it remained in the States it was by implication.

Mr. *Corbin*, after a short address to the Chair, in which he expressed extreme reluctance to get up, said, that all contentions on this subject might be ended, by adverting to the fourth section, of the fourth article, which provides, "That the United States shall guarantee to every State in this Union, a Republican form of Government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive, (when the Legislature cannot be convened) against domestic violence." He thought this section gave the States power to use their own militia, and call on Congress for the militia of other States. He observed, that our Representatives were to return every second year to mingle with their fellow-citizens. He asked then, how in the name of God, they would make laws to destroy themselves? The Gentleman had told us, that nothing could be more humiliating, than that the State Governments could not controul the General Government.—He thought the Gentleman might as well have complained, that one county could not controul the State at large.—Mr. *Corbin* then said, that all Confederate Governments had the care of national defence, and that Congress ought to have it. Animadverting on Mr. *Henry's* observation, that the French had been the instruments of their own slavery, that the Germans had enslaved the Germans, and the Spaniards the Spaniards, &c. he asked if those nations knew any thing of representation? The want of this knowledge was the principal cause of their bondage.—He concluded by observing, that the General Government had no power but such as the State Government had, and that arguments against the one, held against the other.

Mr. *Grayson*, in reply to Mr. *Corbin*, said he was mistaken when he produced the fourth section, of the fourth article, to prove that the State Governments had a right to intermeddle with the militia. He was of opinion, that a previous application must be made to the federal head, by the Legislature when in session, or otherwise by the Executive of any State, before they could interfere with the militia.—In his opinion, no instance could be adduced, where the States could employ the militia. For in all the cases wherein they could be employed, Congress had the exclusive direction and controul of them. Disputes, he observed, had happened in many countries, where this power should be lodged. In England there was a dispute between the Parliament and King Charles, who should have power over the militia.⁹ Were this Government well organized, he would not object to giving it power over the militia. But as it appeared to him to be without checks, and to tend to the formation of an Aristocratic body, he could not agree

to it. Thus organized, his imagination did not reach so far as to know where this power should be lodged. He conceived the State Governments to be at the mercy of the generality. He wished to be open to conviction, but he could see no case where the States could command the militia.—He did not believe that it corresponded with the intentions of those who formed it, as it was altogether without an equilibrium. He humbly apprehended that the power of providing for organizing and disciplining the militia, enabled the Government to make laws for regulating them, and inflicting punishments for disobedience, neglect, &c.—Whether it would be the spirit of the generality to lay unusual punishments, he knew not, but he thought they had the power, if they thought proper to exercise it. He thought that if there was a constructive implied power left in the States, yet as the line was not clearly marked between the two Governments, it would create differences. He complained of the uncertainty of the expression, and wished it to be so clearly expressed that the people might see where the States could interfere.

As the exclusive power of arming, organizing, &c. was given to Congress, they might entirely neglect them: Or they might be armed in one part of the Union, and totally neglected in another. This he apprehended to be a probable circumstance. In this he might be thought suspicious: But he was justified by what had happened in other countries. He wished to know what attention had been paid to the militia of Scotland and Ireland, since the Union; and what laws had been made to regulate them? There is, says Mr. *Grayson*, an excellent militia law in England; and such as I wish to be established by the General Government. They have 30,000 select militia in England. But the militia of Scotland and Ireland are neglected. I see the necessity of the concentration of the forces of the Union.¹⁰—I acknowledge that militia are the best means of quelling insurrections, and that we have an advantage over the English Government. For their regular forces answer the purpose. But I object to the want of checks, and a line of discrimination between the State Governments and the generality.¹¹

Mr. *John Marshall*, asked if Gentlemen were serious, when they asserted that if the State Governments had power to interfere with the militia, it was by implication? If they were, he asked the Committee, whether the least attention would not shew that they were mistaken? The State Governments did not derive their powers from the General Government. But each Government derived its powers from the people; and each was to act according to the powers given it. Would any Gentleman deny this? He demanded if powers not given, were retained by implication? Could any man say so? Could any man say, that this

power was not retained by the States, as they had not given it away? For, says he, does not a power remain till it is given away? The State Legislatures had power to command and govern their militia before, and have it still, undeniably, unless there be something in this Constitution that takes it away. For Continental purposes Congress may call forth the militia; as to suppress insurrections and repel invasions. But the power given to the States by the people is not taken away: For the Constitution does not say so. In the Confederation Congress had this power. But the State Legislatures had it also. The power of Legislation given them within the ten miles square is exclusive of the States, because it is expressed to be exclusive. The truth is, that when power is given to the General Legislature, if it was in the State Legislatures before, both shall exercise it; unless there be an incompatibility in the exercise by one, to that by the other; or negative words precluding the State Governments from it. But there are no negative words here. It rests therefore with the States. To me it appears then unquestionable, that the State Governments can call forth the militia, in case the Constitution should be adopted, in the same manner as they could have done, before its adoption. Gentlemen have said, that the States cannot defend itself without an application to Congress, because Congress can interpose! Does not every man feel a refutation of the argument in his own breast? I will shew, that there could not be a combination between those who formed the Constitution, to take away this power. All the restraints intended to be laid on the State Governments (besides where an exclusive power is expressly given to Congress) are contained in the tenth section, of the first article. This power is not included in the restrictions in that section.—But what excludes every possibility of doubt, is the last part of it.—That “no State shall engage in war, *unless actually invaded, or in such imminent danger as will not admit of delay.*” When invaded, they can engage in war; as also when in imminent danger. This clearly proves, that the States can use the militia when they find it necessary. The worthy Member last up [William Grayson], objects to the Continental Government possessing the power of disciplining the militia, because, though all its branches be derived from the people, he says, they will form an Aristocratic Government, unsafe and unfit to be trusted.

Mr. *Grayson* answered, that he only said it was so constructed as to form a great Aristocratic body.

Mr. *Marshall* replied, that he was not certain whether he understood him. But he thought he had said so. He conceived that as the Government was drawn from the people, the feelings and interests of the people would be attended to, and that we would be safe in granting

them power to regulate the militia. When the Government is drawn from the people, continued Mr. *Marshall*, and depending on the people for its continuance, oppressive measures will not be attempted, as they will certainly draw on their authors the resentment of those on whom they depend. On this Government, thus depending on ourselves for its existence, I will rest my safety, notwithstanding the danger depicted by the Honorable Gentleman. I cannot help being surpris'd that the worthy Member thought this power so dangerous. What Government is able to protect you in time of war? Will any State depend on its own exertions?—The consequence of such dependance and withholding this power from Congress will be, that State will fall after State, and be a sacrifice to the want of power in the General Government. *United we are strong, divided we fall.*¹² Will you prevent the General Government from drawing the militia of one State to another, when the consequence would be, that every State must depend on itself? enemy possessing the water, can quickly go from one State to another. No State will spare to another its militia, which it conceives necessary for itself. It requires a superintending power, in order to call forth the resources of all to protect all. If this be not done, each State will fall a sacrifice. This system merits the highest applause in this respect. The Honorable Gentleman said, that a general regulation may be made to inflict punishments. Does he imagine that a militia law is to be engrafted on the scheme of Government, so as to render it incapable of being changed? The idea of the worthy Member supposes, that men will renounce their own interests. This would produce general inconveniences throughout the Union, and would be equally opposed by all the States. But the worthy Member [*William Grayson*] fears, that in one part of the Union they will be regulated and disciplined, and in another neglected. This danger is enhanced by leaving this power to each State; for some States may attend to their militia, and others may neglect them. If Congress neglect our militia, we can arm them ourselves. Cannot Virginia import arms? Cannot she put them into the hands of her militia men? He then concluded by observing, that the power of governing the militia was not vested in the States by implication; because being possessed of it antecedent to the adoption of the Government, and not being divested of it, by any grant or restriction in the Constitution, they must necessarily be as fully possessed of it as ever they had been: And it could not be said, that the States derived any powers from that system, but retained them, though not acknowledged in any part of it.

Mr. *Grayson*, acknowledged that all power was drawn from the people. But he could see none of those checks in it which ought to char-

acterise a free Government. It had not such checks as even the British Government had.—He thought it so organized as to form an Aristocratic body. If we looked at the Democratic branch, and the great extent of country, he said, it must be considered in a great degree to be an Aristocratic representation. As they were elected with craving appetites, and wishing for emoluments, they might unite with the other two branches. They might give reciprocally good offices to one another, and mutually protect each other. For he considered them all as united in interest, and as but one branch. That there was no check to prevent such a combination; nor in cases of concurrent powers was there a line drawn to prevent interferences between the State Governments and the generality.

Mr. *Henry* still retained his opinion, that the States had no right to call forth the militia to suppress insurrections, &c.—But the right interpretation (and such as the nations of the earth had put upon the concession of power) was, that when power was given, it was given exclusively. He appealed to the Committee, if power was not confined in the hands of a *few* in almost all countries of the world. He referred to their candour, if the construction of conceded power, was not an exclusive concession in nineteen-twentieth parts of the world. The nations which retained their liberty, were comparatively few. America would add to the number of the oppressed nations, if she depended on constructive rights, and argumentative implication: That the powers given to Congress were exclusively given, was very obvious to him. The rights which the States had must be founded on the restrictions on Congress.—He asked, if the doctrine which had been so often circulated, that rights not given were retained, was true, why there were negative clauses to restrain Congress? He told Gentlemen, that these clauses were sufficient to shake all their implication[s]. For, says he, if Congress had no power but what was given them, why restrict them by negative words? Is not the clear implication this—that if these restrictions were not inserted, they could have performed what they prohibit? The worthy Member [John Marshall] had said, that Congress ought to have power to protect all, and had given this system the highest encomium. But still insisted that the power over the militia was concurrent.—To obviate the futility of this doctrine, Mr. *Henry* alledged that it was not reducible to practice. Examine it, says he—Reduce it to practice. Suppose an insurrection in Virginia, and suppose there be danger apprehended of an insurrection in another State, from the exercise of the Government; or suppose a national war, and there be discontents among the people of this State that produces or threatens an insurrection; suppose Congress in either case, demands a number

of militia; will they not be obliged to go? Where are your reserved rights, when your militia go to a neighbouring State? Which call is to be obeyed, the Congressional call, or the call of the State Legislature? The call of Congress must be obeyed. I need not remind this Committee that the sweeping clause will cause their demands to be submitted to.—This clause enables them “to make all laws which shall be necessary and proper to carry into execution all the powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.”—Mr. Chairman, I will turn to another clause, which relates to the same subject, and tends to shew the fallacy of their argument. The tenth section, of the first article, to which reference was made by the worthy Member [John Marshall], militates against himself. It says, that “no State shall engage in war, unless actually invaded.” If you give this clause a fair construction, what is the true meaning of it? What does this relate to? Not domestic insurrections, but war. If the country be invaded, a State may go to war; but cannot suppress insurrections. If there should happen an insurrection of slaves, the country cannot be said to be invaded.—They cannot therefore suppress it, without the interposition of Congress. The fourth section, of the fourth article, expressly directs, that in case of domestic violence, Congress shall protect the States on application of the Legislature or Executive; and the eighth section, of the first article, gives Congress power, to call forth the militia to quell insurrections: There cannot therefore be a concurrent power. The State Legislatures ought to have power to call forth the efforts of militia when necessary. Occasions for calling them out may be urgent, pressing, and instantaneous. The States cannot now call them, let an insurrection be ever so perilous, without an application to Congress. So long a delay may be fatal.

There are three clauses which prove beyond a possibility of doubt, that Congress, and *Congress only*, can call forth the militia. The clause giving Congress power to call them out to suppress insurrections, &c.—that which restrains a State from engaging in war, except when actually invaded,—and that which requires Congress to protect the States against domestic violence, render it impossible, that a State can have power to intermeddle with them. Will not Congress find refuge for their actions in these clauses? With respect to the concurrent jurisdiction, it is a political monster of absurdity. We have passed that clause which gives Congress an unlimited authority over the national wealth; and here is an unbounded controul over the national strength. Notwithstanding this clear and unequivocal relinquishment of the power of controuling the militia, you say the States retain it for the very

purposes given to Congress. Is it fair to say, that you gave the power of arming the militia, and at the same time say you reserve it? This great national Government ought not to be left in this condition. If it be, it will terminate in the destruction of our liberties.

Mr. *Madison*,—Mr. Chairman.—Let me ask this Committee, and the Honorable Member last up [Patrick Henry], what we are to understand from this reasoning? The power must be vested in Congress, or in the State Governments; or there must be a division or concurrence.—He is against division—It is a political monster. He will not give it to Congress for fear of oppression. Is it to be vested in the State Governments? If so, where is the provision for general defence? If ever America should be attacked, the States would fall successively. It will prevent them from giving aid to their sister States.—For, as each State will expect to be attacked, and wish to guard against it, each will retain its own militia for its own defence. Where is this power to be deposited then, unless in the General Government, if it be dangerous to the public safety to give it exclusively to the States? If it must be divided, let him shew a better manner of doing it than that which is in the Constitution. I cannot agree with the other Honorable Gentleman [William Grayson], that there is no check. There is a powerful check in that paper. The State Governments are to govern the militia, when not called forth for general national purposes; and Congress is to govern such part only as may be in the actual service of the Union. Nothing can be more certain and positive than this. It expressly empowers Congress to govern them when in the service of the United States. It is then clear, that the States govern them when they are not. With respect to suppressing insurrections, I say that those clauses which were mentioned by the Honorable Gentleman [Patrick Henry], are compatible with a concurrence of the power. By the first, Congress is to call them forth to suppress insurrections and repel invasions of foreign powers. A concurrence in the former case is necessary, because a whole State may be in insurrection against the Union. What has passed will perhaps justify this apprehension. The safety of the Union, and particular States, requires that the General Government should have power to repel foreign invasions. The fourth section, of the fourth article, is perfectly consistent with the exercise of the power by the States. The words are, “The United States shall guarantee to every State in this Union, a Republican form of Government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive, (when the Legislature cannot be convened) against domestic violence.”—The word *invasion* here, after power had been given in the former clause to repel *invasions*, may be thought

tautologous, but it has a different meaning from the other. This clause speaks of a particular State. It means that it shall be protected from invasion by other States. A Republican Government is to be guaranteed to each State, and they are to be protected from invasion from other States, as well as from foreign powers: And on application by the Legislature or Executive, as the case may be, the militia of other States are to be called to suppress domestic insurrections. Does this bar the States from calling forth their own militia? No.—But it gives them a supplementary security to suppress insurrections and domestic violence. The other clause runs in these words, “No State shall, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.” They are restrained from making war, unless invaded, or *in imminent danger*.—When in such danger, they are not restrained. I can perceive no competition in these clauses. They cannot be said to be repugnant to a concurrence of the power. If we object to the Constitution in this manner, and consume our time in verbal criticism, we shall never put an end to the business.

Mr. *George Mason*.—Mr. Chairman.—A worthy Member has asked, who are the militia, if they be not the *people* of this country, and if we are not to be protected from the fate of the Germans, Prussians, &c. by our representation? I ask who *are* the militia? They consist now of the whole people, except a few public officers. But I cannot say who will be the militia of the future day. If that paper on the table gets no alteration, the militia of the future day may not consist of all classes, high and low, and rich and poor; but may be confined to the lower and middle classes of the people, granting exclusion to the higher classes of the people. If we should ever see that day, the most ignominious punishments and heavy fines may be expected. Under the present Government all ranks of people are subject to militia duty. Under such a full and equal representation as ours, there can be no ignominious punishments inflicted. But under this national, or rather consolidated Government, the case will be different. The representation being so small, and inadequate, they will have no fellow-feeling for the people. They may discriminate people in their own predicament, and exempt from militia duty all the officers and lowest creatures of the national Government. If there were a more particular definition of their powers, and a clause exempting the militia from martial law, except when in actual service, and from fines and punishments of an unusual nature, then we might expect that the militia would be what they are. But if

this be not the case, we cannot say how long all classes of people will be included in the militia. There will not be the same reason to expect it, because the Government will be administered by different people. We know what they are now, but know not how soon they may be altered.

Mr. *George Nicholas*.—Mr. Chairman.—I feel apprehensions lest the subject of our debates should be misunderstood. Every one wishes to know the true meaning of the system:—But I fear those who hear us will think we are captiously quibbling on words. We have been told in the course of this business, that the Government will operate like a *screw*. Give me leave to say, that the exertions of the opposition are like that instrument. They catch at every thing, and take it into their vortex. The worthy Member [*George Mason*] says, that this Government is defective because it comes from the people. Its greatest recommendation with me is putting the power in the hands of the people. He disapproves of it, because it does not say in what particular instances the militia shall be called out to execute the laws. This is a power of the Constitution, and particular instances must be defined by the Legislature. But, says the worthy Member, those laws which have been read, are arguments against the Constitution, because they shew that the States are now in possession of the power, and competent to its execution.—Would you leave this power in the States, and by that means deprive the General Government of a power which will be necessary for its existence? If the State Governments find this power necessary, ought not the General Government to have a similar power? But, Sir, there is no State check in this business. The Gentleman near me [*John Marshall*] has shewn that there is a very important check.

Another worthy Member [*Patrick Henry*] says, there is no power in the States to quell an insurrection of slaves. Have they it now? If they have, does the Constitution take it away? If it does, it must be in one of the three clauses which have been mentioned by the worthy Member. The first clause gives the General Government power to call them out when necessary. Does this take it away from the States? No—but it gives an additional security: For, besides the power in the State Governments to use their own militia, it will be the duty of the General Government to aid them with the strength of the Union when called for. No part of this Constitution can shew that this power is taken away.

But an argument is drawn from that clause, which says, that “No State shall engage in war unless actually invaded, or in such imminent danger as will not admit of delay.”—What does this prohibition amount to? It must be war with a foreign enemy, that the States are prohibited

from making: For the exception to the restriction proves it.—The restriction includes only offensive hostility, as they are at liberty to engage in war when invaded, or in imminent danger. They are therefore not restrained from quelling domestic insurrections, which are totally different from making war with a foreign power. But the great thing to be dreaded, is, that during an insurrection, the militia will be called out from the State. This is his kind of argument. Is it possible that at such a time the General Government would order the militia to be called? It is a groundless objection to work on Gentlemen's apprehensions within these walls. As to the fourth article it was introduced wholly for the particular aid of the States. A Republican form of Government is guaranteed, and protection is secured against invasion and domestic violence on application. Is not this a guard as strong as possible? Does it not exclude the unnecessary interference of Congress, in business of this sort?

The Gentleman over the way [George Mason], cannot tell who will be the militia at a future day, and enumerates dangers of select militia. Let me attend to the nature of Gentlemen's objections. One [George Mason] objects because there will be select militia—Another [William Grayson] objects because there will be no select militia.—And yet both oppose it on these contradictory principles. If you deny the General Government the power of calling out the militia, there must be a recurrence to a standing army.—If you are really jealous of your liberties, confide in Congress.

Mr. *Mason* arose, and said, that he was totally misunderstood. The contrast between his friend's [William Grayson] objection and his, was improper. His friend had mentioned the propriety of having select militia, like those of Great-Britain, who should be more thoroughly exercised than the militia at large could possibly be. But *he*, himself, had not spoken of a selection of militia, but of the exemption of the highest classes of the people from militia service; which would justify apprehensions of severe and ignominious punishments.

Mr. *Nicholas* wished to know, whether the Representatives of the people would consent to such exemptions, as every man who had 25 acres of land, could vote for a Federal Representative?

Mr. *Grayson*,—Mr. Chairman.—I conceive that the power of providing and maintaining a navy is at present dangerous, however warmly it may be urged by Gentlemen, that America ought to become a maritime power. If we once give such power, we put it in the hands of men whose interest it will be to oppress us. It will also irritate the nations of Europe against us. Let us consider the situation of the maritime powers of Europe: They are separated from us by the Atlantic

ocean. The riches of all those countries come by sea. Commerce and navigation are the principal sources of their wealth. If we become a maritime power, we shall be able to participate of their most beneficial business. Will they suffer us to put ourselves in a condition to rival them? I believe the first step of any consequence, which will be made towards it, will bring war upon us. Their ambition and avarice, most powerfully impel them to prevent our becoming a naval nation. We should on this occasion consult our ability. Is there any Gentleman here who can say, that America can support a navy?—The riches of America are not sufficient to bear the enormous expence it must certainly occasion. I may be supposed to exaggerate, but I leave it to the Committee to judge whether my information be right or not. It is said, that shipwrights can be had on better terms in America than in Europe: But necessary materials are so much dearer in America than in Europe, that the aggregate sum would be greater. A seventy-four gun ship will cost you 98,000 l. including guns, tackle, &c. According to the usual calculation in England, it will cost you the further sum of 48,000 l. to man it, furnish provisions, and pay officers and men. You must pay men more here than in Europe, because their Governments being arbitrary, they can command the services of their subjects, without an adequate compensation.—So that, in all, the expences of such a vessel would be 140,000 l. in one year. Let Gentlemen consider then, the extreme difficulty of supporting a navy, and they will concur with me, that America cannot do it. I have no objection to such a navy as will not excite the jealousy of the European countries. But I would have the Constitution say, that no greater number of ships should be had, than would be sufficient to protect our trade. Such a fleet would not probably offend the Europeans. I am not of a jealous disposition: But when I consider that the welfare and happiness of my country are in danger, I beg to be excused for expressing my apprehensions. Let us consider how this navy shall be raised. What would be the consequence under those general words, “To provide and maintain a navy?” All the vessels of the intended fleet, would be built and equipped in the Northern States, where they have every necessary material and convenience for the purpose. Will any Gentleman say, that any ship of war can be raised to the South of Cape Charles?¹³ The consequence will be, that the Southern States will be in the power of the Northern States. We should be called upon for our share of the expences, without having equal emoluments. Can it be supposed, when this question comes to be agitated in Congress, that the Northern States will not take such measures as will throw as much circulating money among them as possible, without any consideration to the other States? If I

know the nature of man, and I believe I do, they will have no consideration for us. But supposing it were not so, America has nothing at all to do with a fleet. Let us remain for some time in obscurity, and rise by degrees. Let us not precipitately provoke the resentment of the maritime powers of Europe. A well regulated militia ought to be the defence of this country. In some of our Constitutions it is said so. This Constitution should have inculcated the principle. Congress ought to be under some restraint in this respect.—Mr. *Grayson* then added, that the Northern States would be principally benefited by having a fleet. That a majority of the States could vote the raising a great navy, or enter into any other commercial regulation very detrimental to the other States. In the United Netherlands there was much greater security, as the commercial interest of no State could be sacrificed without its own consent.¹⁴ The raising a fleet was the daily and favourite subject of conversation in the Northern States. He apprehended, that if attempted, it would draw us into a war with Great-Britain or France. As the American fleet would not be competent to the defence of all the States, the Southern States would be most exposed. He referred to the experience of the late war, as a proof of what he said. At the period the Southern States were most distressed, the Northern States he said, were most happy. They had privateers in abundance, whereas we had but few. Upon the whole, he thought we should depend on our troops on shore, and that it was very impolitic to give this power to Congress, without any limitation.

Mr. *Nicholas* remarked, that the Gentleman last up [William Grayson] had made two observations—The one, that we ought not to give Congress power to raise a navy; and the other, that we had not the means of supporting it. Mr. *Nicholas* thought it a false doctrine. Congress, says he, has a discretionary power to do it when necessary. They are not bound to do it in five or ten years, or at any particular time. It is presumeable therefore, they will postpone it till it be proper.

Mr. *Grayson* had no objection to giving Congress power of raising such a fleet as suited the circumstances of the country. But he could not agree to give that unlimited power which was delineated in that paper.

Adverting to the clause investing Congress with the power of exclusive Legislation in a district not exceeding ten miles square; he said, he had before expressed his doubts, that this district would be the favourite of the generality, and that it would be possible for them to give exclusive privileges of commerce to those residing within it.¹⁵ He had illustrated what he said by European examples. It might be said to be impracticable to exercise this power, in this manner.—Among

the various laws and customs which pervaded Europe, there were exclusive privileges and immunities enjoyed in many places. He thought that this ought to be guarded against: For should such exclusive privileges be granted to merchants residing within the ten miles square, it would be highly injurious to the inhabitants of the other States.

Mr. *George Mason* thought there were few clauses in the Constitution so dangerous as that which gave Congress exclusive power of legislation within ten miles square.—Implication, he observed, was capable of any extension, and would probably be extended to augment the Congressional powers. But here there was no need of implication. This clause gave them an unlimited authority in every possible case within that district. This ten miles square, says Mr. *Mason*, may set at defiance the laws of the surrounding States, and may, like the custom of the superstitious days of our ancestors, become the sanctuary of the blackest crimes. Here the Federal Courts are to sit. We have heard a good deal said of justice. It has been doubted whether jury trial be secured in civil cases. But I will suppose, that we shall have juries in civil cases. What sort of a jury shall we have within the ten miles square? The immediate creatures of the Government. What chance will poor men get, where Congress have power of legislating in all cases whatever, and where Judges and juries may be under their influence, and bound to support their operations? Even with juries the chance of justice may here be very small, as Congress have unlimited authority, Legislative, Executive, and Judicial. Lest this power should not be sufficient, they have it in every case. Now, Sir, if an attempt should be made to establish tyranny over the people, here are ten miles square, where the greatest offender may meet protection.—If any of their officers, or creatures, should attempt to oppress the people, or should actually perpetrate the blackest deed, he has nothing to do, but get into the ten miles square. Why was this dangerous power given?—Felons may receive an asylum there, and in their strong holds. Gentlemen have said that it was dangerous to argue against possible abuse, because there could be no power delegated but might be abused. It is an incontrovertible axiom, that when the dangers that may arise from the *abuse*, are greater than the benefits that may result from the *use*, the power ought to be withheld. I do not conceive that this power is at all necessary, though capable of being greatly abused.

We are told by the Honorable Gentleman [Edmund Randolph], that Holland has its Hague. I confess I am at a loss to know what inference he would draw from that observation. This is the place where the deputies of the United Provinces meet to transact the public business. But I do not recollect that they have any exclusive jurisdiction whatever

in that place, but are subject to the laws of the Province in which the Hague is. To what purpose the Gentleman mentioned that Holland has its Hague, I cannot see.¹⁶

Mr. *Mason* then observed, that he would willingly give them exclusive power as far as respected the police and good government of the place, but he would give them no more, because he thought it unnecessary. He was very willing to give them in this, as well as in all other cases, those powers which he thought indispensably necessary.

Mr. *Madison*,—Mr. Chairman.—I did conceive, Sir, that the clause under consideration, was one of those parts which would speak its own praise. It is hardly necessary to say any thing concerning it. Strike it out of the system, and let me ask, whether there would not be much larger scope for those dangers? I cannot comprehend that the power of legislating over a small district, which *cannot* exceed ten miles square, and *may not* be more than one mile, will involve the dangers which he apprehends. If there be any knowledge in my mind, of the nature of man, I should think it would be the last thing that would enter into the mind of any man, to grant exclusive advantages in a very circumscribed district to the prejudice of the community at large. We make suppositions, and afterwards deduce conclusions from them, as if they were established axioms. But after all, bring home this question to yourselves. Is it probable that the Members from Georgia, New-Hampshire, &c. will concur to sacrifice the privileges of their friends? I believe, that whatever State may become the seat of the General Government, it will become the object of the jealousy, and of the envy of the other States. Let me remark, if not already remarked, that there must be a particular cession by particular States, of the district to Congress, and that the States may settle the terms of the cession.—The States may make what stipulation they please in it, and if they apprehend any danger, they may refuse it altogether. How could the General Government be guarded from the undue influence of particular States, or from insults, without such exclusive power? If it were at the pleasure of a particular State to controul the session and deliberations of Congress, would they be secure from insults or the influence of such State? If this Commonwealth depended for the freedom of deliberation, on the laws of any State where it might be necessary to sit, would it not be liable to attacks of that nature (and with more indignity) which has been already offered to Congress?¹⁷ With respect to the Government of Holland, I believe the States General have no jurisdiction over the Hague.¹⁸ But I have heard *that* mentioned as a circumstance which gave undue influence to Holland over the rest. We must limit our apprehensions to certain degrees of prob-

ability. The evils which they urge must result from this clause, are extremely improbable: Nay, almost impossible.

Mr. *Grayson*,—Mr. Chairman.—One answer which has been given, is the improbability of the evil,—That it will never be attempted; and that it is almost impossible. This will not satisfy us, when we consider the great attachment men have to a great and magnificent capital. It would be the interest of the citizens of that district, to aggrandize themselves by every possible means in their power, to the great injury of the other States. If we travel all over the world, we will find that people have aggrandized their own capitals. Look at Russia and Prussia. Every step has been taken to aggrandize their capitals. In what light are we to consider the ten miles square? It is not to be a fourteenth State. The inhabitants will, in no respect whatever, be amenable to the laws of any State. A clause in the fourth article, highly extolled for its wisdom, will be rendered nugatory by this exclusive legislation. This clause runs thus, “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 the claim of the party to whom such service or labour may be due.”—Unless you consider the ten miles square as a State, persons bound to labour who shall have escaped thither, will not be given up. For they are only to be delivered up after they shall have escaped into a State. As my honorable friend [George Mason] mentioned, felons who shall have fled from justice to the ten miles square, cannot be apprehended. The Executive of a State is to apply to that of another, for the delivery of a felon. He cannot apply to the ten miles square. It was often in contemplation of Congress to have power of regulating the police of the seat of Government; but they never had an idea of an exclusive legislation in all cases.¹⁹ The power of regulating the police and good government of it, will secure Congress against insults. What originated the idea of the exclusive legislation was, some insurrection in Pennsylvania, whereby Congress was insulted, on account of which it is supposed they left the State.²⁰

It is answered, that the consent of the State must be required, or else they cannot have such a district, or places for the erecting of forts, &c. But how much is already given them? Look at the great country to the North West of the Ohio, extending to and commanding the lakes.—Look at the other end of the Ohio, towards South-Carolina, extending to the Mississippi. See what these in process of time may amount to. They may grant exclusive privileges to any particular part of which they have the possession. But it may be observed, that those extensive countries shall be formed into independent States, and that

their consent will be necessary. To this I answer, that they may still grant such privileges, as that country is already granted to Congress by the States. The grants of Virginia, South-Carolina, and other States, will be subservient to Congress in this respect. Of course it results from the whole, that requiring the consent of the States will be no guard against this abuse of power.

A desultory conversation ensued.

Mr. *Nicholas* insisted that as the State within which the ten miles square might be, could prescribe the terms on which Congress should hold it, no danger could arise, as no State would consent to injure itself. There was the same security with respect to the places purchased for the erection of forts, magazines, &c. and as to the territory of the United States, the power of Congress only extended to make needful rules and regulations concerning it, without prejudicing the claim of any particular State; the right of territory not being given up. That the grant of those lands to the United States, was for the general benefit of all the States, and not to be perverted to their prejudice. That consequently whether that country were formed into new States or not, the danger apprehended could not take place. That the seat of Government was to be still a part of a State, and as to general regulations, was to be considered as such.

Mr. *Grayson*, on the other hand, contended, that the ten miles square could not be viewed as a State; and that the State within which it might be, would have no power of legislating over it, and that consequently persons bound to labour, and felons, might receive protection there; and that exclusive emoluments might be granted to those residing within it. That the territory of the United States, being a part of no State or States, might be appropriated to what use Congress pleased, without the consent of any State or States, and that consequently such exclusive privileges and exemptions might be granted, and such protection afforded to fugitives, within such places as Congress should think proper. That after mature consideration, he could not find that the ten miles square was to be looked upon even as a part of a State, but to be totally independent of all, and subject to the exclusive legislation of Congress.

Mr. *Lee*, of *Westmoreland*, strongly expatiated on the impossibility of securing any human institution from possible abuse. He thought the powers conceded in the paper on the table not so liable to be abused as the powers of the State Governments. Gentlemen had suggested that the seat of Government would become a sanctuary for state villains, and that in a short time ten miles square would subjugate a country of 800 miles square. This appeared to him a most improbable

possibility; nay, he might call it impossibility. Were the place crowded with rogues, he asked, if it would be an agreeable place of residence to the Members of the General Government, who were freely chosen by the people and the State Governments? Would the people be so lost to honour and virtue, as to select men who would willingly associate with the most abandoned characters? He thought the Honorable Gentleman's [George Mason] objections against remote possibility of abuse went to prove, that Government of no sort was eligible, but that a state of nature was preferable to a state of civilization. He apprehended no danger, and thought that persons bound to labour, and felons, could not take refuge in the ten miles square, or other places exclusively governed by Congress, because it would be contrary to the Constitution, and a palpable usurpation to protect them.

Mr. *Henry* entertained strong suspicions that great dangers must result from the clause under consideration. They were not removed, but rather confirmed by the remarks of the Honorable Gentleman [James Madison], in saying, that it was extremely improbable that the Members from New-Hampshire and Georgia, would go and legislate exclusively in the ten miles square. If it was so improbable, why ask the power?—Why demand a power which was not to be exercised?—Compare this power, says he, to the next clause, which gives them power to make all laws which shall be necessary to carry their laws into execution. By this they have a right to pass any law that may facilitate the execution of their acts. They have a right by this clause to make a law that such a district shall be set apart for any purpose they please; and that any man who shall act contrary to their commands, within certain ten miles square, or any place they may select, and strong holds, shall be hanged without benefit of clergy. If they think any law necessary for their personal safety, after perpetrating the most tyrannical and oppressive deeds, cannot they make it by this sweeping clause? If it be necessary to provide, not only for this, but for any department or officer of Congress, does not this clause enable them to make a law for the purpose? And will not these laws, made for those purposes, be paramount to the laws of the States? Will not this clause give them a right to keep a powerful army continually on foot, if they think it necessary to aid the execution of their laws? Is there any act, however atrocious, which they cannot do by virtue of this clause? Look at the use which has been made in all parts of the world of that human thing, called power. Look at the predominant thirst of dominion which has invariably and uniformly prompted rulers to abuse their powers. Can you say, that you will be safe when you give such unlimited powers, without any real responsibility?—Will you

be safe when you trust men at Philadelphia with power to make *any law* that will enable them to carry their acts into execution? Will not the Members of Congress have the same passions which other rulers have had? They will not be superiour to the frailties of human nature. However cautious you may be in the selection of your Representatives, it will be dangerous to trust them with such unbounded powers. Shall we be told, when about to grant such illimitable authority, that it shall never be exercised? I conjure you once more to remember the admonition of that sage man who told you, that when you give power, you know not what you give. I know the absolute necessity of an energetic Government. But is it consistent with any principle of prudence or good policy, to grant unlimited, unbounded authority, which is so totally unnecessary, that Gentlemen say it will never be exercised? But Gentlemen say, that we must make experiments. A wonderful and unheard of experiment it will be, to give unlimited power unnecessarily! I admit my inferiority in point of historical knowledge: But I believe no man can produce an instance of an unnecessary and unlimited power, given to a body independent of the Legislature, within a particular district.—Let any man in this Convention shew me an instance of such separate and different powers of legislation in the same country. Shew me an instance, where a part of a community was independent of the whole. The people within that place, and the strong holds, may be excused from all the burdens imposed on the rest of the society; and may enjoy exclusive emoluments, to the great injury of the rest of the people. But Gentlemen say, that the power will not be abused. They ought to shew that it is necessary. All their powers may be fully carried into execution, without this exclusive authority in the ten miles square. The sweeping clause will fully enable them to do what they please. What could the most extravagant and boundless imagination ask, but power to do every thing? I have reason to suspect ambitious grasps at power. The experience of the world teaches me the jeopardy of giving enormous power. Strike this clause out of the form of the Government, and how will it stand? Congress will still have power, by the sweeping clause, to make laws within that place, and the strong holds, independently of the local authority of the State. I ask you, if this clause be struck out, whether the sweeping clause will not enable them to protect themselves from insult? If you grant them these powers you destroy every degree of responsibility. They will fully screen them from justice, and preclude the possibility of punishing them. No instance can be given of such a wanton grasp of power—as an exclusive legislation in all cases whatever.

Mr. *Madison*,—Mr. Chairman.—I am astonished that the Honorable Member should launch out into such strong descriptions without any occasion. Was there ever a Legislature in existence that held their sessions at a place w[h]ere they had not jurisdiction? I do not mean such a Legislature as they have in Holland; for it deserves not the name. Their powers are such as Congress have now; which we find not reducible to practice. If you be satisfied with the shadow and form instead of the substance, you will render them dependent on the local authority. Suppose the Legislature of this country should sit in Richmond, while the exclusive jurisdiction of the place was in some particular county, would this country think it safe, that the general good should be subject to the paramount authority of a part of the community?

The Honorable Member [Patrick Henry] asks, why ask for this power, and if the subsequent clause be not fully competent for the same purpose? If so, what new terrors can arise from this particular clause? It is only a superfluity. If that latitude of construction which he contends for, were to take place with respect to the sweeping clause, there would be room for those horrors. But it gives no supplementary power: It only enables them to execute the delegated powers. If the delegation of their powers be safe, no possible inconvenience can arise from this clause. It is at most but explanatory: For when any power is given, its delegation necessarily involves authority to make laws to execute it.—Were it possible to delineate on paper, all those particular cases and circumstances in which legislation by the General Legislature would be necessary, and leave to the States all the other powers, I imagine no Gentleman would object to it. But this is not within the limits of human capacity.—The particular powers which are found necessary to be given, are therefore delegated generally, and particular and minute specification is left to the Legislature.—(Here Mr. *Madison* spoke of the distinction between regulation of police and legislation; but so low he could not be heard.)—When the Honorable Member objects to giving the General Government jurisdiction over the place of their session, does he mean that it should be under the controul of any particular State, that might at a critical moment seize it? I should have thought that this clause would have met with the most cordial approbation. As the consent of the State in which it may be, must be obtained, and as it may stipulate the terms of the grant; should they violate the particular stipulations, it would be an usurpation: So that if the Members of Congress were to be guided by the laws of their country, none of those dangers could arise.—(Mr. *Madison* made several other remarks, which could not be heard.)

Mr. *Henry* replied, that if Congress were vested with supreme power of legislation, paramount to the Constitution and laws of the States, the dangers he had described might happen; for that Congress would not be confined to the enumerated powers. This construction was warranted, in his opinion, by the addition of the word *department* at the end of the clause; and that they could make any laws which they might think necessary to execute the powers of any *department* or *officer* of the Government.

Mr. *Pendleton*,—Mr. Chairman.—This clause does not give Congress power to impede the operation of any part of the Constitution, or to make any regulation that may affect the interests of the citizens of the Union at large. But it gives them power over the local police of the place, so as to be secured from any interruption in their proceedings. Notwithstanding the violent attack upon it, I believe, Sir, this is the fair construction of the clause. It gives them power of exclusive legislation in any case within that district. What is the meaning of this? What is it opposed to? Is it opposed to the general powers of the Federal Legislature, or to those of the State Legislatures? I understand it as opposed to the Legislative power of that State where it shall be. What then is the power? It is that Congress shall exclusively legislate there, in order to preserve the police of the place, and their own personal independence; that they may not be over-awed or insulted; and of course to preserve them in opposition to any attempt by the State where it shall be. This is the *fair* construction. Can we suppose, that in order to effect these salutary ends, Congress will make it an asylum for villains and the vilest characters from all parts of the world? Will it not degrade their own dignity to make it a sanctuary for villains? I hope that no man that will ever compose that Congress, will associate with the most profligate characters.

Why oppose this power? Suppose they were contrary to the sense of their constituents, to grant exclusive privileges to citizens residing within that place; the effect would be directly in opposition to what he says. It could have no operation without the limits of that district. Were Congress to make a law granting them an exclusive privilege of trading to the East-Indies, it could have no effect the moment it would go without that place. For their exclusive power is confined to that district. Were they to pass such a law, it would be nugatory, and every member of the community at large, could trade to the East-Indies as well as the citizens of that district. This exclusive power is limited to that place solely, for their own preservation, which all Gentlemen allow to be necessary. Will you pardon me when I observe, that their construction of the preceding clause, does not appear to me to be natural, or warranted by the words? They say that the State Governments have

no power at all over the militia. The power of the General Government to provide for arming and organizing the militia, is to introduce an uniform system of discipline to pervade the United States of America. But the power of *governing* the militia, so far as it is in Congress, extends only to such part of them as may be employed in the service of the United States. When not in their service, Congress has no power to govern them.—The States then have the sole government of them. And though Congress *may* provide for arming them, and prescribe the mode of discipline, yet the States have the authority of training them according to the uniform discipline prescribed by Congress. But there is nothing to preclude them from arming and disciplining them should Congress neglect to do it. As to calling the militia to execute the laws of the Union, I think the fair construction is directly opposite to what the Honorable Member [Patrick Henry] says. The fourth section, of the fourth article, contains nothing to warrant the supposition, that the States cannot call them forth to suppress domestic insurrections.—(Here he read the section.)—All the restraint here contained, is, that Congress may at their pleasure, on application of the State Legislature, or (in vacation) of the Executive, protect each of the States against domestic violence. This is a restraint on the General Government not to interpose. The State is in full possession of the power of using its own militia to protect itself against domestic violence; and the power in the General Government cannot be exercised, or interposed, without the application of the State itself. This appears to me to be the obvious and fair construction.

With respect to the necessity of the ten miles square being superseded by the subsequent clause, which gives them power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof; I understand that clause as not going a single step beyond the delegated powers. What can it act upon? Some power given by this Constitution. If they should be about to pass a law in consequence of this clause, they must pursue some of the delegated powers; but can by no means depart from them, or arrogate any new powers. For the plain language of the clause is to give them power to pass laws in order to give effect to the delegated powers.

Mr. *George Mason*.—Mr. Chairman.—Gentlemen say there is no new power given by this clause. Is there any thing in this Constitution which secures to the States the powers which are said to be retained? Will powers remain to the States which are not expressly guarded and reserved? I will suppose a case. Gentlemen may call it an impossible

case, and suppose that Congress will act with wisdom and integrity. Among the enumerated powers, Congress are to lay and collect taxes, duties, imposts, and excises; and to pay the debts, and provide for the general welfare and common defence; and by that clause (so often called the sweeping clause) they are to make all laws necessary to execute those laws. Now suppose oppressions should arise under this Government, and any writer should dare to stand forth and expose to the community at large, the abuses of those powers. Could not Congress, under the idea of providing for the general welfare, and under their own construction, say, that this was destroying the general peace, encouraging sedition, and poisoning the minds of the people? And could they not, in order to provide against this, lay a dangerous restriction on the press? Might they not even bring the trial of this restriction within the ten miles square, when there is no prohibition against it? Might they not thus destroy the trial by jury? Would they not extend their implication? It appears to me that they may and will.— And will the support of our rights depend on the bounty of men whose interest it may be to oppress us? That Congress should have power to provide for the general welfare of the Union, I grant. But I wish a clause in the Constitution with respect to all powers which are not granted, that they are retained by the States. Otherwise the power of providing for the general welfare may be perverted to its destruction. Many Gentlemen whom I respect, take different sides of this question— We wish this amendment to be introduced to remove our apprehensions. There was a clause in the Confederation reserving to the States respectively, every power, jurisdiction, and right, not expressly delegated to the United States.²¹ This clause has never been complained of, but approved of by all. Why not then have a similar clause in this Constitution, in which it is the more indispensably necessary than in the Confederation, because of the great augmentation of power vested in the former? In my humble apprehension, unless there be some such clear and finite expression, this clause now under consideration will go to any thing our rulers may think proper. Unless there be some express declaration, that every thing not given up is retained, it will be carried to any power Congress may please.

Mr. *Henry* moved to read from the eighth to the thirteenth article of the Declaration of Rights, which was done.²²

Mr. *George Nicholas*, in reply to the Gentlemen opposed to the clause under debate, went over the same grounds, and developed the same principles, which Mr. *Pendleton* and Mr. *Madison* had done. The opposers of the clause which gave the power of providing for the general welfare, supposed its dangers to result from its connection with, and

extension of, the powers granted in the other clauses. He endeavoured to shew the Committee, that it only empowered Congress to make such laws as would be necessary to enable them to pay the public debts, and provide for the common defence. That this general welfare was united, not to the general power of legislation, but to the particular power of laying and collecting taxes, imposts, and excises, for the purposes of paying the debts and providing for the common defence. That is, that they could raise as much money as would pay the debts and provide for the common defence, in consequence of this power. The clause which was affectedly called the sweeping clause, contained no new grant of power. To illustrate this position, he observed, that if it had been added at the end of every one of the enumerated powers, instead of being inserted at the end of all, it would be obvious to any one, that it was no augmentation of power. As for instance, if at the end of the clause granting power to lay and collect taxes, it had been added, that they should have power to make necessary and proper laws to lay and collect taxes, who could suspect it to be an addition of power? As it would grant no new power if inserted at the end of each clause, it could not when subjoined to the whole.

He then proceeded thus.—But, says he, who is to determine the extent of such powers? I say, the same power which in all well regulated communities determines the extent of Legislative powers—If they exceed these powers, the Judiciary will declare it void. If not, the people will have a right to declare it void. Is this depending on any man? But, says the Gentleman [George Mason], it may go to any thing.—It may destroy the trial by jury; and they may say it is necessary for providing for the general defence. The power of providing for the general defence only extends to raise any sum of money they may think necessary, by taxes, imposts, &c. But, says he, our only defence against oppressive laws, consists in the virtue of our Representatives. This was misrepresented. If I understand it right, no new power can be exercised. As to those which are actually granted, we trust to the fellow-feeling of our Representatives, and if we are deceived, we then trust to altering our Government. It appears to me, however, that we can confide in their discharging their powers rightly, from the peculiarity of their situation, and connection with us. If, Sir, the powers of the former Congress were very inconsiderable, that body did not deserve to have great powers. It was so constructed that it would be dangerous to invest it with such. But why were the articles of the Bill of Rights read? Let him shew us that those rights are given up by the Constitution. Let him prove them to be violated. He tells us, that the most worthy characters of the country differ as to the necessity of a Bill of Rights.

It is a simple and plain proposition. It is agreed upon by all, that the people have all power. If they part with any of it, is it necessary to declare that they retain the rest? Liken it to any familiar case. If I have one thousand acres of land, and I grant five hundred acres of it, must I declare that I retain the other five hundred? Do I grant the whole thousand acres when I grant five hundred, unless I declare that the five hundred I do not give, belongs to me still? It is so in this case. After granting some powers, the rest must rest with the people.

Governor *Randolph* observed, that he had some objections to the clause. He was persuaded, that the construction put upon it by the Gentlemen, on both sides, was erroneous;—but he thought any construction better than to go into anarchy.

Mr. *George Mason*, still thought that there ought to be some express declaration in the Constitution, asserting that rights not given to the General Government, were retained by the States. He apprehended that unless this was done, many valuable and important rights would be concluded to be given up by implication. All Governments were drawn from the people, though many were perverted to their oppression. The Government of Virginia, he remarked, was drawn from the people; yet there were certain great and important rights, which the people by their Bill of Rights declared to be paramount to the power of the Legislature.—He asked, why should it not be so in this Constitution?—Was it because we were more substantially represented in it, than in the State Government? If in the State Government, where the people were substantially and fully represented, it was necessary that the great rights of human nature should be secure from the encroachments of the Legislature; he asked, if it was not more necessary in this Government, where they were but inadequately represented? He declared, that artful sophistry and evasions could not satisfy him. He could see no clear distinction between rights relinquished by a positive grant, and lost by implication. Unless there were a Bill of Rights, implication might swallow up all our rights.

Mr. *Henry*,—Mr. Chairman.—The necessity of a Bill of Rights appear(s) to me to be greater in this Government, than ever it was in any Government before. I observed already, that the sense of the European nations, and particularly Great-Britain, is against the construction of rights being retained, which are not *expressly* relinquished. I repeat, that all nations have adopted this construction—That all rights not expressly and unequivocally reserved to the people, are impliedly and incidentally relinquished to rulers; as necessarily inseparable from the delegated powers. It is so in Great-Britain: For every possible right which is not reserved to the people by some express provision or

compact, is within the King's prerogative. It is so in that country which is said to be in such full possession of freedom. It is so in Spain, Germany, and other parts of the world. Let us consider the sentiments which have been entertained by the people of America on this subject. At the revolution, it must be admitted, that it was their sense to put down those great rights which ought in all countries to be held inviolable and sacred. Virginia did so we all remember. She made a compact to reserve, expressly, certain rights. When fortified with full, adequate, and abundant representation, was she satisfied with that representation? No.—She most cautiously and guardedly reserved and secured those invaluable, inestimable rights and privileges, which no people, inspired with the least glow of the patriotic love of liberty, ever did, or ever can, abandon. She is called upon now to abandon them, and dissolve that compact which secured them to her. She is called upon to accede to another compact which most infallibly supercedes and annihilates her present one. Will she do it?—This is the question. If you intend to reserve your unalienable rights, you must have the most express stipulation. For if implication be allowed, you are ousted of those rights. If the people do not think it necessary to reserve them, they will be supposed to be given up. How were the Congressional rights defined when the people of America united by a confederacy to defend their liberties and rights against the tyrannical attempts of Great-Britain? The States were not then contented with implied reservation. No, Mr. Chairman. It was expressly declared in our Confederation that every right was retained by the States respectively, which was not given up to the Government of the United States.²³ But there is no such thing here. You therefore by a natural and unavoidable implication, give up your rights to the General Government. Your own example furnishes an argument against it. If you give up these powers, without a Bill of Rights, you will exhibit the most absurd thing to mankind that ever the world saw—A Government that has abandoned all its powers—The powers of (a) direct taxation, the sword, and the purse. You have disposed of them to Congress, without a Bill of Rights—without check, limitation, or controul. And still you have checks and guards—still you keep barriers—pointed where? Pointed against your weakened, prostrated, enervated State Government! You have a Bill of Rights to defend you against the State Government, which is bereaved of all power; and yet you have none against Congress, though in full and exclusive possession of all power! You arm yourselves against the weak and defenceless, and expose yourselves naked to the armed and powerful. Is not this a conduct of unexampled absurdity? What barriers have you to oppose to this most

strong energetic Government? To that Government you have nothing to oppose. All your defence is given up. This is a real actual defect.—It must strike the mind of every Gentleman. When our Government was first instituted in Virginia, we declared the common law of England to be in force.²⁴—That system of law which has been admired, and has protected us and our ancestors, is excluded by that system.—Added to this, we adopted a Bill of Rights. By this Constitution, some of the best barriers of human rights are thrown away. Is there not an additional reason to have a Bill of Rights? By the ancient common law, the trial of all facts is decided by a jury of impartial men from the immediate vicinage. This paper speaks of different juries from the common law, in criminal cases; and in civil controversies excludes trial by jury altogether. There is therefore more occasion for the supplementary check of a Bill of Rights now, than then. Congress from their general powers may fully go into the business of human legislation. They may legislate in criminal cases from treason to the lowest offence, petty larceny. They may define crimes and prescribe punishments. In the definition of crimes, I trust they will be directed by what wise Representatives ought to be governed by. But when we come to punishments, no latitude ought to be left, nor dependence put on the virtue of Representatives. What says our Bill of Rights? “That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”²⁵ Are you not therefore now calling on those Gentlemen who are to compose Congress, to prescribe trials and define punishments without this controul? Will they find sentiments there similar to this Bill of Rights? You let them loose—you do more—you depart from the genius of your country. That paper tells you, that the trial of crimes shall be by jury, and held in the State where the crime shall have been committed.—Under this extensive provision, they may proceed in a manner extremely dangerous to liberty.—Persons accused may be carried from one extremity of the State to another, and be tried not by an impartial jury of the vicinage, acquainted with his character, and the circumstances of the fact; but by a jury unacquainted with both, and who may be biassed against him.—Is not this sufficient to alarm men?—How different is this from the immemor[i]al practice of your British ancestors, and your own? I need not tell you, that by the common law a number of hundredors were required to be on a jury,²⁶ and that afterwards it was sufficient if the jurors came from the same county. With less than this the people of England have never been satisfied. That paper ought to have declared the common law in force.

In this business of legislation, your Members of Congress will lose

the restriction of not imposing excessive fines, demanding excessive bail, and inflicting cruel and unusual punishments.—These are prohibited by your Declaration of Rights. What has distinguished our ancestors?—That they would not admit of tortures, or cruel and barbarous punishments. But Congress may introduce the practice of the civil law, in preference to that of the common law.—They may introduce the practice of France, Spain, and Germany—Of torturing to extort a confession of the crime. They will say that they might as well draw examples from those countries as from Great-Britain; and they will tell you, that there is such a necessity of strengthening the arm of Government, that they must have a criminal equity, and extort confession by torture, in order to punish with still more relentless severity. We are then lost and undone.—And can any man think it troublesome, when we can by a small interference prevent our rights from being lost?—If you will, like the Virginian Government, give them knowledge of the extent of the rights retained by the people, and the powers themselves, they will, if they be honest men, thank you for it.—Will they not wish to go on sure grounds?—But if you leave them otherwise, they will not know how to proceed; and being in a state of uncertainty, they will assume rather than give up powers by implication. A Bill of Rights may be summed up in a few words. What do they tell us?—That our rights are reserved.—Why not say so? Is it because it will consume too much paper? Gentlemen's reasonings against a Bill of Rights, do not satisfy me. Without saying which has the right side, it remains doubtful. A Bill of Rights is a favourite thing with the Virginians, and the people of the other States likewise. It may be their prejudice, but the Government ought to suit their geniuses, otherwise its operation will be unhappy. A Bill of Rights, even if its necessity be doubtful, will exclude the possibility of dispute, and with great submission, I think the best way is to have no dispute. In the present Constitution, they are restrained from issuing general warrants to search suspected places, or seize persons not named, without evidence of the commission of a fact, &c.²⁷ There was certainly some celestial influence governing those who deliberated on that Constitution:—For they have with the most cautious and enlightened circumspection, guarded those indefeasible rights, which ought ever to be held sacred. The officers of Congress may come upon you, fortified with all the terrors of paramount federal authority.—Excisemen may come in multitudes:—For the limitation of their numbers no man knows.—They may, unless the General Government be restrained by a Bill of Rights, or some similar restriction, go into your cellars and rooms, and search, ransack and measure, every thing you eat, drink and wear. They ought

to be restrained within proper bounds. With respect to the freedom of the press, I need say nothing; for it is hoped that the Gentlemen who shall compose Congress, will take care as little as possible, to infringe the rights of human nature.—This will result from their integrity. They should from prudence, abstain from violating the rights of their constituents. They are not however expressly restrained.—But whether they will intermeddle with that palladium of our liberties or not, I leave you to determine.

Mr. *Grayson* thought it questionable, whether rights not given up were reserved. A majority of the States, he observed, had expressly reserved certain important rights by Bills of Rights, and that in the Confederation there was a clause, declaring expressly, that every power and right not given up, was retained by the States.²⁸ It was the general sense of America, that such a clause was necessary; otherwise why did they introduce a clause which was totally unnecessary? It had been insisted, he said, in many parts of America, that a Bill of Rights was only necessary between a Prince and people, and not in such a Government as this, which was a compact between the people themselves. This did not satisfy his mind: For so extensive was the power of legislation, in his estimation, that he doubted, whether when it was once given up, *any thing* was retained. He further remarked, that there were some negative clauses in the Constitution, which refuted the doctrine contended for by the other side: For instance, the second clause, of the ninth section, of the first article, provided, that “The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.”—And by the last clause, of the same section, “No title of nobility shall be granted by the United States.”—Now if these restrictions had not been here inserted, he asked, whether Congress would not most clearly have had a right to suspend that great and valuable right, and to grant titles of nobility? When, in addition to these considerations, he saw they had an indefinite power to provide for the general welfare, he thought there were great reasons to apprehend great dangers. He thought therefore, that there ought to be a Bill of Rights.

Mr. *George Nicholas*, in answer to the two Gentlemen last up, observed, that though there was a Declaration of Rights in the Government of Virginia, it was no conclusive reason that there should be one in this Constitution. For, if it was unnecessary in the former, its omission in the latter could be no defect. They ought therefore to prove, that it was essentially necessary to be inserted in the Constitution of Virginia: That there were five or six States in the Union, which had no Bill of Rights, separately and distinctly as such.²⁹ But they annexed

the substance of a Bill of Rights to their respective Constitutions. These States, he further observed, were as free as this State, and their liberties as secure as ours. If so, Gentlemen's arguments from the precedent were not good. In Virginia, all powers were given to the Government without any exception. It was different in the General Government, to which certain special powers were delegated for certain purposes. He asked, which was the more safe?—Was it safer to grant general powers, than certain limited powers? This much as to the theory, continued he. What is the practice of this invaluable Government? Have your citizens been bound by it? They have not, Sir. You have violated that maxim, "That no man shall be condemned without a fair trial."—That man who was killed, not *secundum artem*, was deprived of his life, without the benefit of law, and in express violation of this Declaration of Rights, which they confide in so much.³⁰ But, Sir, this Bill of Rights was no security.—It is but a paper check.—It has been violated in many other instances. Therefore from theory and practice it may be concluded, that this Government with special powers, without any express exceptions, is better than a Government with general powers, and special exceptions. But the practice of England is against us.—The rights there reserved to the people, are to limit and check the King's prerogative. It is easier to enumerate the exceptions to his prerogative, than to mention all the cases to which it extends.—Besides, these reservations being only formed in acts of the Legislature, may be altered by the Representatives of the people, when they think proper. No comparison can be made of this, with the other Governments he mentioned.—There is no stipulation between the King and people. The former is possessed of absolute unlimited authority.

But, Sir, this Constitution is defective, because the common law is not declared to be in force—What would have been the consequences if it had? It would be immutable. But now it can be changed or modified as the Legislative body may find necessary for the community. But the common law is not excluded. There is nothing in that paper to warrant the assertion. As to the exclusion of a jury from the vicinage, he has mistaken the fact:—The Legislature may direct a jury to come from the vicinage. But the Gentleman says, that by this Constitution, they have power to make laws to define crimes, and prescribe punishments; and that consequently we are not free from torture. Treason against the United States is defined in the Constitution, and the forfeiture limited to the life of the person attainted.—Congress have power to define and punish piracies and felonies committed on the high seas; and offences against the law of nations: But they cannot define or prescribe the punishment of any other crime whatever, with-

out violating the Constitution. If we had no security against torture, but our Declaration of Rights, we might be tortured to-morrow: For it has been repeatedly infringed and disregarded. A Bill of Rights is only an acknowledgement of the pre-existing claim to rights in the people. They belong to us as much as if they had been inserted in the Constitution.—But it is said, that if it be doubtful, the possibility of dispute ought to be precluded. Admitting it was proper for the Convention to have inserted a Bill of Rights, it is not proper here to propose it, as the condition of our accession to the Union. Would you reject this Government for its omission, dissolve the Union, and bring miseries on yourselves and posterity? I hope the Gentleman [Patrick Henry] does not oppose it on this ground solely. Is there another reason? He said, that it is not only the general wish of this State, but of all the States to have a Bill of Rights. If it be so, where is the difficulty of having this done by way of subsequent amendments? We shall find the other States willing to accord with their own favourite wish. The Gentleman last up [William Grayson], says, that the power of legislation includes every thing. A *general* power of legislation does. But this is a special power of legislation: Therefore it does not contain that plenitude of power which he imagines. They cannot legislate in any case, but those particularly enumerated. No Gentleman who is a friend to the Government ought to withhold his assent from it for this reason.

Mr. *George Mason* replied, that the worthy Gentleman [George Nicholas] was mistaken in his assertion, that the Bill of Rights did not prohibit torture. For, that one clause expressly provided, that no man can give evidence against himself;³¹ and that the worthy Gentleman must know, that in those countries where torture is used, evidence was extorted from the criminal himself. Another clause of the Bill of Rights, provided, that no cruel and unusual punishments shall be inflicted;³² therefore torture was included in the prohibition.

Mr. *Nicholas* acknowledged the Bill of Rights to contain that prohibition, and that the Gentleman was right with respect to the practice of extorting confession from the criminal in those countries where torture is used; but still he saw no security arising from the Bill of Rights as separate from the Constitution, for that it had been frequently violated with impunity.

After some irregular conversation,

The Committee then rose—And on motion, *Resolved*, That this Convention will, to-morrow, again resolve itself into a Committee of the whole Convention, to take into farther consideration, the proposed Constitution of Government.

And then the Convention adjourned until to morrow morning, nine o'clock.

1. For the Riot Act of 1715, see Convention Debates, 5 June, note 11 (RCS:Va., 969).

2. The state declarations of rights of Virginia, Pennsylvania, and North Carolina affirmed that standing armies in time of peace were dangerous to liberty and that they ought not to be raised or maintained. The declarations of Delaware, Maryland, Massachusetts, and New Hampshire specified that standing armies were dangerous to liberty and that they ought not to be raised or kept without the consent of the legislature (Thorpe, III, 1688, 1892; IV, 2456; V, 2788, 3083; *American Historical Review*, III [1898], 646 [Delaware]; and RCS:Va., 531).

3. James Madison possibly refers to an incident that occurred in late June and early July 1787 at the Port of Alexandria. The captain and crew of the schooner *Dart* from St. Kitts (or St. Christopher), aided by people on shore, escaped from the custody of James M. McCrea, the searcher of the Port of Alexandria, who had seized the vessel for smuggling rum. The *Dart* went into the Potomac River port of Georgetown, Md., and Maryland authorities refused the request of Charles Lee, the naval officer of Virginia's South Potomac District, to arrest the *Dart's* captain. In the meantime, an armed state boat, the *Patriot*, had been dispatched to intercept the *Dart*. The *Patriot*, however, was forced to return to Hampton for repairs, and the *Dart*, which had left Georgetown and had sailed down the Potomac, managed to escape. Whereupon, the Council ordered the state's other armed boat, the *Liberty*, to prevent future smuggling in the area between Georgetown and Quantico, Va., especially near the town of Alexandria. (See Joseph Jones to Madison, 29 June, Rutland, *Madison*, X, 84-85n. Jones, who described the incident to Madison, was a member of the Council of State.)

It should be noted, however, that neither Jones, McCrea, Lee, nor the Journal of the Council of State refer to the use of militia, although Lee wrote Lieutenant-Governor Randolph that, before the *Dart* escaped, McCrea tried to retake the vessel with the help of "some armed men." (For letters by McCrea and Lee, see William P. Palmer et al., eds., *Calendar of Virginia State Papers . . .*, [11 vols., Richmond, 1875-1893], IV, 301, 308-9, 311, 314, 335.)

4. In 1765 Parliament passed an act that once again brought the Isle of Man, granted to Sir John Stanley and his heirs in 1405, under the sovereignty of the British government and its customs service, whereby the island ceased to be a smugglers' haven. Under the act, Britain paid Stanley's heirs £70,000.

5. See Patrick Henry's speech earlier in the day, at note 1.

6. In December 1784, the Virginia legislature passed "An act for amending the several laws for regulating and disciplining the militia, and guarding against invasions and insurrections" because the state's militia laws were "inadequate" for the defense and safety of the state. Among other things, the act stated that the militia was to be governed by Baron Von Steuben's plan for the forming and disciplining of Continental troops which Congress had adopted on 29 March 1779. When called into actual service, the militia was to "be governed by the articles of war which were last in force in the continental army during the last war." In January 1786 the legislature adopted "An act to amend and reduce into one act, the several laws for regulating and disciplining the militia, and guarding against invasions and insurrections." This act retained the disciplinary provisions of the 1784 law (Hening, XI, 476-94; XII, 9-24; and Rutland, *Madison*, VIII, 478, 482n).

7. The militia act of January 1786 "authorized and empowered" the governor, with the advice of the council, to call up the militia to combat invasions or quell insurrections, or the "probable prospect thereof" (Hening, XII, 16-17).

8. An act passed on 7 January 1788 provided that "If any officer of the customs, or

officer of the state boats, shall meet with obstruction in the execution of his office, he may impress persons or vessels to his assistance, and the person or persons so summoned and assisting shall be allowed one half the sum given by law to the officer making seizure; but every person failing to render the assistance required, without reasonable excuse, shall forfeit and pay the sum of ten pounds, to be recovered, on motion of the officer, in the court of the county where the party resides, to the use of the commonwealth; *Provided*, ten days previous notice be given of such motion" (*ibid.*, 449).

9. In March 1629 Charles I dissolved Parliament and did not call another until early 1640. This new Parliament met for three weeks in April and May 1640 and was also dissolved. Later in the year, Charles called another Parliament which convened in early November and was soon at loggerheads with Charles over a variety of constitutional and political issues, one of which concerned the control of the militia.

The dispute over the militia came to a head in January 1642, when Charles I, backed by several hundred swordsmen, entered the House of Commons in order to arrest five members whom he charged with high treason and high misdemeanors. The king's action and his refusal to sign a militia bill giving Parliament control of the militia led both houses of Parliament in March to adopt an ordinance placing the militia under its control. In May Charles issued a proclamation condemning the ordinance, but in June Parliament sent him "Nineteen Propositions," one of which reaffirmed its position on the militia. It also issued a declaration defending its ordinance. The king reasserted his authority over the militia, and in July Parliament voted to raise an army. This action helped to precipitate the civil war which eventually led to the execution of Charles in 1649. In 1660 the monarchy was restored, and two years later Parliament passed an act restoring the king's authority over the militia.

10. In 1757 Parliament passed an act reorganizing the militia so that it would be an efficient force during the Seven Years War. The act provided that 31,800 "private Men" be raised in England, Wales, and the town of Berwick-upon-Tweed. When the militia was called into actual service, the militiamen were to receive the same pay as soldiers in the regular army and the militia was placed under the Mutiny Act and the Articles of War. The act did not provide for the payment of the militiamen when not in actual service, thus requiring annual acts to pay them. This gave Parliament the same kind of control that it exercised over the regular army through the Mutiny Act. Although Parliament passed another comprehensive militia act in 1786, the general plan of the force continued much the same as it had been.

11. Before or during the state Convention, William Grayson drafted amendments to the Constitution that he never formally presented to that body. To check the power of Congress over the militia, Grayson proposed that "The several States shall not be restrained from providing Arms for their own Militia" (Bryan Family Papers, Vi. For the complete text of Grayson's proposed amendments, see Mfm:Va.; and for his other amendments, see Convention Debates, 18 June, note 5; 21 June, note 7; and 24 June, note 27.).

12. Aesop, "The Four Oxen and the Lion."

13. Cape Charles is the southernmost point on the Eastern Shore of Virginia.

14. The Treaty of Utrecht, adopted in 1579 and in force until 1795, provided that all matters pertaining to war and peace and all levies of duties and taxes be approved unanimously by the provinces. All other matters could be enacted by majority rule in the general assembly.

15. See William Grayson's speech, Convention Debates, 12 June (RCS:Va., 1191).

16. On 9 June Edmund Randolph noted that The Hague, the permanent capital of The Netherlands, was located in the province of Holland. According to Randolph, since Holland's authority to legislate in The Hague "has been injurious to the other Provinces," the Constitutional Convention had wisely granted Congress exclusive jurisdiction over the federal capital (RCS:Va., 1084).

17. For an example of an indignity suffered by Congress in 1783, see Convention Debates, 6 June, note 24.

18. See note 16 (above); and Madison's "Notes on Ancient and Modern Confederacies," Rutland, *Madison*, IX, 12.

19. On 5 September 1783 a committee of Congress, appointed on 8 July to consider the jurisdiction of Congress over a permanent residence, reported that Congress "ought to enjoy an exclusive jurisdiction over the District which may be ceded and accepted for their permanent residence." Congress considered the committee's report on 25 September (JCC, XXIV, 428, 428n; XXV, 603, 603n, 616-17).

Two resolutions on the exclusive jurisdiction of Congress over a federal capital are preserved in the Papers of the Continental Congress. Neither resolution appears to have been considered by Congress. The first, in the handwriting of committee member James Madison, reads: "That the district which may be ceded to & accepted by Congress for their permanent residence, ought to be entirely exempted from the authority of the State ceding the same; and the organization & administration of the powers of Govt. within the sd. district concerted between Congress & the inhabitants thereof." The second resolution, in the handwriting of Arthur Lee, states: "That the People inhabiting within the said territory, should enjoy the privilege of trial by Jury, and of being governed by Laws made by Representatives of their own election." Again, Congress appears not to have discussed the resolution (JCC, XXV, 603-4; and Hutchinson, *Madison*, VII, 357-58).

At different times during the remainder of 1783, Congress considered sites for the federal capital, and on each occasion resolutions provided for "an exclusive or such other jurisdiction as Congress may direct" (JCC, XXV, 656, 697-98, 706-10, 712, 714, 768-71, 841).

20. See Convention Debates, 6 June, note 24 (above).

21. Article II of the Articles of Confederation states: "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."

22. See RCS:Va., 531.

23. See note 21 (above).

24. For the adoption by the fifth revolutionary convention (1776) of an ordinance declaring the common law of England to be in force, see RCS:Va., 339, note 7.

25. See Article 9 of the Declaration of Rights (RCS:Va., 531).

26. In his *Commentaries on the Laws of England*, William Blackstone states: "by the policy of the antient law, the jury was to come *de vicineto*, from the neighbourhood of the vill or place where the cause of action was laid in the declaration; and therefore some of the jury were obliged to be returned from the hundred in which such vill lay; and, if none were returned, the array might be challenged for defect of hundredors" (Book III, chapter XXIII, 359). A hundred was a subdivision of an English county which had its own court, and the hundredor, an inhabitant of a hundred, was liable to serve on a jury.

27. See Article 10 of the Virginia Declaration of Rights (RCS:Va., 531).

28. See note 21 (above).

29. Rhode Island, Connecticut, New York, New Jersey, South Carolina, and Georgia did not have declarations of rights as parts of their constitutions. Both Connecticut and New York adopted acts that served as bills of rights (Mfm:Conn. 2; and *Laws of the State of New-York* . . . [26 January-21 April 1787, New York, 1787], 5-6 [Evans 20578]).

30. Nicholas refers to the case of Josiah Philips, who was executed in 1778 (Convention Debates, 6 June, note 5, RCS:Va., 1004). "*Secundum artem*" means "according to rule."

31. See Article 8 of the Declaration of Rights (RCS:Va., 531).

32. See Article 9 of the Declaration of Rights (*ibid.*).

The Virginia Convention
Tuesday
17 June 1788

Debates

The Convention, according to the order of the day, again resolved itself into a Committee of the whole Convention, to take into farther consideration, the proposed plan of Government.—Mr. *Wythe* in the Chair.

(The first clause, of the ninth section, read.)

Mr. *George Mason*,—Mr. Chairman.—This is a fatal section, which has created more dangers than any other.—The first clause, allows the importation of slaves for twenty years. Under the royal Government, this evil was looked upon as a great oppression, and many attempts were made to prevent it; but the interest of the African merchants prevented its prohibition. No sooner did the revolution take place, than it was thought of. It was one of the great causes of our separation from Great-Britain. Its exclusion has been a principal object of this State, and most of the States in the Union.¹ The augmentation of slaves weakens the States; and such a trade is diabolical in itself, and disgraceful to mankind. Yet by this Constitution it is continued for twenty years. As much as I value an union of all the States, I would not admit the Southern States into the Union, unless they agreed to the discontinuance of this disgraceful trade, because it would bring weakness and not strength to the Union. And though this infamous traffic be continued, we have no security for the property of that kind which we have already. There is no clause in this Constitution to secure it; for they may lay such a tax as will amount to manumission. And should the Government be amended, still this detestable kind of commerce cannot be discontinued till after the expiration of twenty years.—For the fifth article, which provides for amendments, expressly excepts this clause. I have ever looked upon this as a most disgraceful thing to America. I cannot express my detestation of it. Yet they have not secured us the property of the slaves we have already. So that “They have done what they ought not to have done, and have left undone what they ought to have done.”

Mr. *Madison*,—Mr. Chairman.—I should conceive this clause to be impolitic, if it were one of those things which could be excluded without encountering greater evils.—The Southern States would not have entered into the Union of America, without the temporary permission

of that trade.² And if they were excluded from the Union, the consequences might be dreadful to them and to us. We are not in a worse situation than before. That traffic is prohibited by our laws, and we may continue the prohibition. The Union in general is not in a worse situation. Under the articles of Confederation, it might be continued forever: But by this clause an end may be put to it after twenty years. There is therefore a(n) (a)melioration of our circumstances. A tax may be laid in the mean time; but it is limited, otherwise Congress might lay such a tax as would amount to a prohibition. From the mode of representation and taxation, Congress cannot lay such a tax on slaves as will amount to manumission. Another clause secures us that property which we now possess. At present, if any slave elopes to any of those States where slaves are free, he becomes emancipated by their laws. For the laws of the States are uncharitable to one another in this respect. But in this Constitution, "No person held to service, or labor, in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labour may be due."—This clause was expressly inserted to enable owners of slaves to reclaim them. This is a better security than any that now exists. No power is given to the General Government to interpose with respect to the property in slaves now held by the States. The taxation of this State being equal only to its representation, such a tax cannot be laid as he supposes. They cannot prevent the importation of slaves for twenty years; but after that period they can. The Gentlemen from South-Carolina and Georgia argued in this manner:—"We have now liberty to import this species of property, and much of the property now possessed, has been purchased, or otherwise acquired, in contemplation of improving it by the assistance of imported slaves. What would be the consequence of hindering us from it? The slaves of Virginia would rise in value, and we would be obliged to go to your markets." I need not expatiate on this subject. Great as the evil is, a dismemberment of the Union would be worse. If those States should disunite from the other States, for not indulging them in the temporary continuance of this traffic, they might solicit and obtain aid from foreign powers.

Mr. Tyler warmly enlarged on the impolicy, iniquity, and disgracefulness of this wicked traffic. He thought the reasons urged by Gentlemen in defence of it, were inconclusive, and ill-founded. It was one cause of the complaints against British tyranny, that this trade was permitted. The revolution had put a period to it; but now it was to be revived. He thought nothing could justify it. This temporary *re-*

striction on Congress militated, in his opinion, against the arguments of Gentlemen on the other side, that what was not given up was retained by the States; for that if this restriction had not been inserted, Congress could have prohibited the African trade. The power of prohibiting it, was not expressly delegated to them; yet they would have had it by implication, if this restraint had not been provided. This seemed to him to demonstrate most clearly the necessity of restraining them by a Bill of Rights, from infringing our unalienable rights. It was immaterial whether the Bill of Rights was by itself, or included in the Constitution.—But he contended for it one way or the other. It would be justified by our own example, and that of England. His earnest desire was, that it should be handed down to posterity, that he had opposed this wicked clause. He then reverted to the clauses which enabled Congress, to legislate exclusively in the ten miles square, and other places purchased for forts, magazines, &c.—To provide for the general welfare—To raise a standing army; and to make any law that may be necessary to carry their laws into execution. From the combined operation of these unlimited powers, he dreaded the most fatal consequences. If any acts of violence should be committed on persons or property, the perpetrators of such acts might take refuge in the sanctuary of the ten miles square, and the strong holds. They would thus escape with impunity, as the States had no power to punish them. He called to the recollection of the Committee, the history of the Athenian, who from small beginnings had enslaved his country. He begged them to remember, that Cæsar, who prostrated the liberties of his country, did not possess a powerful army at first. Suppose, says he, the time should come, that a King should be proposed by Congress. Will they not be able by the sweeping clause to call in foreign assistance and raise troops, and do whatever they think proper to carry this proposition into effect? He then concluded, that unless this clause were expunged he would vote against the Constitution.

Mr. *Madison* was surprised, that any Gentleman should return to the clauses which had already been discussed. He begged the Gentleman to read the clause which gave the power of exclusive legislation, and he might see that nothing could be done without the consent of the States. With respect to the supposed operation of what was denominated the sweeping clause, the Gentleman, he said, was mistaken; for it only extended to the enumerated powers. Should Congress attempt to extend it to any power not enumerated, it would not be warranted by the clause. As to the restriction in the clause under consideration, it was a restraint on the exercise of a power expressly delegated to Congress, namely, that of regulating commerce with foreign nations.

Mr. *Henry* insisted, that the insertion of these restrictions on Congress, was a plain demonstration, that Congress could exercise powers by implication. The Gentleman had admitted that Congress could have interdicted the African trade, were it not for this restriction. If so, the power not having been expressly delegated, must be obtained by implication. He demanded, where then was their doctrine of reserved rights? He wished for negative clauses to prevent their assuming any powers but those expressly given.—He asked, why it was omitted to secure us that property in slaves, which we held now? He feared its omission was done with design. They might lay such heavy taxes on slaves, as would amount to emancipation; and then the Southern States would be the only sufferers. His opinion was confirmed by the mode of levying money. Congress, he observed, had power to lay and collect taxes, imposts and excises. Imposts (or duties) and excises were to be uniform. But this uniformity did not extend to taxes.—This might compel the Southern States to liberate their negroes. He wished this property therefore to be guarded. He considered the clause which had been adduced by the Gentleman as a security for this property, as no security at all. It was no more than this—That a run-away negro could be taken up in Maryland or New-York. This could not prevent Congress from interfering with that property by laying a grievous and enormous tax on it, so as to compel owners to emancipate their slaves rather than pay the tax. He apprehended it would be productive of much stock-jobbing, and that they would play into one another's hands in such a manner as that this property would be lost to this country.

Mr. *George Nicholas*, wondered that Gentlemen who were against slavery, would be opposed to this clause, as after that period the slave trade would be done away. He asked, if Gentlemen did not see the inconsistency of their arguments? They object, says he, to the Constitution, because the slave trade is laid open for twenty odd years; and yet they tell you, that by some latent operation of it, the slaves who are so now, will be manumitted! At the same moment it is opposed for being promotive and destructive of slavery!—He contended that it was advantageous to Virginia, that it should be in the power of Congress to prevent the importation of slaves after twenty years, as it would then put a period to the evil complained of.

As the Southern States would not confederate without this clause, he asked, if Gentlemen would rather dissolve the Confederacy than to suffer this temporary inconvenience, admitting it to be such? Virginia might continue the prohibition of such importation during the intermediate period; and would be benefited by it, as a tax of ten dollars, each slave, might be laid; of which she would receive a share. He

endeavoured to obviate the objection of Gentlemen, that the restriction on Congress was a proof that they would have power not given them, by remarking, that they would only have had a general superintendency of trade, if the restriction had not been inserted. But the Southern States insisted on this exception to that general superintendency for twenty years. It could not therefore have been a power by implication, as the restriction was an exception from a delegated power. The taxes could not, as had been suggested, be laid so high on negroes as to amount to emancipation; because taxation and representation were fixed according to the census established in the Constitution. The exception of taxes, from the uniformity annexed to duties and excises, could not have the operation contended for by the Gentleman; because other clauses had clearly and positively fixed the census. Had taxes been uniform it would have been universally objected to, for no one object could be selected without involving great inconveniences and oppressions. But, says Mr. *Nicholas*, is it from the General Government we are to fear emancipation? Gentlemen will recollect what I said in another house, and what other Gentlemen have said that advocated emancipation. Give me leave to say, that that clause is a great security for our slave tax. I can tell the Committee, that the people of our country are reduced to beggary by the taxes on negroes.—Had this Constitution been adopted, it would not have been the case. The taxes were laid on all our negroes. By this system two-fifths are exempted. He then added, that he had imagined Gentlemen would not support here what they had opposed in another place.

Mr. *Henry* replied, that though the proportion of each was to be fixed by the census, and three-fifths of the slaves only were included in the enumeration, yet the proportion of Virginia being once fixed, might be laid on blacks and blacks only. For the mode of raising the proportion of each State being to be directed by Congress, they might make slaves the sole object to raise it of. Personalities he wished to take leave of: They had nothing to do with the question, which was solely whether that paper was wrong or not.

Mr. *Nicholas* replied, that negroes must be considered as persons or property. If as property, the proportion of taxes to be laid on them was fixed in the Constitution: If he apprehended a poll tax on negroes, the Constitution had prevented it. For, by the census, where a white man paid ten shillings, a negro paid but six shillings. For the exemption of two fifths of them reduced it to that proportion.

(*The 2d, 3d, and 4th clauses read.*)

Mr. *George Mason* said, that Gentlemen might think themselves secured by the restriction in the fourth clause, that no capitation or

other direct tax should be laid but in proportion to the census before directed to be taken. But that when maturely considered it would be found to be no security whatsoever. It was nothing but a direct assertion, or mere confirmation of the clause which fixed the ratio of taxes and representation. It only meant that the quantum to be raised of each State, should be in proportion to their numbers in the manner therein directed. But the General Government was not precluded from laying the proportion of any particular State on any one species of property they might think proper. For instance, if 500,000 dollars were to be raised, they might lay the whole of the proportion of the Southern States on the blacks, or any one species of property: So that by laying taxes too heavily on slaves, they might totally annihilate that kind of property. No real security could arise from the clause which provides, that persons held to labor in one State, escaping into another, shall be delivered up. This only meant, that run-away slaves should not be protected in other States. As to the exclusion of *ex post facto* laws, it could not be said to create any security in this case. For laying a tax on slaves would not be *ex post facto*.

Mr. *Madison* replied, that even the Southern States, who were most affected, were perfectly satisfied with this provision, and dreaded no danger to the property they now hold. It appeared to him, that the General Government would not intermeddle with that property for twenty years, but to lay a tax, on every slave imported, not exceeding ten dollars; and that after the expiration of that period they might prohibit the traffic altogether. The census in the Constitution was intended to introduce equality in the burdens to be laid on the community. No Gentleman objected to laying duties, imposts, and excises, uniformly. But uniformity of taxes would be subversive of the principles of equality: For that it was not possible to select any article which would be easy for one State, but what would be heavy for another. That the proportion of each State being ascertained, it would be raised by the General Government in the most convenient manner for the people, and not by the selection of any one particular object. That there must be some degree of confidence put in agents, or else we must reject a state of civil society altogether. Another great security to this property, which he mentioned, was, that five States were greatly interested in that species of property, and there were other States which had some slaves, and had made no attempt, or taken any step to take them from the people. There were a few slaves in New-York, New-Jersey and Connecticut:³ These States would probably oppose any attempts to annihilate this species of property. He concluded, by ob-

serving, that he would be glad to leave the decision of this to the Committee.

(*The 5th and 6th clauses read.*)

Mr. *George Mason*, apprehended the loose expression of "publication from time to time," was applicable to any time. It was equally applicable to monthly and septennial periods. It might be extended ever so much. The reasons urged in favor of this ambiguous expression, was, that there might be some matters which might require secrecy. In matters relative to military operations, and foreign negotiations, secrecy was necessary sometimes. But he did not conceive that the receipts and expenditures of the public money ought ever to be concealed. The people, he affirmed, had a right to know the expenditures of their money. But that this expression was so loose, it might be concealed forever from them, and might afford opportunities of misapplying the public money, and sheltering those who did it. He concluded it to be as exceptionable as any clause in so few words could be.

Mr. *Lee*, of *Westmoreland*, thought such trivial arguments as that just used by the Honorable Gentleman, would have no weight with the Committee. He conceived the expression to be sufficiently explicit and satisfactory. It must be supposed to mean, in the common acceptation of language, short convenient periods. It was as well, as if it had said one year, or a shorter term. Those who would neglect this provision, would disobey the most pointed directions. As the Assembly was to meet next week,⁴ he hoped Gentlemen would confine themselves to the investigation of the principal parts of the Constitution.

Mr. *Mason* begged to be permitted to use that mode of arguing to which he had been accustomed. However desirous he was of pleasing that worthy Gentleman, his duty would give way to that pleasure.

Mr. *George Nicholas*, said it was a better direction and security than was in the State Government. No appropriation shall be made of the public money but by law. There could not be any misapplication of it. Therefore he thought instead of censure, it merited applause. Being a cautious provision which few Constitutions, or none, had ever adopted.

Mr. *Corbin* concurred in the sentiments of Mr. *Nicholas* on this subject.

Mr. *Madison* thought it much better than if it had mentioned any specified period. Because if the accounts of the public receipts and expenditures were to be published at short stated periods, they would not be so full and connected, as would be necessary for a thorough comprehension of them, and detection of any errors. But by giving

them an opportunity of publishing them from time to time, as might be found easy and convenient, they would be more full and satisfactory to the public, and would be sufficiently frequent. He thought, after all, that this provision went farther than the Constitution of any State in the Union, or perhaps in the world.

Mr. *Mason* replied, that in the Confederation the public proceedings were to be published monthly,⁵ which was infinitely better than depending on men's virtue to publish them or not, as they might please. If there was no such provision in the Constitution of Virginia, Gentlemen ought to consider the difference between such a full representation, dispersed and mingled with every part of the community, as the State representation was, and such an inadequate representation as this was. One might be safely trusted, but not the other.

Mr. *Madison* replied, that the inconveniences which had been experienced from the Confederation in that respect, had their weight with him in recommending this in preference to it; for that it was impossible, in such short intervals, to adjust the public accounts in any satisfactory manner.

(*The 7th clause read.*)

Mr. *Henry*,—Mr. Chairman.—We have now come to the ninth section, and I consider myself at liberty to take a short view of the whole. I wish to do it very briefly. Give me leave to remark, that there is a Bill of Rights in that Government. There are express restrictions which are in the shape of a Bill of Rights: But they bear the name of the ninth section. The design of the negative expressions in this section is to prescribe limits, beyond which the powers of Congress shall not go. These are the sole bounds intended by the American Government. Whereabouts do we stand with respect to a Bill of Rights? Examine it, and compare it to the idea manifested by the Virginian Bill of Rights, or that of the other States. The restraints in this Congressional Bill of Rights, are so feeble and few, that it would have been infinitely better to have said nothing about it. The fair implication is, that they can do every thing they are not forbidden to do. What will be the result if Congress, in the course of their legislation, should do a thing not restrained by this ninth section? It will fall as an incidental power to Congress, not being prohibited expressly in the Constitution. The first prohibition is, that the privilege of the writ of *habeas corpus* shall not be suspended, but when in cases of rebellion, or invasion, the public safety may require it. It results clearly, that if it had not said so, they could suspend it in all cases whatsoever. It reverses the position of the friends of this Constitution, that every thing is retained which is not given up. For instead of this, every thing is given up, which is not

expressly reserved.—It does not speak affirmatively, and say that it shall be suspended in those cases. But that it shall not be suspended but in certain cases; going on a supposition that every thing which is not negated, shall remain with Congress. If the power remains with the people, how can Congress supply the want of an affirmative grant? They cannot do it but by implication, which destroys their doctrine. The Virginia Bill of Rights interdicts the relinquishment of the sword and purse without controul. That Bill of Rights secures the great and principal rights of mankind. But this Bill of Rights extends to but very few cases, and is destructive of the doctrine advanced by the friends of that paper.

If *ex post facto* laws had not been interdicted, they might also have been extended by implication at pleasure. Let us consider whether this restriction be founded in wisdom or good policy. If no *ex post facto* laws be made, what is to become of the old continental paper dollars? Will not this country be forced to pay it in gold and silver, shilling for shilling? Gentlemen may think that this does not deserve an answer: But it is an all important question. Because the property of this country is not commensurate to the enormous demand. Our own Government triumphs with infinite superiority when put in contrast with that paper.—The want of a Bill of Rights will render all their laws, however oppressive, constitutional.

If the Government of Virginia passes a law in contradiction to our Bill of Rights, it is nugatory. By that paper the national wealth is to be disposed of under the veil of secrecy: For the publication from time to time, will amount to nothing; and they may conceal what they may think requires secrecy. How different is it in your own Government?—Have not the people seen the journals of our Legislature every day during every session? Is not the lobby full of people every day? Yet, Gentlemen say, that the publication from time to time is a security unknown in our State Government! Such a regulation would be nugatory and vain, or at least needless, as the people see the journals of our Legislature, and hear their debates every day. If this be not more secure than what is in that paper, I will give up that I have totally misconceived the principles of the Government. You are told, that your rights are secured in this new Government. They are guarded in no other part but this ninth section. The few restrictions in that section are your only safeguards. They may controul your actions, and your very words, without being repugnant to that paper. The existence of your dearest privileges will depend on the consent of Congress: For these are not within the restrictions of the ninth section.

If Gentlemen think that securing the slave trade is a capital object;

that the privilege of the *habeas corpus* is sufficiently secured; that the exclusion of *ex post facto* laws will produce no inconvenience; that the publication from time to time will secure their property; in one word, that this section alone will sufficiently secure their liberties, I have spoken in vain.—Every word of mine, and of my worthy coadjutor [George Mason], is lost. I trust that Gentlemen, on this occasion, will see the great objects of religion, liberty of the press, trial by jury, interdiction of cruel punishments, and every other sacred right secured, before they agree to that paper. These most important human rights are not protected by that section, which is the only safeguard in the Constitution.—My mind will not be quieted till I see something substantial come forth in the shape of a Bill of Rights.

Governor *Randolph*.—Mr. Chairman.—The general review which the Gentleman [Patrick Henry] has taken of the ninth section, is so inconsistent, that in order to answer him, I must with your permission, who are the custos of order here, depart from the rule of the House in some degree. I declared some days ago that I would give my suffrage for this Constitution, not because I considered it without blemish, but because the critical situation of our country demanded it. I invite those who think with me to vote for the Constitution.—But where things occur in it which I disapprove of, I shall be candid in exposing my objections.

Permit me to return to that clause, which is called by Gentlemen the sweeping clause. I observed yesterday, that I conceived the construction which had been put on this clause by the advocates of the Constitution was too narrow; and that the construction put upon it by the other party, was extravagant. The intermediate explanation appears to me most rational. The former contend, that it gives no supplementary power; but only enables them to make laws to execute the delegated powers, or in other words, that it only involves the powers incidental to those expressly delegated.—By incidental powers they mean those which are necessary for the principal thing.—That the incident is inseparable from the principal, is a maxim in the construction of laws.—A Constitution differs from a law.—For a law only embraces one thing—But a Constitution embraces a number of things, and is to have a more liberal construction. I need not recur to the Constitutions of Europe for a precedent to direct my explication of this clause, because in Europe there is no Constitution wholly in writing. The European Constitutions sometimes consist in detached statutes or ordinances:—Sometimes they are on record, and sometimes they depend on immemorial tradition. The American Constitutions are singular, and their construction ought to be liberal. On this principle

what should be said of the clause under consideration (*the sweeping clause.*) If incidental powers be those only which are necessary for the principal thing, the clause would be superfluous.

Let us take an example of a single department: For instance that of the President, who has certain things annexed to his office. Does it not reasonably follow, that he must have some incidental powers? The principle of incidental powers extends to all parts of the system. If you then say, that the President has incidental powers, you reduce it to tautology. I cannot conceive that the fair interpretation of these words is as the Honorable Member [James Madison] says.

Let me say, that, in my opinion, the adversaries of the Constitution wander equally from the true meaning. If it would not fatigue the House too far, I would go back to the question of reserved rights. The Gentleman [Patrick Henry] supposes, that compleat and unlimited legislation is vested in the Congress of the United States. This supposition is founded on false reasoning. What is the present situation of this State? She has possession of all rights of sovereignty, except those given to the Confederation. She *must* delegate powers to the Confederate Government. It is necessary for her public happiness. Her weakness compels her to confederate with the twelve other Governments. She trusts certain powers to the General Government in order to support, protect, and defend the Union. Now is there not a demonstrable difference between the principle of the State Government, and the General Government? There is not a word said in the State Government of the powers given to it, because they are general. But in the general Constitution, its powers are enumerated. Is it not then fairly deducible, that it has no power but what is expressly given it? For if its powers were to be general, an enumeration would be needless.

But the insertion of the negative restrictions has given cause of triumph it seems, to Gentlemen. They suppose, that it demonstrates that Congress are to have powers by implication. I will meet them on that ground. I persuade myself, that every exception here mentioned, is an exception not from general powers, but from the particular powers therein vested. To what power in the General Government is the exception made, respecting the importation of negroes? Not from a general power, but from a particular power expressly enumerated. This is an exception from the power given them of regulating commerce. He asks, where is the power to which the prohibition of suspending the *habeas corpus* is an exception. I contend that by virtue of the power given to Congress to regulate courts, they could suspend the writ of *habeas corpus*.—This is therefore an exception to that power.

The third restriction is, that “No bill of attainder, or *ex post facto*

law shall be passed.”—This is a manifest exception to another power. We know well that attainders, and *ex post facto* laws, have always been the engines of criminal jurisprudence. This is therefore an exception to the criminal jurisdiction vested in that body.

The fourth restriction is, that no capitation, or other direct tax shall be laid, unless in proportion to the census before directed to be taken. Our debates shew from what power this is an exception.

The restrictions in the fifth clause, are an exception to the power of regulating commerce.

The restriction of the sixth clause, that no money shall be drawn from the treasury, but in consequence of appropriations made by law, is an exception to the power of paying the debts of the United States; for the power of drawing money from the treasury is consequential of that of paying the public debts.

The next restriction is, that no titles of nobility shall be granted by the United States. If we cast our eyes to the manner in which titles of nobility first originated, we shall find this restriction founded on the same principles. These sprung from military and civil offices: Both are put in the hands of the United States, and therefore I presume it to be an exception to that power.

The last restriction restrains any persons in office from accepting of any present or emolument, title or office, from any foreign Prince or State. It must have been observed before, that though the Confederation had restricted Congress from exercising any powers not given them, yet they inserted it,⁶ not from any apprehension of usurpation, but for greater security. This restriction is provided to prevent corruption. All men have a natural inherent right of receiving emoluments from any one, unless they be restrained by the regulations of the community. An accident which actually happened, operated in producing the restriction. A box was presented to our Ambassador by the King of our allies.⁷ It was thought proper, in order to exclude corruption and foreign influence, to prohibit any one in office from receiving or holding any emoluments from foreign States. I believe, that if at that moment, when we were in harmony with the King of France, we had supposed that he was corrupting our Ambassador, it might have disturbed that confidence, and diminished that mutual friendship, which contributed to carry us through the war.

The Honorable Gentleman observed, that Congress might define punishments, from petty larceny to high treason.⁸ This is an unfortunate quotation for the Gentleman; because treason is expressly defined in the third section, of the third article, and they can add no feature to it. They have not cognizance over any other crime, except

piracies, felonies committed on the high seas, and offences against the law of nations.

But the rhetoric of the Gentleman has highly coloured the dangers of giving the General Government an indefinite power of providing for the general welfare. I contend that no such power is given. They have power "To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States." Is this an independent, separate, substantive power, to provide for the general welfare of the United States?—No, Sir.—They can lay and collect taxes, &c.—For what?—To pay the debts and provide for the general welfare. Were not this the case the following part of the clause would be absurd. It would have been treason against common language. Take it altogether, and let me ask if the plain interpretation be not this—a power to lay and collect taxes, &c. in order to provide for the general welfare, and pay debts.

On the subject of a Bill of Rights, the want of which has been complained of, I will observe that it has been sanctified by such reverend authority, that I feel some difficulty in going against it. I shall not, however, be deterred from giving my opinion on this occasion, let the consequence be what it may. At the beginning of the war we had no certain Bill of Rights: For our charter cannot be considered as a Bill of Rights. It is nothing more than an investiture in the hands of the Virginian citizens, of those rights which belonged to the British subjects. When the British thought proper to infringe our rights, was it not necessary to mention in our Constitution, those rights which ought to be paramount to the power of the Legislature? Why are the Bill of Rights distinct from the Constitution? I consider Bills of Rights in this view, that the Government should use them when there is a departure from its fundamental principles, in order to restore them. This is the true sense of a Bill of Rights. If it be consistent with the Constitution, or contains additional rights, why not put it in the Constitution? If it be repugnant to the Constitution, there will be a perpetual scene of warfare between them. The Honorable Gentleman has praised the Bill of Rights of Virginia, and called it his guardian angel, and vilified this Constitution for not having it. Give me leave to make a distinction between the Representatives of the people of a particular country, who are appointed as the ordinary Legislature, having no limitation to their powers, and another body arising from a compact and certain delineated powers. Were a Bill of Rights necessary in the former, it would not in the latter; for the best security that can be in the latter is the express enumeration of its powers. But let me ask the Gentleman where his favourite rights are violated? They are not vio-

lated by the tenth section, which contains restrictions on the States. Are they violated by the enumerated powers? (Here his Excellency read from the eighth to the twelfth article of the Declaration of Rights.)⁹—Is there not provision made in this Constitution for the trial by jury in criminal cases? Does not the third article provide, that the trial of all crimes shall be by jury, and held in the State where the said crimes shall have been committed? Does it not follow, that the cause and nature of the accusation must be produced, because otherwise they cannot proceed on the cause? Every one knows, that the witnesses must be brought before the jury, or else the prisoner will be discharged. Calling for evidence in his favor is co-incident to his trial. There is no suspicion, that less than twelve jurors will be thought sufficient. The only defect is, that there is no speedy trial.—Consider how this could have been amended. We have heard complaints against it, because it is supposed the jury is to come from the State at large. It will be in their power to have juries from the vicinage. And would not the complaints have been louder, if they had appointed a Federal Court to be had in every county in the State?—Criminals are brought in this State from every part of the country to the General Court, and jurors from the vicinage are summoned to the trials. There can be no reason to prevent the General Government from adopting a similar regulation.

As to the exclusion of excessive bail and fines, and cruel and unusual punishments, this would follow of itself without a Bill of Rights. Observations have been made about watchfulness over those in power, which deserve our attention. There must be a combination—We must presume corruption in the House of Representatives, Senate, and President, before we can suppose that excessive fines can be imposed, or cruel punishments inflicted. Their number is the highest security.—Numbers are the highest security in our own Constitution, which has attracted so many eulogiums from the Gentleman. Here we have launched into a sea of suspicions. How shall we check power?—By their numbers. Before these cruel punishments can be inflicted, laws must be passed, and Judges must judge contrary to justice. This would excite universal discontent, and detestation of the Members of the Government. They might involve their friends in the calamities resulting from it, and could be removed from office. I never desire a greater security than this, which I believe to be absolutely sufficient.

That general warrants are grievous and oppressive, and ought not to be granted, I fully admit. I heartily concur in expressing my detestation of them. But we have sufficient security here also. We do not rely on the integrity of any one particular person or body; but on the

number and different orders of the Members of the Government: Some of them having necessarily the same feelings with ourselves. Can it be believed, that the Federal Judiciary would not be independent enough to prevent such oppressive practices? If they will not do justice to persons injured, may they not go to our own State Judiciaries and obtain it?

Gentlemen have been misled to a certain degree, by a general declaration, that the trial by jury was gone. We see that in the most valuable cases, it is reserved. Is it abolished in civil cases? Let him put his finger on the part where it is abolished. The Constitution is silent on it.—What expression would you wish the Constitution to use, to establish it? Remember we were not making a Constitution for Virginia alone, or we might have taken Virginia for our directory. But we were forming a Constitution for thirteen States. The trial by jury is different in different States. In some States it is excluded in cases in which it is admitted in others. In Admiralty causes it is not used. Would you have a jury to determine the case of a capture? The Virginian Legislature thought proper to make an exception of that case. These depend on the law of nations, and no twelve men that could be picked up would be equal to the decision of such a matter.

Then, Sir, the freedom of the press is said to be insecure. God forbid that I should give my voice against the freedom of the press. But I ask, (and with confidence that it cannot be answered) where is the page where it is restrained? If there had been any regulation about it, leaving it insecure, then there might have been reason for clamours. But this is not the case. If it be, I again ask for the particular clause which gives liberty to destroy the freedom of the press.

He has added religion to the objects endangered in his conception. Is there any power given over it? Let it be pointed out. Will he not be contented with the answer which has been frequently given to that objection? That variety of sects which abounds in the United States is the best security for the freedom of religion. No part of the Constitution, even if strictly construed, will justify a conclusion, that the General Government can take away, or impair the freedom of religion.

The Gentleman asks with triumph, shall we be deprived of these valuable rights? Had there been an exception, or express infringement of those rights, he might object.—But I conceive every fair reasoner will agree, that there is no just cause to suspect that they will be violated.

But he objects, that the common law is not established by the Constitution. The wisdom of the Convention is displayed by its omission; because the common law ought not to be immutably fixed. Is it es-

tablished in our own Constitution, or the Bill of Rights which has been resounded through the House? It is established only by an act of the Legislature,¹⁰ and can therefore be changed as circumstances may require it. Let the Honorable Gentleman consider what would be the destructive consequences of its establishment in the Constitution. Even in England, where the firmest opposition has been made to encroachments upon it, it has been frequently changed. What would have been our dilemma if it had been established?—Virginia has declared, that children shall have equal portions of the real estates of their intestate parents,¹¹ and it is consistent to the principles of a Republican Government.—The immutable establishment of the common law, would have been repugnant to that regulation. It would in many respects be destructive to republican principles, and productive of great inconveniencies. I might indulge myself, by shewing many parts of the common law which would have this effect. I hope I shall not be thought to speak ludicrously, when I say, that the *writ of burning heretics*,¹² would have been revived by it. It would tend to throw real property in few hands, and prevent the introduction of many salutary regulations. Thus, were the common law adopted in that system, it would destroy the principles of Republican Government. But it is not excluded. It may be established by an act of the Legislature. Its defective parts may be altered, and it may be changed and modified as the convenience of the public may require it.

I said when I opened my observations, that I thought the friends of the Constitution were mistaken, when they supposed the powers granted by the last clause of the eighth section, to be merely incidental; and that its enemies were equally mistaken when they put such an extravagant construction upon it.

My objection is, that the clause is ambiguous, and that that ambiguity may injure the States. My fear is, that it will by gradual accessions gather to a dangerous length. This is my apprehension, and I disdain to disown it. I will praise it where it deserves it, and censure it where it appears defective. But, Sir, are we to reject it, because it is ambiguous in some particular instances? I cast my eyes to the actual situation of America; I see the dreadful tempest, to which the present calm is a prelude, if disunion takes place. I see the anarchy which must happen if no energetic Government be established. In this situation, I would take the Constitution were it more objectionable than it is.—For if anarchy and confusion follow disunion, an enterprising man may enter into the American throne. I conceive there is no danger. The Representatives are chosen by and from among the people. They will have a fellow-feeling for the farmers and planters. The twenty-six Senators,

Representatives of the States, will not be those desperadoes and horrid adventurers which they are represented to be. The State Legislatures, I trust, will not forget the duty they owe to their country so far, as to choose such men to manage their federal interests. I trust, that the Members of Congress themselves, will explain the ambiguous parts: And if not, the States can combine in order to insist on amending the ambiguities. I would depend on the present actual feelings of the people of America, to introduce any amendment which may be necessary. I repeat it again, though I do not reverence the Constitution, that its adoption is necessary to avoid the storm which is hanging over America, and that no greater curse can befall her, than the dissolution of the political connection between the States. Whether we shall propose previous or subsequent amendments, is now the only dispute. It is supererogation to repeat again the arguments in support of each.—But I ask Gentlemen, whether, as eight States have adopted it, it be not safer to adopt it, and rely on the probability of obtaining amendments, than by a rejection to hazard a breach of the Union? I hope to be excused for the breach of order which I have committed.

Mr. *Henry* lamented, that he could not see with that perspicuity which other Gentlemen were blessed with. But the ninth section struck his mind still in an unfavourable light. He hoped, as the Gentleman had been indulged in speaking of the Constitution in general, that he would be allowed to answer him before they adopted or rejected it.

(The first clause of the tenth section, read.)

Mr. *Henry* apologized for repeatedly troubling the Committee with his fears. But he apprehended the most serious consequences from these restrictions on the States. As they could not emit bills of credit, make any thing but gold and silver coin a tender in payment of debts, pass *ex post facto* laws, or impair the obligation of contracts; though these restrictions were founded on good principles, yet he feared they would have this effect—That this State would be obliged to pay for her share of the continental money, shilling for shilling. He asked Gentlemen who had been in high authority, whether there were not some State speculations on this matter?—He had been informed that some States had acquired vast quantities of that money, which they would be able to recover in its nominal value of the other States.¹³

Mr. *Madison* admitted there might be some speculations on the subject. He believed the old continental money was settled in a very disproportionate manner. It appeared to him, however, that it was unnecessary to say any thing on this point, for there was a clause in the Constitution which cleared it up. The first clause, of the sixth article, provides, that “All debts contracted, and engagements entered into

before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation." He affirmed that it was meant there should be no change with respect to claims by this political alteration; and that the public would stand, with respect to their creditors, as before. He thought that the validity of claims ought not to diminish by the adoption of the Constitution. But, however, it could not increase the demands on the public.

Mr. *George Mason* declared, he had been informed that some States had speculated most enormously in this matter. Many individuals had speculated so as to make great fortunes on the ruin of their fellow-citizens. The clause which has been read as a sufficient security, seemed to him to be satisfactory as far as it went.—That is, that the continental money ought to stand on the same ground as it did previously, or that the claim should not be impaired. Under the Confederation there were means of settling the old paper money, either in Congress or in the State Legislatures. The money had at last depreciated to a thousand for one. The intention of State speculation, as well as individual speculation, was to get as much as possible of that money, in order to recover its nominal value.—The means, says he, of settling this money were in the hands of the old Congress. They could discharge it at its depreciated value. Is there that means here? No, Sir, we must pay it shilling for shilling, or at least at the rate of one for forty. The amount will surpass the value of the property of the United States. Neither the State Legislatures nor Congress can make an *ex post facto* law.—The nominal value must therefore be paid. Where is the power in the new Government, to settle this money so as to prevent the country from being ruined? When they prohibit the making *ex post facto* laws, they will have no authority to prevent our being ruined by paying that money at its nominal value. Without some security against it, we shall be compelled to pay it to the last particle of our property. Shall we ruin our people by taxation, from generation to generation, to pay that money? Should any *ex post facto* law be made to relieve us from such payment, it will not be regarded, because *ex post facto* laws are interdicted in the Constitution. We may be taxed for centuries, to give advantage to a few particular States in the Union, and a number of rapacious speculators.—If there be any real security against this misfortune, let Gentlemen shew it.—I can see none. The clause under consideration does away [with] the pretended security in the clause which was adduced by the Honorable Gentleman [James Madison]. This enormous mass of worthless money, which has been offered at a thousand for one, must be paid in actual gold or silver at the nominal value.

Mr. *Madison*,—Mr. Chairman.—It appears to me immaterial who holds those great quantities of paper money, which were in circulation before the peace, or at what value they acquired it; for it will not be affected by this Constitution. What would satisfy Gentlemen more than that the new Constitution would place us in the same situation with the old? In this respect it has done so. The claims against the United States are declared to be *as valid* as they were, but *not more so*. Would they have a particular specification of these matters? Where can there be any danger?—Is there any reason to believe that the new rulers, one branch of which will be drawn from the mass of the people, will neglect or violate our interests more than the old?—It rests on the obligation of public faith only in the articles of Confederation. It will be so in this Constitution should it be adopted. If the new rulers should wish to enhance its value, in order to gratify its holders, how can they compel the States to pay it if the letter of the Constitution be observed? Do Gentlemen wish the public creditors should be put in a worse situation? Would the people at large wish to satisfy creditors in such a manner as to ruin them? There cannot be a majority of the people of America that would wish to defraud their public creditors. I consider this as well guarded as possible. It rests on plain and honest principles. I cannot conceive how it could be more honorable or safe.—(Mr. *Madison* made some other observations, which could not be heard.)

Mr. *Henry*,—Mr. Chairman.—I am convinced, and I see clearly that this paper money must be discharged, shilling for shilling. The Honorable Gentleman [James Madison] must see better than I can, from his particular situation and judgment, but this has certainly escaped his attention. The question arising on the clause before you, is, whether an act of the Legislature of this State, for scaling money, will be of sufficient validity to exonerate you from paying the nominal value, when such a law called *ex post facto*, and impairing the obligation of contracts, are expressly interdicted by it?—Your hands are tied up by this clause, and you must pay shilling for shilling; and, in the last section, there is a clause that prohibits the General Legislature from passing any *ex post facto* law—So that the hands of Congress are tied up, as well as the hands of the State Legislatures.

How will this thing operate, when ten or twenty millions are demanded as the quota of this State? You will cry out that speculators have got it at one for a thousand, and that they ought to be paid so. Will you then have recourse for relief, to Legislative interference? They cannot relieve you because of that clause. The expression includes public contracts, as well as private contracts between individuals.—Notwithstanding the sagacity of the Gentleman, he cannot prove its

exclusive relation to private contracts. Here is an enormous demand, which your children to the tenth generation will not be able to pay. Should we ask, if there be any obligation in justice to pay more than the depreciated value, we shall be told that contracts must not be impaired. Justice may make a demand of millions, but the people cannot pay them.

I remember the clamours and public uneasiness concerning the payments of British debts, put into the treasury. Was not the alarm great and general lest these payments should be laid on the people at large? Did not the Legislature interfere and pass a law to prevent it?¹⁴ Was it not re-echoed every where, that the people of this country ought not to pay the debts of their great ones? And though some urged their patriotism, and merits in putting money on the faith of the public into the treasury, yet the outcry was so great, that it required Legislative interference. Should those enormous demands be made upon us, would not Legislative interference be more necessary than it was in that case? Let us not run the risk of being charged with carelessness, and neglect of the interest of our constituents and posterity. I would ask the number of millions? It is without exaggeration, immense. I ask Gentlemen if they can pay one hundred millions, or two hundred millions? Where have they the means of paying it? Still they would make us proceed to tie the hands of the States and of Congress.

A Gentleman [William Grayson] has said with great force, that there is a contest for empire: There is also a contest for money. The States of the North wish to secure a superiority of interest and influence. In one part their deliberation is marked with wisdom, and in the other with the most liberal generosity. When we have paid all the gold and silver we could to replenish the Congressional coffers, here they ask for confidence. Their hands will be tied up. They cannot merit confidence. Here is a transfer from the old to the new Government, without the means of relieving the greatest distresses which can befall the people. This money might be scaled, Sir, but the exclusion of *ex post facto* laws, and laws impairing the obligation of contracts, steps in and prevents it. These were admitted by the old Confederation.—There is a contest for money as well as empire, as I have said before. The Eastern States have speculated chiefly in this money. As there can be no Congressional scale, their speculation will be extremely profitable. Not satisfied with a majority in the Legislative Councils, they must have all our property. I wish the Southern genius of America had been more watchful.

This State may be sued in the Federal Court, for those enormous demands; and judgment may be obtained, unless *ex post facto* laws be

passed. To benefit whom are we to run this risk? I have heard there were vast quantities of that money packed up in barrels—Those formidable millions are deposited in the Northern States, and whether in public or private hands, makes no odds. They have acquired it for the most inconsiderable trifle. If you accord to this part, you are bound hand and foot. Judgment must be rendered against you for the whole. Throw all pride out of the question, this is a most nefarious business. Your property will be taken from you to satisfy this most infamous speculation. It will destroy your public peace, and establish the ruin of your citizens. Only general resistance will remedy it. You will shut the door against every ray of hope, if you allow the holders of this money, by this clause, to recover their formidable demands. I hope Gentlemen will see the absolute necessity of amending it, by enabling the State Legislatures to relieve their people from such nefarious oppressions.

Mr. *George Nicholas*,—Mr. Chairman.—I beg Gentlemen to consider most attentively the clause under consideration, and the objections against it. He says there exists the most dangerous prospect. Has the Legislature of Virginia any right to make a law or regulation to interfere with the continental debts? Have they a right to make *ex post facto* laws, and laws impairing the obligation of contracts for that purpose? No, Sir. If his fears proceed from this clause, they are without foundation. This clause does not hinder them from doing it, because the State never could do it—The jurisdiction of such general objects being exclusively vested in Congress.

But, says he, this clause will hinder the General Government from preventing the nominal value of those millions from being paid. On what footing does this business stand if the Constitution be adopted? By it all contracts will be as valid, and *only as valid* as under the old Confederation. The new Government will give the holders the same power of recovery as the old one. There is no law under the existing system which gives power to any tribunal to enforce the payment of such claims. On the will of Congress alone the payment depends. The Constitution expressly says, that they shall be only as binding as under the present Confederation. Cannot they decide according to real equity? Those who have this money must make application to Congress for payment. Some positive regulation must be made to redeem it. It cannot be said, that they have power of passing a law to enhance its value. They cannot make a law that that money shall no longer be but one for one.—For though they have power to pay the debts of the United States, they can only pay the real debts, and this is no farther a debt than it was before. Application must therefore be made by the

holders of that money, to Congress, who will make the most proper regulation to discharge its real and equitable, and not its nominal value.

We are told of the act passed to exonerate the public from the payments of the British debts put into the treasury.—That has no analogy to this: Those payments were opposed, because they were unjust. But he supposes that Congress may be sued by those speculators. Where is the clause that gives that power? It gives no such power. This, according to my idea, is inconsistent. Can the Supreme Legislature be sued in their own subordinate Courts, by their own citizens, in cases where they are not a party? They may be plaintiffs, but not defendants. But the individual States perhaps may be sued? Pennsylvania or Virginia may be sued—How is this? Do I owe the man in New-England any thing? Does Virginia owe any thing to the Pennsylvanian holder of such money? Who promised to pay it? Congress, Sir. Congress are answerable to the individual holders of this money, and individuals are answerable over to Congress. Therefore no individual can call on any State.

But the Northern States struggle for money as well as for empire. Cannot Congress make such a regulation as they please at present? If the Northern States wish to injure us, why do they not do it now? What greater dangers are there to be dreaded from the new Government, since there is no alteration? If they have a majority in the one case, they have in the other. The interests of those States would be as dangerous for us under the old as under the new Government, which leaves this business where it stands, because the conclusion says, that all debts contracted, or engagements entered into, shall be only as valid in the one case as the other.

Governor *Randolph*.—Mr. Chairman.—This clause in spite of the invective of the Gentleman [Patrick Henry], is a great favourite of mine; because it is essential to justice. I shall reserve my answer respecting the safety of the people, till the objection be urged: But I must make a few observations. He says, this clause will be injurious, and that no scale can be made, because there is a prohibition on Congress of passing *ex post facto* laws. If the Gentleman did not make such strong objections to logical reasoning, I could prove by such reasoning, that there is no danger. *Ex post facto* laws, if taken technically, relate solely to criminal cases; and my honorable colleague tells you it was so interpreted in Convention.¹⁵ What greater security can we have against arbitrary proceedings in criminal jurisprudence than this? In addition to the interpretation of the Convention, let me shew him still greater authority. The same clause provides, that no bill of attainder shall be passed. It shews that the attention of the Convention was drawn to

criminal matters alone.—Shall it be complained against this Government, that it prohibits the passing of a law annexing a punishment to an act which was lawful at the time of committing it? With regard to retrospective laws there is no restraint.

Let us examine the cause of the clamours which are made with regard to the continental money. A friend [James Madison] has mentioned a clause which shews there is no danger from the new Congress. Does it not manifestly appear, that they are precisely in the same predicament as under the old Confederation? And do Gentlemen wish that this should be put in a worse condition? If they have equity under the old Confederation, they have equity still. There is no tribunal to recur to by the old Government. There is none in the new for that purpose. If the old Congress can scale that money, they have this power still. But he [Patrick Henry] says not, because the States cannot impair the obligation of contracts. What is to be done by the States with regard to it? Congress, and not they, have contracted to pay it. It is not affected by this clause at all. I am still a warm friend to the prohibition, because it must be promotive of virtue, and justice, and preventive of injustice and fraud. If we take a review of the calamities which have befallen our reputation as a people, we will find they have been produced by frequent interferences of the State Legislatures with private contracts. If you inspect the great corner stone of republicanism, you will find it to be justice and honor.

I come now to what will be agitated by the Judiciary.—They are to enforce the performance of private contracts. The British debts, which are withheld contrary to treaty, ought to be paid. Not only the law of nations, but justice and honor require that they be punctually discharged. I fear their payment may press on my country, but we must retrench our superfluities, and profuse and idle extravagance, and become more œconomical and industrious. Let me not be suspected of being interested in this respect; for without a sad reverse of my fortune, I shall never be in a situation to be benefited by it. I am confident the honest Convention of Virginia will not oppose it. Can any society exist without a firm adherence to justice and virtue? The Federal Judiciary cannot intermeddle with those public claims without violating the letter of the Constitution. Why then such opposition to the clause? His Excellency then concluded, that he would, if necessary, display his feelings more fully on the subject another time.

Mr. *George Mason*.—Mr. Chairman.—The debt is transferred to Congress, but not the means of paying it. They cannot pay it any other way than according to the nominal value: For they are prohibited from making *ex post facto* laws; and it would be *ex post facto* to all intents

and purposes, to pay off creditors with less than the nominal sum, which they were originally promised. But the Honorable Gentleman [Edmund Randolph] has called to his aid technical definitions. He says, that *ex post facto* laws relate solely to criminal matters. I beg leave to differ from him. Whatever it may be at the bar, or in a professional line, I conceive, that according to the common acceptation of the words, *ex post facto* laws, and retrospective laws, are synonymous terms. Are we to trust business of this sort to technical definitions? The contrary is the plain meaning of the words. Congress has no power to scale this money. The States are equally precluded. The debt is transferred without the means of discharging it. Implication will not do. The means of paying it are expressly withheld. When this matter comes before the Federal Judiciary, they must determine according to this Constitution. It says expressly, that they shall not make *ex post facto* laws. Whatever may be the professional meaning, yet the general meaning of *ex post facto* law, is, an act having a retrospective operation. This construction is agreeable to its primary etymology. Will it not be the duty of the Federal Court to say, that such laws are prohibited?—This goes to the destruction and annihilation of all the citizens of the United States, to enrich a few. Are we to part with every shilling of our property, and be reduced to the lowest insignificance, to aggrandize a few speculators?—Let me mention a remarkable effect this Constitution will have. How stood our taxes before this Constitution was introduced? Requisitions were made on the State Legislatures, and if they were unjust, they could be refused. If we were called upon to pay twenty millions, shilling for shilling, or at the rate of one for forty, our Legislature could refuse it, and remonstrate against the injustice of the demand. But now this could not be done; for direct taxation is brought home to us. The federal officer collects immediately of the planters. When it withholds the only possible means of discharging those debts, and by direct taxation prevents any opposition to the most enormous and unjust demand, where are you?—Is there a ray of hope?—As the law has never been my profession, if I err, I hope to be excused. I spoke from the general sense of the word. The worthy Gentleman [George Nicholas] has told you, that the United States can be plaintiffs, but never defendants.—If so, it stands on very unjust grounds. The United States cannot be come at for any thing they may owe, but may get what is due to them.—There is therefore no reciprocity. The thing is so incomprehensible, that it cannot be explained. As an express power is given to the Federal Court, to take cognizance of such controversies, and to declare null all *ex post facto* laws, I think

Gentlemen must see there is danger, and that it ought to be guarded against.

Mr. *Madison*,—Mr. Chairman.—I did expect from the earnestness he [Patrick Henry] has expressed, that he would cast some light upon it.—But the ingenuity of the Honorable Member could make nothing of this objection. He argues from a supposition that the State Legislatures individually, might have passed laws to affect the value of the continental debt. I believe he did not well consider this, before he hazarded his observations. He says, that the United States being restrained in this case, will be obliged to pay it at an unjust rate.—It has been so clearly explained, by the Honorable Gentleman over the way [George Nicholas], that there could be no danger, that it is unnecessary to say more on the subject. The validity of these claims will neither be increased nor diminished by this change.—There must be a law made by Congress respecting their redemption,—The States cannot interfere.—Congress will make such a regulation as will be just.—There is, in my opinion, but one way of scaling improperly and unjustly, and that is, by acceding to the favourite mode of the Honorable Gentleman [George Mason],—by requisitions. Is it to be presumed, any change can be made in the system inconsistent with reason or equity? Strike the clause out of the Constitution—what will it be then?—The debt will be as valid only, as it was before the adoption.—Gentlemen will not say, that obligations are varied. This is merely a declaratory clause, that things are to exist in the same manner as before.

But I fear the very extensive assertions of the Gentleman [Patrick Henry], may have misled the Committee. The whole of that continental money amounted to but little more than one hundred millions.—A considerable quantity of it has been destroyed.—At the time when no share of it had been destroyed, the quota of this State did not amount to more than twenty-six millions.—At forty for one, this is but five hundred thousand dollars at most.¹⁶ In every point of view it appears to me that it cannot be on a more reasonable, equitable, or honorable footing, than it is. Do Gentlemen suppose, that they will agree to any system or alteration, that will place them in a worse situation than before? Let us suppose this Commonwealth was possessed of the same money that the Northern States have; and suppose that an objection was made by them to its redemption at its real value—what would be the consequence? We should pronounce them to be unreasonable, and on good grounds. This case is so extremely plain, that it was unnecessary to say as much as has been said.

Mr. *Mason* was still convinced of the rectitude of his former opinion. He thought it might be put on a safer footing, by three words. By

continuing the restriction of *ex post facto* laws to crimes—It would then stand under the new Government as it did under the old.

Governor *Randolph* could not coincide with the construction put by the Honorable Gentleman on *ex post facto* laws.—The technical meaning which confined such laws solely to criminal cases, was followed in the interpretation of treaties between nations, and was concurred in by all civilians. The prohibition of bills of attainder, he thought a sufficient proof, that *ex post facto* laws related to criminal cases only, and that such was the idea of the Convention.

(*The next clause read.*)

Mr. *George Mason*.—Mr. Chairman.—If Gentlemen attend to this clause, they will see we cannot make any inspection-law but what is subject to the controul and revision of Congress.—Hence Gentlemen, who know nothing of the business, will make rules concerning it, which may be detrimental to our interests. For forty years we have laid duties on tobacco to defray the expences of the inspection and to raise an incidental revenue for the State. Under this clause that incidental revenue which is calculated to pay for the inspection, and to defray contingent charges, is to be put into the Federal treasury.—But if any tobacco house is burnt, we cannot make up the loss.—I conceive this to be unjust and unreasonable.—When any profit arises from it, it goes into the Federal treasury:—But when there is any loss or deficiency from damage, it cannot be made up. Congress are to make regulations for our tobacco.—Are the men in the States where no tobacco is made, proper judges of this business?—They may perhaps judge as well, but surely not better than our own immediate Legislature, who are accustomed and familiar with this business. This is one of the most wanton powers of the General Government. I would concede any power that was essentially necessary for the interests of the Union.—But this instead of being necessary, will be extremely oppressive.

Mr. *George Nicholas*.—Mr. Chairman.—I consider this clause as a good regulation. It will be agreed to that they will impose duties in the most impartial manner, and not throw the burdens on a part of the community. Every man who is acquainted with our laws, must know that the duties on tobacco were as high as sixteen shillings a hogshead. The consequence was, that the tobacco-makers have paid upwards of 20,000 pounds, annually, more than the other citizens; because they paid every other kind of tax as well as the rest of the community. We have every reason to believe that this clause will prevent injustice and impartiality.—Tobacco-makers will be benefited by it. But the Gentleman says, that our tobacco regulations will be subject to the controul of Congress, who will be unacquainted with the subject. The clause

says, that all such laws shall be subject to the revision and controul of Congress. What laws are meant by this?—It means laws imposing duties on the exports of tobacco. But it does not follow, that laws made for the regulation of the inspection shall be subject to the revision of Congress. He may say, that the laws for imposing duties on the exports of tobacco, and laws regulating the inspection, must be blended in the same acts. Give me leave to say, that they need not be so: For the duties on exports might be in one law, and the regulation of the inspection in another. The States may easily make them separately. But, he says, we shall loose the profit. We shall then find equity in our Legislature, which we have not found heretofore: For as they will lay it, not for their own exclusive advantage, but partly for the benefit of others, they will not be interested in laying it partially. As to the effect of ware-houses being burnt, I differ from him. A tax may be laid to make up this loss.—Though the amount of the duties go into the Federal treasury, yet a tax may be laid for that purpose. Is it not necessary and just, if the inspection law obliges the planter to carry his tobacco to a certain place, that he should receive a compensation for the loss, if it be destroyed? The Legislature must defray the expences and contingent charges by laying a tax for that purpose: For such a tax is not prohibited. The nett amounts only go into the Federal treasury, after paying the expences. Gentlemen must be pleased with this part, especially those who are tobacco makers.

Mr. *George Mason* replied, that the State Legislatures could make no law but what would come within the general controul given to Congress; and that the regulation of the inspection and the imposition of duties, must be inseparably blended together.

Mr. *Madison*,—Mr. Chairman.—Let us take a view of the relative situation of the States. Some States export the produce of other States. Virginia exports the produce of North-Carolina; Pennsylvania those of Jersey and Delaware; and Rhode-Island those of Connecticut and Massachusetts. The exporting States wished to retain the power of laying duties on exports, to enable them to pay the expences incurred. The States whose produce is exported by other States, were extremely jealous, lest a contribution should be raised of them by the exporting States, by laying heavy duties on their commodities. If this clause be fully considered, it will be found to be more consistent with justice and equity than any other practicable mode: For if the States had the exclusive imposition of duties on exports, they might raise a heavy contribution of the other States, for their own exclusive emoluments. The Honorable Member [George Nicholas] who spoke in defence of the clause, has fairly represented it. As to the reimbursement of the

loss that may be sustained by individuals, a tax may be laid on tobacco when brought to the ware-houses, for that purpose. The sum arising therefrom may be appropriated to it consistently with the clause. For it only says, that "The *nett* produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States," which necessarily implies that all contingent charges shall have been previously paid.

(The 1st section, of the 2d article, read.)

Mr. *George Mason*,—Mr. Chairman.—There is not a more important article in the Constitution than this. The great fundamental principle of responsibility in republicanism is here sap[p]ed. The President is elected without rotation.—It may be said that a new election may remove him, and place another in his stead. If we judge from the experience of all other countries, and even our own, we may conclude, that as the President of the United States may be re-elected, so he will. How is it in every Government where rotation is not required? Is there a single instance of a great man not being re-elected? Our Governor is obliged to return after a given period, to a private station. It is so in most of the States.¹⁷ This President will be elected time after time—He will be continued in office for life.—If we wish to change him, the great powers in Europe will not allow us.

The Honorable Gentleman my colleague in the late Federal Convention [Edmund Randolph], mentions with applause those parts of which he had expressed his approbation; but when he comes to those parts of which he had expressed his disapprobation, he says not a word. If I am mistaken, let me be put right. I shall not make use of his name, but in the course of this investigation, I shall use the arguments of that Gentleman against it.

Will not the great powers of Europe, as France and Great-Britain, be interested in having a friend in the President of the United States; and will they not be more interested in his election, than in that of the King of Poland? The people of Poland have a right to displace their King. But do they ever do it? No. Prussia and Russia, and other European powers, would not suffer it. This clause will open a door to the dangers and misfortunes which the people of Poland undergo. The powers of Europe will interpose, and we shall have a civil war in the bowels of our country, and be subject to all the horrors and calamities of an elective Monarchy. This very executive officer, may, by consent of Congress, receive a stated pension from European Potentates. This is an idea not altogether new in America. It is not many years ago, since the revolution, that a foreign power offered emoluments to persons holding offices under our Government. It will moreover be dif-

ficult to know, whether he receives emoluments from foreign powers or not. The Electors who are to meet in each State to vote for him, may be easily influenced. To prevent the certain evils of attempting to elect a new President, it will be necessary to continue the old one. The only way to alter this, would be to render him ineligible after a certain number of years, and then no foreign nation would interfere to keep *in* a man who was utterly ineligible. Nothing is so essential to the preservation of a Republican Government, as a periodical rotation. Nothing so strongly impels a man to regard the interest of his constituents, as the certainty of returning to the general mass of the people, from whence he was taken; where he must participate [in] their burdens. It is a great defect in the Senate, that they are not ineligible at the end of six years. The biennial exclusion of one third of them, will have no effect, as they can be re-elected. Some stated time ought to be fixed, when the President ought to be reduced to a private station. I should be contented that he might be elected for eight years: But I would wish him to be capable of holding the office only eight years, out of twelve or sixteen years. But as it now stands, he may continue in office for life; or in other words, it will be an elective Monarchy.

Governor *Randolph*.—Mr. Chairman.—The Honorable Gentleman last up, says that I do not mention the parts to which I object. I have hitherto mentioned my objections with freedom and candour. But, Sir, I considered that our critical situation rendered adoption necessary, were it even more defective than it is. I observed, that if opinions ought to lead the Committee on one side, they ought on the other. Every Gentleman who has turned his thoughts to the subject of politics, and has considered of the most eligible mode of Republican Government, agrees that the greatest difficulty arises from the Executive, as to the time of his election, mode of his election, quantum of power, &c. I will acknowledge that at one stage of this business, I had embraced the idea of the Honorable Gentleman, that the re-eligibility of the President was improper.¹⁸ But I will acknowledge, that on a further consideration of the subject, and attention to the lights which were thrown upon it by others, I altered my opinion of the limitation of his eligibility. When we consider the advantages arising to us from it, we cannot object to it. That which has produced my opinion against the limitation of his eligibility, is this—that it renders him more independent in his place, and more solicitous of promoting the interest of his constituents: For, unless you put it in his power to be re-elected, instead of being attentive to their interests, he will lean to the augmentation of his private emoluments. This subject will admit of high

coloring and plausible arguments; but on considering it attentively and coolly, I believe it will be found less exceptionable than any other mode. The mode of election here, excludes that faction which is productive of those hostilities and confusion in Poland. It renders it unnecessary and impossible for foreign force or aid to interpose. The Electors must be elected by the people at large.¹⁹ To procure his re-election, his influence must be co-extensive with the Continent. And there can be no combination between the Electors, as they elect him on the same day in every State. When this is the case, how can foreign influence or intrigues enter? There is no reason to conclude, from the experience of these States, that he will be continually re-elected. There has been several instances, where officers have been displaced where they were re-eligible. This has been the case with the Executive of Massachusetts, and I believe of New-Hampshire. It happens from the mutation of sentiments though the officers be good.

There is another provision against the danger mentioned by the Honorable Member, of the President receiving emoluments from foreign powers. If discovered he may be impeached. If he be not impeachable he may be displaced at the end of the four years. By the ninth section, of the first article, "No person holding an office of profit or trust, shall accept of any present or emolument whatever, from any foreign power, without the consent of the Representatives of the people;" and by the first section, of the second article, his compensation is neither to be increased or diminished, during the time for which he shall have been elected; and he shall not, during that period, receive any [other] emolument from the United States or any of them. I consider therefore, that he is restrained from receiving any present or emoluments whatever. It is impossible to guard better against corruption. The Honorable Member seems to think, that he may hold his office without being re-elected. He cannot hold over four years, unless he be re-elected, any more than if he were prohibited. As to forwarding and transmitting the certificates of the Electors, I think the regulation as good as could be provided.

Mr. *George Mason*.—Mr. Chairman.—The Vice-President appears to me to be not only an unnecessary but a dangerous officer. He is, contrary to the usual course of Parliamentary proceedings, to be President of the Senate. The State from which he comes may have two votes, when the others will have but one. Besides, the Legislative and Executive are hereby mixed and incorporated together. I cannot at this distance of time foresee the consequences; but I think, that in the course of human affairs, he will be made a tool of in order to bring about his own interest, and aid in overturning the liberties of his

country. There is another part which I disapprove of, but which perhaps I do not understand. "In case of removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected."—The power of Congress is right and proper so far as it enables them to provide what officer shall act, in case both the President and Vice-President be dead or disabled. But Gentlemen ought to take notice that the election of this officer is only for four years. There is no provision for a speedy election of another President, when the former is dead or removed. The influence of the Vice-President may prevent the election of the President. But perhaps I may be mistaken.

Mr. *Madison*,—Mr. Chairman.—I think there are some peculiar advantages incident to this office, which recommend it to us. There is in the first place a great probability this officer will be taken from one of the largest States, and if so, the circumstance of his having an eventual vote will be so far favorable. The consideration which recommends it to me, is, that he will be the choice of the people at large.²⁰—There are to be ninety one Electors, each of whom has two votes: If he have one-fourth of the whole number of votes, he is elected Vice-President.²¹ There is much more propriety in giving this office to a person chosen by the people at large, than to one of the Senate who is only the choice of the Legislature of one State. His eventual vote is an advantage too obvious to comment upon. I differ from the Honorable Member [George Mason] in the case which enables the Congress to make a temporary appointment. When the President and Vice-President die, the election of another President will immediately take place, and suppose it would not, all that Congress could do, would be to make an appointment between the expiration of the four years and the last election, and to continue only till such expiration. This can rarely happen. This power continues the Government in motion, and is well guarded.

The Committee then rose—And on motion, *Resolved*, That this Convention will, to-morrow, again resolve itself into a Committee of the whole Convention, to take into farther consideration, the proposed Constitution of Government.

And then the Convention adjourned until to-morrow morning, nine o'clock.

1. During the eighteenth century, the Virginia legislature passed several laws placing high duties on the importation of slaves, but the Crown disallowed some of them. In 1772 the House of Burgesses petitioned George III, beseeching him to remove all restraints on the royal governor that prevented him from assenting to such laws. Since the imperial government did not change its policy, the new state constitution (1776) accused George III of an "inhuman use of his negative" to prevent the exclusion of slaves. In his rough draft of the Declaration of Independence, Thomas Jefferson also criticized the king for using his veto power in this matter, but Congress deleted the passage "in complaisance to South Carolina & Georgia." Some Northern delegates also favored deleting the passage because "they had been pretty considerable carriers."

In 1778 and 1785, the Virginia legislature prohibited the importation of slaves, and by 1788 all of the states (except Georgia) had similar prohibitions or had imposed high duties upon importation. Mason himself attacked the slave trade in the Fairfax Resolves (1774), in the Constitutional Convention, and in his published objections to the Constitution.

(See W. E. Burghardt Du Bois, *The Suppression of the African Slave-Trade to the United States of America, 1638-1870* [1896; reprinted, Baton Rouge, La., 1969], 7-38, 204, 205, 213, 214, 215, 218-19, 220, 221-22, 224; Boyd, I, 314, 426; RCS:Va., 45, 533; Hening, IX, 471-72; XII, 182; CC:Vol. 2, pp. 503-4; Rutland, *Mason*, I, 207; and Farrand, II, 370.)

2. In the Constitutional Convention on 22 August, delegates from North Carolina, South Carolina, and Georgia opposed giving Congress the power to prohibit the foreign slave trade and warned that their states would not ratify the Constitution if Congress were given such a power (Farrand, II, 369-75). Later in the Convention, a compromise was struck between the Northern and Southern states that included the slave trade. Congress was denied the power to prohibit the importation of slaves before 1808, while acts regulating commerce could be passed by a simple majority in each house of Congress, instead of a two-thirds vote favored by the Southern States (*ibid.*, 414-16, 449-53).

3. According to the federal census of 1790, New York had 21,324 slaves, New Jersey 11,423, and Connecticut 2,764 (CDR, 300).

4. The legislature, which included sixty-two Convention delegates, was scheduled to convene for a special session on 23 June.

5. Article IX of the Articles of Confederation stipulates that Congress "shall publish the Journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy" (CDR, 92).

6. Article VI of the Articles of Confederation reads: "nor shall any person holding any office of profit or trust under the united states, or any of them, except of any present, emolument, office or title of any kind whatever from any king, prince or foreign state" (CDR, 88).

7. It was the practice of Louis XVI of France to give presents to departing ministers who signed treaties with France. Before he left France in mid-1780, Arthur Lee received a portrait of Louis set in diamonds atop a gold snuff box. In October 1780 Lee turned the gift over to Congress, and on 1 December Congress resolved that he could keep the gift. In September 1785 Benjamin Franklin informed Secretary for Foreign Affairs John Jay that, when he left France, Louis XVI presented him with a miniature portrait of himself, set with 408 diamonds. In October Jay recommended to Congress that Franklin be permitted to keep the miniature in accordance with its December 1780 ruling about a similar miniature given to Lee. In March 1786 Congress ordered that Franklin be permitted to keep the gift. At the same time, Congress also allowed Jay himself to accept the gift of a horse from the King of Spain even though Jay was then engaged in negotiations with Spain's representative, Don Diego de Gardoqui. (Jay had wanted a Spanish horse for breeding purposes.)

8. See Patrick Henry's speech, Convention Debates, 16 June (RCS:Va., 1330).

9. For the text of these articles, see RCS:Va., 531.

10. For the adoption by the fifth revolutionary convention (1776) of an ordinance declaring the common law of England to be in force, see RCS:Va., 339, note 7.

11. Randolph refers to an act revising the rule of primogeniture, drafted by Thomas Jefferson between 1776 and 1779 and adopted by the legislature on 30 November 1785, which stipulated the order of inheritance for owners of real property who died intestate (Hening, XII, 138–40; Boyd, I, 563n; II, 301–2, 305–35, 391–93; and Rutland, *Madison*, VIII, 391–99).

12. Randolph refers to the writ *de hæretico comburendo*. A statute of 1677 abolished the writ (see Blackstone, *Commentaries*, Book IV, chapter IV, 46–49).

13. As the principal means of financing the War for Independence, Congress issued more than \$200,000,000 in Continental paper money from 1775 to 1779. In 1778 the money ranged between 4 and 6 to 1 of specie, while in 1779 it went from 8 to 1 in January to 41.5 to 1 in December. In March 1780 the ratio was 62.5 to 1, and Congress revalued the money at 40 to 1 and assigned a quota of the paper money for each state to collect in taxes and to remit to Congress.

In pursuance of the order of Congress, most of the Northern States collected, in the form of taxes, large amounts of Continental paper money in the next few years; while the Southern States collected much less. Massachusetts, which collected its entire quota, and the other Northern States that met substantial portions of their quotas wanted the money redeemed at 40 to 1 rather than at its lesser actual value. As of May 1790, Virginia had paid into Congress only forty percent of its quota (see note 16, below). The issue of redemption was much debated in the 1780s but never resolved.

(See E. James Ferguson, *The Power of the Purse: A History of American Public Finance, 1776–1790* [Chapel Hill, N.C., 1961], 30, 44, 51, 64–67, 205–6; Anne Bezanson, *Prices and Inflation During the American Revolution: Pennsylvania, 1770–1790* [Philadelphia, 1951], 65; LMCC, VII, 294–97, 593–94, 597–98; and *American State Papers. Documents, Legislative and Executive, of the Congress of the United States*. Class III, Finance, Vol. I [Washington, D.C., 1832], 58–59. See also note 16, below.)

14. Henry refers to a law, passed on 3 January 1788, which provided that the state was only liable for the depreciated value (plus six percent interest) of any money that had been deposited in the loan office as payment for debts owed to British creditors (Hening, XII, 529–30). For the issue of British debts and the legislation concerning these debts, see RCS:Va., xxv–xxvii.

15. In the Constitutional Convention on 29 August, John Dickinson stated “that on examining Blackstone’s *Commentaries* [Book I, Introduction, section II, page 46], he found that the terms ‘ex post facto’ related to criminal cases only; that they would not consequently restrain the States from retrospective laws in civil cases, and that some further provision for this purpose would be requisite.” On 14 September, George Mason moved unsuccessfully to strike out the provision on ex post facto laws in Article I, section 9, because “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.” On the same day, the Convention added a provision to Article I, section 10, clause 1, which prohibited the states from passing any “law impairing the obligation of contracts” (Farrand, II, 448–49, 617, 619).

The “honorable colleague” referred to by Randolph was probably James Madison, some of whose earlier remarks “could not be heard” by stenographer David Robertson.

16. Virginia’s quota of Continental money was \$32,500,000. As of 11 May 1790, the state had paid into the U.S. Treasury \$13,040,376 of that sum. At the depreciation scale of 40 to 1, the specie value of the amount outstanding is \$486,491. (See note 13, above.)

17. The Virginia constitution provided that the governor should have a one-year term and should “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” (RCS:Va., 534). Other states that limited the reeligibility of their executives were Penn-

sylvania, Delaware, Maryland, North Carolina, South Carolina, and Georgia (Thorpe, I, 563; II, 781; III, 1696; V, 2791, 3087; VI, 3249).

18. In his 10 October 1787 letter to the Speaker of the Virginia House of Delegates, Randolph supported an amendment to the Constitution "rendering the President ineligible after a given number of years" (RCS:Va., 273).

19. The Constitution provides that each state legislature shall determine the manner in which presidential electors are to be chosen. Ten states participated in the first election of presidential electors. In five (Massachusetts, Pennsylvania, Delaware, Maryland, and Virginia) the electors were chosen by the people. In the other five (New Hampshire, Connecticut, New Jersey, South Carolina, and Georgia), they were elected by the legislature.

20. See note 19, immediately above.

21. Three candidates could each receive more than one-fourth of the total number of electoral votes cast; consequently, the candidate with the lowest total, even though greater than one-quarter, would not be elected vice president.

The Virginia Convention Wednesday 18 June 1788

Debates

The Convention, according to the order of the day, again resolved itself into a Committee of the whole Convention, to take into farther consideration, the proposed plan of Government.—Mr. *Wythe* in the Chair.

(The 1st section, of the 2d article, still under consideration.)

Mr. *Monro*, after a brief exordium in which he insisted, that on the judicious organization of the executive power, the security of our interest and happiness greatly depended; that in the construction of this part of the Government, we should be cautious in avoiding the defects of other Governments, and that our circumspection should be commensurate to the extent of the powers delegated; proceeded as follows: The President ought to act under the strongest impulses of rewards and punishments, which are the strongest incentives to human actions. There are two ways of securing this point. He ought to depend on the people of America for his appointment and continuance in office: He ought also to be responsible in an equal degree to all the States; and to be tried by dispassionate Judges: His responsibility ought further to be direct and immediate. Let us consider in the first place then, how far he is dependent on the people of America. He is to be elected by Electors, in a manner perfectly dissatisfactory to my mind. I believe that he will owe his election, in fact, to the State Governments, and not to the people at large. It is to be observed, that Congress

have it in their power to appoint the time of choosing the Electors, and of electing the President. Is it not presumeable they will appoint the times of choosing the Electors, and electing the President, at a considerable distance from each other, so as to give an opportunity to the Electors to form a combination? If they know that such a man as they wish, for instance the actual President, cannot possibly be elected by a majority of the whole number of Electors appointed, yet if they can prevent the election by such majority, of any one they disapprove of, and if they can procure such a number of votes as will be sufficient to make their favourite one of the five highest on the list, they may ultimately carry the election into the General Congress; where the votes in choosing him shall be taken by States, each State having one vote. Let us see how far this is compatible with the security of republicanism. Although this State is to have ten and Massachusetts eight Representatives, and Delaware and Rhode-Island are to have but one each, yet the votes are to be by States only. The consequence will be, that a majority of the States, and these consisting of the smallest, may elect him. This will give an advantage to the small States. He will depend therefore on the States for his re-election and continuance in office, and not on the people. Does it not bear the complexion of the late Confederation? He will conduct himself in accommodation to them, since by them he is chosen, and may be again. If he accommodates himself to the interest of particular States, will they not be obliged by State policy to support him afterwards?—Let me inquire into his responsibility if he does not depend on the people. To whom is he responsible? To the Senate, his own council. If he makes a treaty bartering the interests of his country, by whom is he to be tried?—By the very persons who advised him to perpetrate the act. Is this any security? I am persuaded that the Gentleman who will be first elected, may continue in the office for life.¹

The situation of the United States, as it applies to the European States, demands attention. We may hold the balance among those States. Their Western territories are contiguous to us. What we may do without any offensive operations, may have considerable influence. Will they not then endeavor to influence his general councils? May we not suppose that they will endeavour to attach him to their interest, and support him, in order to make him serve their purposes? If this be the case, does not the mode of election present a favorable opportunity to continue in office the person that shall be President? I am persuaded they may, by their power and intrigues, influence his re-election. There being nothing to prevent his corruption, but his virtue, which is but precarious, we have not sufficient security. If there

be a propriety in giving him a right of making leagues, he ought not to be connected with the Senate.—If the Senate have a right to make leagues, there ought to be a majority of the States.

The Vice-President is an unnecessary officer. I can see no reason for such an officer. The Senate might of their own body elect a President, who would have no dangerous influence. He is to succeed the President in case of removal, disability, &c. and is to have the casting vote in the Senate. This gives an undue advantage to the State he comes from, and will render foreign powers desirous of securing his favor, to obtain which they will exert themselves in his behalf. I am persuaded that the advantage of his information will not counterbalance the disadvantages attending his office.

The President might be elected by the people, dependent upon them, and responsible for mal-administration. As this is not the case, I must disapprove of this clause in its present form.

Mr. *Grayson*.—Mr. Chairman.—One great objection with me is this. If we advert to the Democratical, Aristocratical, or Executive branch, we will find their powers are perpetually varying and fluctuating throughout the whole. Perhaps the Democratic branch would be well constructed were it not for this defect. The Executive is still worse in this respect than the Democratic branch. He is to be elected by a number of Electors in the country; but the principle is changed, when no person has a majority of the whole number of Electors appointed, or when more than one have such a majority, and have an equal number of votes, for then the Lower House is to vote by States. It is thus changing throughout the whole. It seems rather founded on accident, than any principle of Government I ever heard of. We know that there scarcely ever was an election of such an officer, without the interposition of foreign powers. Two causes prevail to make them intermeddle in such cases: One is to preserve the balance of power; the other to preserve their trade. These causes have produced interferences of foreign powers in the election of the King of Poland. All the great powers of Europe interfered in an election which took place not very long ago, and would not let the people choose for themselves.² We know how much the powers of Europe have interfered with *Sweden*.—Since the death of Charles the XIIth, that country has been a Republican Government. Some powers were willing it should be so: Some were willing her imbecility should continue: Others wished the contrary: And at length the Court of France brought about a revolution, which converted it into an absolute Government.³ Can America be free from these interferences? France after losing Holland will wish to make America entirely her own. Great-Britain will wish to increase

her influence by a still closer connection. It is the interest of Spain, from the contiguity of her possessions in the Western hemisphere to the United States, to be in an intimate connection with them, and influence their deliberations if possible. I think we have every thing to apprehend from such interferences. It is highly probable the President will be continued in office for life. To gain his favor they will support him. Consider the means of importance he will have by creating officers. If he has a good understanding with the Senate, they will join to prevent a discovery of his misdeeds.

Whence comes this extreme confidence, that we disregard the example of ancient and modern nations? We find that Aristocracies never invested their officers with such immense powers. *Rome* had not only an Aristocratical, but also a Democratical branch; yet the Consuls were in office only two years. This quadrennial power cannot be justified by ancient history. There is hardly an instance where a Republic trusted its Executive so long with much power.—Nor is it warranted by modern Republics. The delegation of power is in most of them only for one year.

When you have a strong Democratical and a strong Aristocratical branch, you may have a strong Executive.—But when those are weak, the balance will not be preserved if you give the Executive extensive powers for so long a time. As this Government is organized, it would be dangerous to trust the President with such powers. How will you punish him if he abuse his power? Will you call him before the Senate? They are his counsellors and partners in crimes. Where are your checks? We ought to be extremely cautious in this country. If ever the Government be changed, it will probably be into a Despotism.—The first object in England was to destroy the Monarchy: But the Aristocratic branch restored him, and of course the Government was organized on its ancient principles. But were a revolution to happen here, there would be no means of restoring the Government to its former organization.—This is a caution to us not to trust extensive powers. I have an extreme objection to the mode of his election. I presume the seven Eastern States will always elect him. As he is vested with the power of making treaties, and as there is a material distinction between the carrying and productive States, the former will be disposed to have him themselves. He will accommodate himself to their interests in forming treaties, and they will continue him perpetually in office.—Thus, mutual interest will lead them reciprocally to support one another. It will be a Government of a faction, and this observation will apply to every part of it. For, having a majority, they may do what they please. I have made an estimate which shews, with what facility

they will be able to re-elect him. (The number of Electors is equal to the number of Representatives and Senators, viz: ninety-one. They are to vote for two persons. They give therefore one hundred and eighty-two votes. Let there be forty-five votes for four different candidates, and two for the President. He is one of the five highest, if he have but two votes which he may easily purchase. In this case, by the third clause, of the first section, of the second article, the election is to be by the Representatives, according to States.

Let New-Hampshire be for him; a majority of its

	3	Representatives is	2
Rhode-Island,			1
Connecticut,	5		3
New-Jersey,	4		3
Delaware,			1
Georgia,	3		2
North-Carolina,	5		3
A majority of seven States, is			15

Thus the majority of seven States is but 15, while the minority amounts to 50.

The total number of voices, 91 Electors, and 65 Representatives, is 156.

Voices in favor of the President, are two State Electors, and 15 Representatives, which are in all $\frac{17}{139}$ [,] So that the President may be re-elected by the voices of 17 against 139.⁴ It may be said, that this is an extravagant case, and will never happen. In my opinion, it will often happen. A person who is a favorite with Congress if he gets but two votes of Electors, may, by the subsequent choice of 15 Representatives, be elected President. Surely the possibility of such a case, ought to be excluded. I shall postpone mentioning in what manner he ought to be elected, till we come to offer amendments.⁵

Mr. *George Mason* contended, that this mode of election was a mere deception—a mere *ignus fatuus*⁶ on the people of America, and thrown out to make them believe they were to choose him; whereas it would not be once out of fifty that he would be chosen by them in the first instance; because a majority of the whole number of votes was required. If the localities of the States were considered, and the probable diversity of opinions of the people attended to, he thought it would be found, that so many persons would be voted for, that there seldom or never could be a majority in favor of one, except one great name, who he believed would be unanimously elected.⁷ He then continued thus:—A majority of *the whole number* of Electors is necessary to elect the President. It is not the greatest number of votes that is required,

but a majority of the whole number of Electors. If there be more than one having such majority, and an equal number, one of them is to be chosen by ballot of the House of Representatives. But if no one have a majority of the actual number of Electors appointed, how is he to be chosen? From the five highest on the list, by ballot of the Lower House, and the votes to be taken by States!—I conceive he ought to be chosen from the two highest on the list. This would be simple and easy. Then indeed the people would have some agency in the election. But when it is extended to the five highest, a person having a very small number of votes may be elected. This will almost constantly happen. The States may choose the man in whom they have most confidence. This is, in my opinion, a very considerable defect. The people will in reality have no hand in his election.

It has been wittily observed, that the Constitution has married the President and Senate—has made them man and wife. I believe the consequence that generally results from marriage, will happen here. They will be continually supporting and aiding each other: They will always consider their interests as united. We know the advantage the few have over the many. They can with facility act in concert and on an uniform system: They may join scheme and plot against the people without any chance of detection. The Senate and President will form a combination that cannot be prevented by the Representatives. The Executive and Legislative powers thus connected, will destroy all balances: This would have been prevented by a Constitutional Council to aid the President in the discharge of his office; vesting the Senate at the same time with power of impeaching them. Then we should have real responsibility. In its present form, the guilty try themselves. The President is tried by his counsellors. He is not removed from office during his trial. When he is arraigned for treason he has the command of the army and navy, and may surround the Senate with 30,000 troops. It brings to my recollection the remarkable trial of *Milo at Rome*.⁸ We may expect to see similar instances here. But I suppose, that the cure for all evils—the virtue and integrity of our Representatives, will be thought a sufficient security. On this great and important subject, I am one of those (and ever shall be) who object to it.

Mr. *Madison*.—Mr. Chairman.—I will take the liberty of making a few observations which may place this in such a light as may obviate objections. It is observable, that none of the Honorable Members objecting to this, have pointed out the right mode of election. It was found difficult in the Convention, and will be found so by any Gentleman who will take the liberty of delineating a mode of electing the President, that would exclude those inconveniences which they appre-

hend. I would not contend against some of the principles laid down by some Gentlemen if the interests of some States only were to be consulted. But there is a great diversity of interests. The choice of the people ought to be attended to. I have found no better way of selecting the man in whom they place the highest confidence, than that delineated in the plan of the Convention—nor has the Gentleman told us. Perhaps it will be found impracticable to elect him by the immediate suffrages of the people. Difficulties would arise from the extent and population of the States. Instead of this, the people choose the Electors.—This can be done with ease and convenience, and will render the choice more judicious. As to the eventual voting by States, it has my approbation. The lesser States, and some large States, will be generally pleased by that mode. The Deputies from the small States argued, (and there is some force in their reasoning) that when the people voted, the large States evidently had the advantage over the rest, and without varying the mode, the interests of the little States might be neglected or sacrificed. Here is a compromise.—For in the eventual election, the small States will have the advantage. In so extensive a country, it is probable that many persons will be voted for, and the lowest of the five highest on the list may not be so inconsiderable as he supposes. With respect to the possibility, that a small number of votes may decide his election, I do not know how, nor do I think that a bare calculation of possibility ought to govern us. One Honorable Gentleman [William Grayson] has said, that the Eastern States may, in the eventual election, choose him. But in the extravagant calculation he has made, he has been obliged to associate North-Carolina and Georgia, with the five smallest Northern States. There can be no union of interests or sentiments between States so differently situated.

The Honorable Member last up [George Mason] has committed a mistake in saying, there must be a majority of the *whole* number of Electors appointed. A majority of votes, equal to a majority of the Electors appointed, will be sufficient. Forty-six is a majority of ninety-one, and will suffice to elect the President.

Mr. *Mason* arose, and insisted that the person having the greatest number of votes would not be elected, unless such majority consisted of the whole number of Electors appointed: That it would rarely happen that any one would have such a majority, and as he was then to be chosen from the five highest on the list, his election was entirely taken from the people.

Mr. *Madison*, expressed astonishment at the construction of the Honorable Member, and insisted, that nothing was necessary but a number of votes equal to a majority of the Electors, which was forty-six. For

the clause expressly said, that "The person having the greatest number of votes shall be President, if such number be a majority of the whole number of Electors appointed." Each had two votes, because one vote was intended for the Vice President. I am surprised, continued Mr. *Madison*, that the Honorable Member has not pointed out a more proper mode, since he objects to this.

But the Honorable Gentleman [George Mason] tells us, that the President and Senate will be in alliance against the Representatives, and that from the advantage of the few over the many, they may seduce, or over-rule the Representatives. But if this be the case, how can he contend for the augmentation of the number of the latter? For the more you increase their number, the more danger in the disproportion. The diversity of circumstances, situation and extent of the different States, will render a previous combination, with respect to the election of the President, impossible.

(The 1st clause, of the 2d section, read.)

Mr. *George Mason*, animadverting on the magnitude of the powers of the President, was alarmed at the additional power of commanding the army in person. He admitted the propriety of his being Commander in Chief, so far as to give orders, and have a general superintendency: But he thought it would be dangerous to let him command in person without any restraint, as he might make a bad use of it. He was then clearly of opinion, that the consent of a majority of both Houses of Congress should be required before he could take the command in person. If at any time it should be necessary that he should take the personal command, either on account of his superior abilities, or other cause, then Congress would agree to it: And all dangers would be obviated by requiring their consent. He called to Gentlemen's recollection, the extent of what the late Commander in Chief might have done, from his great abilities, and the strong attachment of both officers and soldiers towards him, if, instead of being a disinterested, he had been an ambitious man. So disinterested and amiable a character as General Washington might never command again. The possibility of danger ought to be guarded against. Although he did not disapprove of the President's consultation with the principal executive officers, yet he objected to the want of an Executive Council, which he conceived to be essentially necessary to any regular free Government. There being none such, he apprehended, a Council would arise out of the Senate, which for want of real responsibility he thought dangerous. You will please, says he, to recollect that removal from offices, and future disqualification to hold any offices, are the only consequences of conviction on impeachment. Now I conceive that the Pres-

ident ought not to have the power of pardoning, because he may frequently pardon crimes which were advised by himself. It may happen at some future day, that he will establish a Monarchy, and destroy the Republic. If he has the power of granting pardons before indictment, or conviction, may he not stop inquiry and prevent detection? The case of treason ought at least to be excepted. This is a weighty objection with me.

Mr. *Lee* reminded his honorable friend, that it did not follow of necessity, that the President should command in person. That he was to command as a civil officer, and might only take the command when he was a man of military talents, and the public safety required it. He thought the power of pardoning, as delineated in the Constitution, could be no where so well placed as in the President. It was so in the Government of New-York,⁹ and had been found safe and convenient.

Mr. *Mason* replied, that he did not mean that the President was of necessity to command, but he might if he pleased; and if he was an ambitious man, he might make a dangerous use of it.

Mr. *George Nicholas*, hoped the Committee would advert to this—that the army and navy were to be raised by Congress, and not the President. It was on the same footing with our State Government: For the Governor with the Council, were to embody the militia, but when actually embodied, they were under the sole command of the Governor. The instance adduced was not similar. General Washington was not a President. As to possible danger, any commander might attempt to pervert what was intended for the common defence of the community, to its destruction. The President at the end of four years, was to relinquish all his offices.—But if any other person was to have the command, the time would not be limited.

Mr. *Mason* answered, that it did not resemble the State Constitution, because the Governor did not possess such extensive powers as the President, and had no influence over the navy. The liberty of the people had been destroyed by those who were military commanders only. The danger here was greater by the junction of great civil powers to the command of the army and fleet. Although Congress are to raise the army, says he, no security arises from that:—For in time of war they must and ought to raise an army, which will be numerous, or otherwise, according to the nature of the war, and then the President is to command without any controul.

Mr. *Madison*, adverting to Mr. *Mason's* objection to the President's power of pardoning, said, it would be extremely improper to vest it in the House of Representatives, and not much less so to place it in the Senate; because numerous bodies were actuated more or less by

passion, and might in the moment of vengeance forget humanity.—It was an established practice in Massachusetts for the Legislature to determine in such cases. It was found, says he, that two different sessions, before each of which the question came, with respect to pardoning the delinquents of the rebellion, were governed precisely by different sentiments—the one would execute with universal vengeance, and the other would extend general mercy.¹⁰

There is one security in this case to which Gentlemen may not have adverted:—If the President be connected in any suspicious manner with any persons, and there be grounds to believe he will shelter himself; the House of Representatives can impeach him:—They can remove him if found guilty:—They can suspend him when suspected, and the power will devolve on the Vice-President: Should he be suspected also, he may likewise be suspended till he be impeached and removed, and the Legislature may make a temporary appointment. This is a great security.

Mr. *Mason* vindicated the conduct of the Assemblies mentioned by the Gentleman last up. He insisted, they were both right:—For in the first instance when such ideas of severity prevailed, a rebellion was in existence.—In such circumstances, it was right to be rigid. But after it was over, it would be wrong to exercise unnecessary severity.

Mr. *Madison* replied, that the Honorable Member had misunderstood the fact:—For the first Assembly was after the rebellion was over. The decision must have been improper in one or the other case. It marks this important truth, says he, that numerous bodies of men are improper to exercise this power. The universal experience of mankind proves it.

(*The 2d clause, of the 2d section, read.*)

Mr. *George Mason* thought this a most dangerous clause, as thereby five States might make a treaty; ten Senators, the Representatives of five States, being two-thirds of a quorum. These ten might come from the five smallest States, and make a treaty that would ruin the other States. By the Confederation nine States were necessary to concur in a treaty.—This secured justice and moderation. His principal fear, however, was, not that five, but that seven States—a bare majority would make treaties to bind the Union.

Mr. *George Nicholas*, in answer to Mr. *Mason*, insisted that we were on a more safe footing in this Constitution than in the Confederation. The possibility of five States making treaties, was founded on a supposition of the non-attendance of the Senators from the other States. This non-attendance, he observed, might be reciprocated. It was presumeable, that on such important occasions they would attend from

all the States, and then there must be a concurrence of nine States. The approbation of the President, who had no local views, being elected by no particular State, but the people at large, was an additional security.

Mr. *Mason* differed widely from the Gentleman. He conceived, that the contiguity of some States, and remoteness of others, would prevent that reciprocity which he had mentioned. Some States were near the seat of Government—others far from it:—For instance, Georgia was 800 or 900 miles from it. Suppose, says he, a partial treaty is made by the President, and is to be ratified by the Senate.—They do not always sit. Who is to convene them?—The President. Is it presumeable that he would call distant States to make the ratification,—or those States whose interest he knew to be injured by the treaty he had proposed? This I conceive will have a contrary effect from what the Gentleman says.

A desultory conversation took place.—

Mr. *Nicholas* asked, if it was presumeable that the President, who depended on the people for his political existence, would sacrifice the interest of the eight largest States, to accommodate the five smallest?—The Gentleman had said once, that the Senate would be always sitting, and yet five States were now to effect the business because the rest were away.

Mr. *Lee* compared the possibility of non-attendance of the Senators to that in our State Legislature.—It consisted of 170 Members:—A majority was 86, which were sufficient to make a House:—A majority of these was 44, which were competent to pass any law. He demanded if all our laws were bad, because 44 might pass them?—The case was similar. Although two-thirds of the Senators present could form a treaty, it was not presumeable it could often happen, that there should be but a bare quorum present on so important an occasion, when the consequence of non-attendance was so well known.

Mr. *Madison* thought it astonishing that Gentlemen should think, that a treaty could be got with surprise, or that foreign nations should be solicitous to get a treaty only ratified by the Senators of a few States—Were the President to commit any thing so atrocious as to summon only a few States, he would be impeached and convicted, as a majority of the States would be affected by his misdemeanor.

Mr. *Henry* begged Gentlemen to consider the condition this country would be in, if two-thirds of a quorum should be empowered to make a treaty:—They might relinquish and alienate territorial rights, and our most valuable commercial advantages.—In short, if any thing should be left us, it would be because the President and Senators were pleased

to admit it. The power of making treaties by this Constitution, ill-guarded as it is, extended farther than it did in any country in the world. Treaties were to have more force here than in any part of Christendom.—For he defied any Gentleman to shew any thing so extensive in any strong energetic Government in Europe. Treaties rest, says he, on the laws and usages of nations.—To say that they are municipal, is to me a doctrine totally novel.—To make them paramount to the Constitutions and laws of the States is unprecedented. I would give them the same force and obligation they have in Great-Britain, or any other country in Europe. Gentlemen are going on in a fatal career:—But I hope they will stop before they concede this power unguarded and unaltered.

Mr. *Madison*, instead of being alarmed, had no doubt but the Constitution would increase, rather than decrease, the security of territorial rights and commercial advantages, as it would augment the strength and respectability of the country. The Honorable Gentleman [Patrick Henry], says he, has said we are making great innovations in extending the force of treaties. Are not treaties the law of the land in England? I will refer you to a book which is in every man's hand—Blackstone's Commentaries. It will inform you that treaties made by the King are to be the supreme law of the land.¹¹ If they are to have *any* efficacy, they must be the law of the land: They are so in every country. He thinks that by the power of making treaties, the empire may be dismembered in time of peace. The King of Great-Britain has the power of making peace, but he has no power of dismembering the empire, or alien[at]ing any part of it. Nay, the King of France has no right of alien[at]ing any part of his dominions, to any power whatsoever. The power of making treaties does not involve a right of dismembering the Union.

Mr. *Henry* asked, how the power of the King of Great-Britain with respect to dismembering the empire, would stand, if the Constitution had declared, that treaties would be effectual notwithstanding any thing in the Constitution or laws of the country? He would confess his error, if the Gentleman could prove that the power of the King of Great-Britain and that of Congress, as to making treaties, were similar.

Mr. *Madison* conceived, that as far as the King of Great-Britain had a constitutional power of making a treaty, such a treaty was binding. He did not say that his power was unlimited. One exception was, that he could not dismember the empire.

Mr. *Grayson*, after discriminating the difference of what was called the law of nations in different countries and its different operations, said he was exceedingly alarmed about this clause. His apprehensions

were increased from what he had seen. He went over the grounds which had been before developed, of the dangers to which the right of navigating the Mississippi would be exposed, if two-thirds of the Senators present had a right to make a treaty to bind the Union. Seven States had already discovered a determined resolution of yielding it to Spain. There was every reason, in his opinion, to believe they would avail themselves of the power as soon as it was given them. The prevention of emigrations to the Westward, and consequent superiority of the Southern power and influence, would be a powerful motive to impel them to relinquish that river. He warmly expatiated on the utility of that navigation, and the impolicy of surrendering it up. The consent of the President ~~(he)~~ (is) considered as a trivial check, if indeed it was any. For his election would be so managed, that he would always come from a particular place, and he would pursue the interest of such place. Gentlemen had said, that the Senators would attend from all the States. This, says he, is impracticable if they be not nailed to the floor. If the Senators of the Southern States be gone but one hour, a treaty may be made by the rest, yielding that inestimable right. This paper will be called the law of nations in America: It will be the great charter of America: It will be paramount to every thing. After having once consented to it, we cannot recede from it. Such is my repugnance to the alienation of a right which I esteem so important to the happiness of my country, that I would object to this Constitution, if it contained no other defect.

Mr. *Nicholas*, in answer to the observations of the Gentleman last up [William Grayson] on the law of nations, said, he thought it was dictated by no particular nation—That there was no such thing as a particular law of nations; but that the law of nations was permanent and general—It was superior to any act or law of any nation. It implied the consent of all, and was mutually binding on all, being acquiesced in for the common benefit of all. Gentlemen recurred to their favorite business again—their scuffle for Kentucky votes.¹² He compared the King of England's power to make treaties, to that given by this clause. He insisted they resembled each other. If a treaty was to be the supreme law of the land here, it was so in England. The power was as unlimited in England, as it was here. Let Gentlemen, says he, shew me that the King can go so far, and no further; and I will shew them a like limitation in America. But, say they, the President has no check. The worthy Member says, the weight of power ought to be in this part of the Continent, because the number of inhabitants will be greater here. If so, every freeholder having a right to vote for the President,

by the interposition of the Electors, he will attend to their interests. This is a sufficient check.

Mr. *Henry*,—Mr. Chairman.—Gentlemen say, that the King of Great-Britain has the same right of making treaties that our President has here. I will have no objection to this, if you make your President a King. But I will adduce a difference between an American treaty, and an English treaty. Recollect the case of the Russian Ambassador: He was arrested contrary to the rights of his master. The Russian Emperor demanded the man at whose instance his Ambassador was arrested, to be given up to him, to be put to instant death. What did the Queen say? She wrote him, that that was something paramount to what she could do:—That it exceeded her power to comply with his demand, because it was contrary to the Constitution and laws.¹³ But how is it here? Treaties are binding, notwithstanding our laws and Constitutions. Let us illustrate this fatal instance:—Suppose the case of the Russian Ambassador to happen here. The President can settle it by a treaty, and have the man arrested, and punished according to the Russian manner. The Constitutions of these States may be most flagrantly violated without remedy. And still will Gentlemen compare the two cases? So great was the anxiety of Queen Anne, that she wrote a letter to the Russian Prince with her own hand, apologizing for her inability to comply with his demands. The Parliament was consulted, and a law made to prevent such arrests for the future. I say again, that if you consent to this power, you depend on the justice and equity of those in power. We may be told, that we shall find ample refuge in the law of nations. When you yourselves have your necks so low that the President may dispose of your rights as he pleases, the law of nations cannot be applied to relieve you. Sure I am if treaties are made, infringing our liberties, it will be too late to say that our constitutional rights are violated. We are in contact with two powers: Great-Britain and Spain. They may claim our most valuable territories, and treaties may be made to yield them. It is easy on our part to define our unalienable rights, and expressly secure them, so as to prevent future claims and disputes. Suppose you be arraigned as offenders and violators of a treaty made by this Government. Will you have that fair trial which offenders are entitled to in your own Government? Will you plead a right to the trial by jury? You will have no right to appeal to your own Constitution. You must appeal to your Continental Constitution. A treaty may be made giving away your rights and inflicting unusual punishments on its violators. It is contended, that if the King of Great-Britain makes a treaty within the line of his prerogative, it is the law of the land. I agree that this is proper, and if I could see the same checks in that

paper which I see in the British Government, I would consent to it. Can the English Monarch make a treaty which shall subvert the common law of England, and the Constitution? Dare he make a treaty that shall violate Magna Charta, or the Bill of Rights? Dare he do any thing derogatory to the honor, or subversive of the great privileges of his people? No, Sir. If he did it would be nugatory, and the attempt would endanger his existence.

The King of France calls his Parliament to give him power to make what regulations with regard to treaties, they may think conducive to the interest of the nation. In the time of *Henry* the Vth, a treaty with Sigismund, King of Poland, was ratified by the Parliament. You have not even as much security as that. You prostrate your rights to the President and Senate. This power is therefore dangerous and destructive.

Governor *Randolph*,—Mr. Chairman.—I conceive that neither the life, nor property of any citizen, nor the particular right of any State, can be affected by a treaty. The lives and properties of European subjects are not affected by treaties; which are binding on the aggregate community in its political social capacity.

The Honorable Gentleman [Patrick Henry] says, that if you place treaties on the same footing here, as they are in England, he will consent to power; because the King is restrained in making treaties. Will not the President and Senate be restrained? Being creatures of that Constitution, can they destroy it? Can any particular body, instituted for a particular purpose, destroy the existence of the society for whose benefit it is created? It is said, there is no limitation of treaties. I defy the wisdom of that Gentleman to shew how they ought to be limited. When the Constitution marks out the powers to be exercised by particular departments, I say no innovation can take place. An Honorable Gentleman says, that this is the great charter of America. If so, will not the last clause, of the fourth article, of the Constitution, secure against dismemberment? It provides, that "Nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State." And if this did not constitute security, it follows from the nature of civil association, that no particular part shall sacrifice the whole.

The Committee then rose—And on motion, *Resolved*, That this Convention will, to-morrow, again resolve itself into a Committee of the whole Convention, to take into farther consideration, the proposed Constitution of Government.

And then the Convention adjourned until to-morrow morning, nine o'clock.

1. Monroe refers to George Washington.

2. When King Augustus III of Poland died in 1763, several candidates for the crown emerged, among them Count Stanislaus Poniatowski, a member of the pro-Russian faction of the Polish nobility and a former lover of Catherine the Great of Russia. Poniatowski was favored by Russia and Prussia (Frederick the Great). France and Austria were opposed to Poniatowski, but neither had an effective candidate of its own. In 1764, Catherine and Frederick agreed to obtain Poniatowski's election. In that year, Russian troops occupied Poland, the Russian envoy employed bribes and the threat of force, and the Polish Convocation Diet elected Poniatowski.

3. In 1719 and 1720, the first two years following the death of Charles XII, an absolute monarch, the Swedish Parliament (*Riksdag*) drew up a new constitution, giving itself control of the government. Parliament consolidated its power by decrees issued in 1723. In 1772 Gustavus III, with the support of the people of Stockholm and the assistance of France (which had been financially supporting the court party), seized control of the government and restored many of the ancient privileges and rights of the Crown.

4. A two-page draft of Grayson's calculations (contained here within angle brackets) is located in the Bryan Family Papers at the Virginia State Library. For a photographic copy of the complete document, see Mfm:Va.

5. Before or during the state Convention, Grayson drafted amendments to several sections of the Constitution, but he did not formally present them. His draft and amendment to Article II, section 1 reads:

"The president for the time being, or in Case of a Vacancy, the last preceeding president shall not be re-elected, unless by a Majority of the votes of the State-electors: nor shall any person hold or exercise the office of president more than eight years, in any term of sixteen years, but by the unanimous vote of two thirds of the state electors.

"Electors shall not be chosen more than twenty days before the day on which they shall give their votes" (Bryan Family Papers, Vi. For a photographic reproduction of the two-page document that has all of Grayson's proposed amendments, see Mfm:Va.).

6. A delusive hope.

7. George Mason refers to George Washington.

8. In 52 B.C. Titus Annius Milo killed his rival Publius Clodius, an ally of Julius Caesar. During Milo's trial, Caesar's supporters intimidated the judges and the friends of Milo. Cicero was afraid to speak in defense of Milo at the trial, even though he had prepared a defense oration (*Pro Milone*). Milo went into exile at Marseilles.

9. The governor of New York was permitted, "at his discretion," to pardon "persons convicted of crimes, other than treason or murder, in which he may suspend the execution of the sentence, until it shall be reported to the legislature at their subsequent meeting; and they shall either pardon or direct the execution of the criminal, or grant a further reprieve" (Thorpe, V, 2633). For the pardoning power in the constitutions of the other states, see CC:Vol. 4, 326n.

10. Madison refers to the Massachusetts legislature's response to Shays's Rebellion which was crushed by the state militia by the end of January 1787. In February the Massachusetts legislature, which was controlled by conservatives, passed a disqualifying act depriving the Shaysite rebels of the right to vote, to sit on juries, or to serve as town officers until after 1 May 1788. It also offered rewards for the capture of the Shaysite leaders and authorized the raising of 1,500 militia to serve in the west (the center of the rebellion) for four months. By the end of April 1787, about a dozen leaders were sentenced to death and hundreds of insurgents were arrested. In the April and May elections the voters of Massachusetts, reacting in part to these repressive measures, replaced Governor James Bowdoin with John Hancock and elected a majority to both houses of the legislature that was more sympathetic to the rebels. In June the legislature repealed the disqualifying act and "pardoned and indemnified" those insurgents who had not yet been convicted. The next month the legislature adopted a res-

olution ending all prosecutions for seditious activities that had taken place between 1 June 1786 and 15 June 1787. Governor Hancock eventually pardoned everyone who had been convicted; no condemned leader was ever executed (CC:18; and Van Beck Hall, *Politics Without Parties: Massachusetts, 1780-1791* [Pittsburgh, 1972], 227-53).

11. Blackstone, *Commentaries*, Book I, chapter VII, 257. See George Nicholas' speech on 19 June (RCS:Va., 1388-89) in which he quotes this passage.

12. Nicholas refers to the treaty negotiations with Spain over the free navigation of the Mississippi River which was of particular interest to the inhabitants of Kentucky. The issue of the Mississippi was debated at the end of the day on 12 June, all day on the 13th, and concluded on the morning of the 14th.

13. According to William Blackstone, Peter the Great's ambassador to Great Britain was arrested for a debt of fifty pounds in July 1708. Instead of claiming diplomatic privilege, the ambassador posted bail and was released, after which he protested to the British Crown. The attorney general then charged the persons involved in the arrest, and a jury convicted them of the facts, but the criminality of the defendants' actions was never determined. In the meantime, Peter demanded that the officials who made the arrest be executed. Queen Anne replied "that she could inflict no punishment upon any, the meanest, of her subjects, unless warranted by the law of the land." To appease Peter and various foreign ministers, Parliament passed a law making it a punishable crime to arrest diplomats who were entitled to the diplomatic immunity under the law of nations (*Commentaries*, Book I, chapter VII, 254-57). See George Nicholas' response to Henry, *Convention Debates*, 19 June (RCS:Va., 1389).

The Virginia Convention Thursday 19 June 1788

Debates

The Convention, according to the order of the day, again resolved itself into a Committee of the whole Convention to take into farther consideration, the proposed plan of Government.—Mr. *Wythe* in the Chair.

(The 2d clause, of the 2d section, still under consideration.)

Mr. *Grayson*, after recapitulating the dangers of losing the Mississippi, if the power of making treaties as delineated in the Constitution were granted; insisted most strenuously, that the clause which the Honorable Gentleman [Edmund Randolph] had cited as a security against a dismemberment of the empire, was no real security; because it related solely to the back lands claimed by the United States, and different States. This clause was inserted for the purpose of enabling Congress to dispose of and make all needful rules and regulations respecting the territory, or other property, belonging to the United States, and to ascertain clearly that the claims of particular States respecting territory, should not be prejudiced by the alteration of Government; but be on the same footing as before.—That it could not be construed to

be a limitation of the power of making treaties.—Its sole intention was to obviate all the doubts and disputes which existed under the Confederation concerning the Western territory, and other places in controversy in the United States. He defended his former position with respect to a particular law of nations.—I insist, says he, that the law of nations is founded on particular laws of different nations.—I have mentioned some instances:—I will mention some more. It is a part of the laws of several Oriental nations, to receive no Ambassadors, and to burn their prisoners.—It is a custom with the Grand Seignior¹ to receive, but not to send Ambassadors.—It is a particular custom with him in time of a war with Russia, to put the Russian Ambassador in the seven towers. But the worthy Member [George Nicholas] said, that it was odd there should be a particular law of nations. I beg leave to tell him, that the United States are entering into a particular law of nations now. I do not deny the existence of a general law of nations:—But I contend, that in different nations, there are certain laws or customs regulating their conduct towards other nations, which are as permanently and immutably observed as the general law of nations. Of course there was a law of nations incident to the Confederation. Any person may renounce a right secured to him by any particular law or custom of a nation. If Congress have no right by the law of nations to give away a part of the empire, yet by this compact they may give it up. I look on that compact to be a part of the law of nations.—The treaty of Munster,² formed a great part of the law of nations.—How is the Scheld given up?—By that treaty, though contrary to the law of nations. Cannot Congress give up the Mississippi also by treaty, though such cession would deprive us of a right to which, by the law of nations, we are unalienably and indefeasibly entitled?—I lay it down as a principle, that nations can, as well as individuals, renounce any particular right. Nations who inhabit on the sources of rivers have a right to navigate them, and go down as well as the waters themselves.

Mr. *George Nicholas* again drew a pallel between the power of the King of Great-Britain, and that of Congress with respect to making treaties.—He contended, they were on the same foundation, and that every possible security which existed in the one instance, was to be found in the other.—To prove that there was no constitutional limits to the King's power of making treaties, and that treaties when once by him made, were the supreme law of the land, he quoted the following lines in Blackstone's Commentaries, Vol. I, page 257, "It is also the King's prerogative to make treaties, leagues, and alliances, with foreign States and Princes.—For it is, by the law of nations, essential to the goodness of a league, that it be made by the sovereign

power; and then it is binding upon the whole community:—And in England the sovereign power, *quoad hoc*, is vested in the person of the King.—Whatever contracts therefore he engages in, no other power in the kingdom can legally delay, resist, or annul.” A further proof, says Mr. *Nicholas*, that there is no limitation in this respect, is afforded by what he adds.—“And yet, lest this plenitude of authority should be abused to the detriment of the public, the Constitution has interposed a check by the means of Parliamentary impeachment, for the punishment of such Ministers as from criminal motives advise or conclude any treaty, which shall afterwards be judged to derogate from the honor and interest of the nation.”³—How does this apply to this Constitution?—The President and Senate have the same power of making treaties; and when made they are to have the same force and validity. They are to be the supreme law of the land here—This book shews us they are so in England. Have we not seen in America that treaties were violated, though they are in all countries considered as the supreme law of the land?—Was it not therefore necessary to declare in explicit terms, that they should be so here?—How then is this Constitution on a different footing with the Government of Britain? The worthy Member [Patrick Henry] says, they can make a treaty relinquishing our rights, and inflicting punishments; because all treaties are declared paramount to the Constitutions and laws of the States.—An attentive consideration of this, will shew the Committee, that they can do no such thing. The provision of the sixth article, is, that this Constitution and the laws of the United States, which shall be made in *pursuance* thereof, and all treaties made, or which shall be made, *under the authority of the United States*, shall be the supreme law of the land.—They can by this make no treaty which shall be repugnant to the spirit of the Constitution, or inconsistent with the delegated powers. The treaties they make must be under the authority of the United States, to be within their province. It is sufficiently secured, because it only declares, that in *pursuance* of the powers given they shall be the supreme law of the land, notwithstanding any thing in the Constitution or laws of particular States. The fact which he has adduced from the English history, respecting the Russian Ambassador, does not apply to this part of the Constitution.—The arrest of that Ambassador was an offence against the law of nations.—There was no tribunal to punish it before.—An act was therefore made, to prevent such offences for the future; appointing a court to try offenders against it, and pointing out their punishment.—That act acknowledges the arrest to have been a violation of the law of nations, and that it was a defect in their laws, that no remedy had been provided against such violations before.⁴—I

think it must appear to the satisfaction of the Committee, that this power is similar to what it is in England.

Mr. *George Mason*.—Mr. Chairman.—It is true that this is one of the greatest acts of sovereignty, and therefore ought to be most strongly guarded.—The cession of such a power without such checks and guards, cannot be justified:—Yet I acknowledge such a power must rest somewhere.—It is so in all Governments. If in the course of an unsuccessful war we should be compelled to give up part of our territories, or undergo subjugation, if the General Government could not make a treaty to give up such a part for the preservation of the residue, the Government itself, and consequently the rights of the people, must fall.—Such a power must therefore rest somewhere. For my own part I never heard it denied, that such a power must be vested in the Government.—Our complaint is, that it is not sufficiently guarded, and that it requires much more solemnity and caution than are delineated in that system.—It is more guarded in England.—Will any Gentleman undertake to say, that the King, by his prerogative, can dismember the British empire?—Could the King give *Portsmouth to France*?—He could not do this without an express act of Parliament—without the consent of the Legislature in all its branches. There are other things which the King cannot do—which may be done by the President and Senate, in this case. Could the King, by his prerogative, enable foreign subjects to purchase lands, and have an hereditary indefeasible title? This would require an express act of Parliament.—Though the King can make treaties, yet he cannot make a treaty contrary to the Constitution of his country. Where did their Constitution originate?—It is founded on a number of maxims, which by long time are rendered sacred and inviolable.—Where are there such maxims in the American Constitution? In that country, which we called formerly our mother country, they have had for many centuries certain fundamental maxims, which have secured their persons and properties and prevented a dismemberment of their country. The common law, Sir, has prevented the power of the crown from destroying the immunities of the people. We are placed in a still better condition—in a more favorable situation than perhaps any people ever were before. We have it in our power to secure our liberties and happiness on the most unshaken, firm, and permanent basis.—We can establish what Government we please.—But by that paper we are consolidating the United States into one great Government, and trusting to constructive security:—You will find no such thing in the English Government.—The common law of England is not the common law of these States. I conceive therefore that there is nothing in that Constitution to hinder a dismemberment of the

empire. Will any Gentleman say, that they may not make a treaty, whereby the subjects of France, England, and other powers may buy what lands they please in this country?—This would violate those principles which we have received from the mother country. The indiscriminate admission of all foreigners to the first rights of citizenship, without any permanent security for their attachment to the country, is repugnant to every principle of prudence and good policy[.] The President and Senate can make any treaty whatsoever.—We wish not to refuse, but to guard this power as it is done in England. The empire there cannot be dismembered, without the consent of the national Parliament. We wish an express and explicit declaration in that paper, that the power which can make other treaties, cannot, without the consent of the national Parliament—the national Legislature, dismember the empire.—The Senate alone ought not to have this power:—Much less ought a few States to have it.—No treaty, to dismember the empire, ought to be made without the consent of three-fourths of the Legislature in all its branches.—Nor ought such a treaty to be made, but in case of the most urgent and unavoidable necessity. When such necessity exists, there is no doubt but there will be a general and uniform vote of the Continental Parliament.

Mr. *Corbin* largely expatiated on the propriety of vesting this power in the General Government, in the manner proposed by the plan of the Convention.—He also contended, that the empire could not be dismembered without the consent of the part dismembered. To obviate the force of the observations made by an Honorable Gentleman [William Grayson] respecting the relinquishment of the Scheld, he adduced the late complaints and efforts of the Emperor of Germany, respecting that river.—He insisted that no part of the Constitution was less exceptionable than this. If, says he, there be any sound part in this Constitution it is this clause. The Representatives are excluded from interposing in making treaties, because large popular assemblies are very improper to transact such business, from the impossibility of their acting with sufficient secrecy, dispatch and decision, which can only be found in small bodies—and because such numerous bodies are ever subject to factions, and party animosities. It would be dangerous to give this power to the President alone—as the concession of such a power to one individual, is repugnant to Republican principles.—It is therefore given to the President and the Senate (who represent the States in their individual capacities) conjointly.—In this it differs from every Government we know.—It steers with admirable dexterity between the two extremes—neither leaving it to the Executive, as in most

other Governments, nor to the Legislative, which would too much retard such negotiations.

The Honorable Gentleman [Patrick Henry] said, that treaties are not the supreme law of the land in England. My honorable friend proved the contrary by the commentaries of Blackstone.⁵ Let me confirm it by a circumstance fresh in the memory of every body.—When the treaty was made by us with England, it was disapproved of by the English Parliament, and the Administration was turned out:⁶—Yet the treaty was good.—Does not this prove that it was binding on the nation, and that the King has such a power?—What other proof do Gentlemen wish? In England it is a maxim, that the King can do no wrong.—Yet they have sufficient responsibility, as the Ministry can do wrong:—For if they advise him to make a treaty, derogatory to the honor and interest of the nation, they do it at the risk of their heads.—If the King were to make such a treaty himself, contrary to the advice of his Ministry, an honest or prudent Minister would resign. The President of the United States is responsible in person himself, as well as the Senators.

But, say Gentlemen, all treaties made under this Constitution, are to be the supreme law of nations; that is, in their way of construction, paramount to the Constitution itself, and the laws of Congress. It is as clear, as that two and two make four, that the treaties made are to be binding on the States only.—Is it not necessary that they should be binding on the States? Fatal experience has proved, that treaties would never be complied with, if their observance depended on the will of the States; and the consequences would be constant war.—For, if any one State could counteract any treaty, how could the United States avoid hostility with foreign nations?—Do not Gentlemen see the infinite dangers that would result from it, if a small part of the community could drag the whole Confederacy into war?

The Honorable Gentleman on the other side [George Mason], tells us, that this doctrine is not sound, because in England it is declared that the consent of Parliament is necessary. Had the Honorable Gentleman used his usual discernment and penetration, he would see the difference between a commercial treaty and other treaties. A commercial treaty must be submitted to the consideration of Parliament; because such treaties will render it necessary to alter some laws, add new clauses to some, and repeal others. If this be not done the treaty is void, *quoad hoc*. The Mississippi cannot be dismembered but two ways—by a common treaty, or a commercial treaty. If the interest of Congress will lead them to yield it by the first, the law of nations would justify the people of Kentucky to resist, and the cession would be

nugatory. It cannot then be surrendered by a common treaty. Can it be done by a commercial treaty? If it should, the consent of the House of Representatives would be requisite; because of the correspondent alterations that must be made in the laws.—(Here Mr. *Corbin* illustrated his position by reading the last clause of the treaty with France, which gives certain commercial privileges to the subjects of France; to give full effect to which, certain correspondent alterations were necessary in the commercial regulations.)⁷—This, continued he, secures Legislative interference. Some of the most extraordinary calculations that ever were made, have been adduced, to prove, that the navigation of the Mississippi is on a worse ground than it was before. We are told that five States can make a treaty.—This is on a supposition, that the Senators from the other States will be absent, which is wild and extravagant.—On this ground three States can prevent it; and if Kentucky become a State, two other States with it can prevent the making such a treaty. I wish not to assert, but to prove. Suppose there be fourteen Members, and the Members from Kentucky be of the number.—Two-thirds, which are ten, are necessary to make a treaty.—Three Members, together with the two Members from Kentucky, will be sufficient to prevent its being made. But suppose all the other States to be present (which is the fair conclusion, for it is fair to conclude that men will be attentive to their own interest) what would be the consequence?—There would be twenty-eight.—Two-thirds of which are nineteen, which is one Member more than the Senators of nine States; so that in such a case ten States must concur in the treaty, whereas by the old Confederation only nine States were necessary. I defy any man to confute this doctrine. The argument of Gentlemen is therefore disingenuous.—I am more forcibly led to this conclusion, when I hear Gentlemen go to barbarous nations to adduce proofs of the requisites of a social Government.

Mr. *Henry*.—Mr. Chairman.—This great national concern is handled in a manner quite new to me. When arguments are used, which are calculated in their nature to mislead men—when I reflect on the subject, I dread that our rights are about to be given away, though I may possibly be mistaken. I said yesterday, and not without thinking much on the subject, that my mind would be at ease were we on the same grounds in this respect, as the English are. Gentlemen think that Great-Britain was produced by me in this instance, unfortunately for myself, because the learned Judge Blackstone says, that treaties are binding on the nation, and the King can make treaties!—That learned Judge says, there is one thing which operates as a guard.—That thing we have not in this paper—It is responsibility.—He tells you, that the Minister

who will sacrifice the interest of the nation, is subject to Parliamentary impeachment.⁸—This has been ever found to be effectual. But I beg Gentlemen to consider the American impeachment.—What is it?—It is a mere sham—a mere farce. When they do any thing derogatory to the honor or interest of their country, they are to try themselves! Is it so in England?—The history of that country shews, that they have blocks and gibbets. The violators of the public interest have been tried, justly and impartially, and perished by those necessary instruments of justice. Can there be any security where offenders mutually try one another? I hope Gentlemen will consider the necessity of amendment in this clause.

We are told that the State rights are preserved.—Suppose the State right to territory be preserved, I ask and demand how do the rights of persons stand, when they have power to make any treaty, and that treaty is paramount to Constitutions, laws, and every thing?—When a person shall be treated in the most horrid manner, and most cruelly and inhumanly tortured, will the security of territorial rights grant him redress?—Suppose an unusual punishment in consequence of an arrest similar to that of the Russian Ambassador⁹—can it be said to be contrary to the State rights? I might go on in this discrimination, but it is too obvious that the security of territory is no security of individual safety. I ask, how are the State rights, individual rights, and national rights secured?—Not as in England—For the authority quoted from Blackstone, would, if stated right, prove in a thousand instances, that if the King of England attempted to take away the rights of individuals, the law would stand against him.—The acts of Parliament would stand in his way—The Bill, and Declaration of Rights would be against him. The common law is fortified by the Bill of Rights. The rights of the people cannot be destroyed even by the paramount operation of the law of nations, as the case of the Russian Ambassador evinces. If you look for a similar security in the paper on your table, you look in vain.—That paper is defective without such a Declaration of Rights.—It is unbounded without such restrictions. If the Constitution be paramount, how are the Constitutions and laws of the States to stand? Their operation will be totally controuled by it:—For, it is paramount to every thing, unless you can shew some guard against it.—The rights of persons are exposed as it stands now.

The calculation of the Honorable Gentleman (Mr. *Corbin*) was wrong. I am sure he spoke from the best of his recollection, when he referred to our treaty of peace with Great-Britain, and said, that it was binding on the nation though disapproved of by Parliament. Did not an act of Parliament pass, acknowledging the independence of America?¹⁰—

If the King of England wished to dismember the empire, would he dare to attempt it without the advice of Parliament? The most hardy Minister would not dare to advise him to attempt it without a previous consultation of the Parliament. No cession of territory is binding on the nation unless it be fortified by an act of Parliament. Will it be so in your American Government?—No—They will tell you that they are omnipotent as to this point.

We are so used to speak of enormity of powers, that we are familiarised with it.—To me this power appears still destructive; for they can make any treaty. If Congress forbears to exercise it, you may thank them:—But they may exercise it if they please, and as they please. They have a right, from the paramount power given them, to do so.—Will the Gentleman [Francis Corbin] say, that this power is only paramount to the State laws only?—Is it not paramount to the Constitution, and every thing?—Can any thing be paramount to what is paramount?—Will not the laws of Congress be binding on Congress, as well as on any particular State?—Will they not be bound by their own acts?—The worthy Gentleman must see the impropriety of his assertion. To render this safe, I conceive we must adopt my honorable friend's [George Mason] amendment. The component parts of this supreme power are the President, Senators, and House of Representatives. The latter is the most material part.—They ought to interpose in the formation of treaties. When their consent is necessary, there will be a certainty of attending to the public interests.

Mr. *Henry* then contended, that there was real responsibility in the British Government, and sufficient security arising from the common law, Declaration of Rights, &c. whereas in this Government, there was no barrier to stop their mad career. He hoped to obtain the amendments which his honorable friend had proposed.

Mr. *Madison*,—Mr. Chairman.—I am persuaded that when this power comes to be thoroughly and candidly viewed, it will be found right and proper. As to its extent, perhaps it will be satisfactory to the Committee, that the power is precisely in the new Constitution, as it is in the Confederation. In the existing Confederacy, Congress are authorised indefinitely to make treaties.—Many of the States have recognized the treaties of Congress to be the supreme law of the land. Acts have passed within a year, declaring this to be the case.—I have seen many of them.¹¹ Does it follow, because this power is given to Congress, that it is absolute and unlimited?—I do not conceive that power is given to the President and Senate to dismember the empire, or to alienate any great essential right.—I do not think the whole

Legislative authority have this power. The exercise of the power must be consistent with the object of the delegation.

One objection against the amendment proposed, is this—that by implication it would give power to the Legislative authority to dismember the empire—a power that ought not to be given, but by the necessity that would force assent from every man. I think it rests on the safest foundation as it is. The object of treaties is the regulation of intercourse with foreign nations, and is external. I do not think it possible to enumerate all the cases in which such external regulations would be necessary. Would it be right to define all the cases in which Congress could exercise this authority? The definition might, and probably would be defective.—They might be restrained by such a definition, from exercising the authority where it would be essential to the interest and safety of the community. It is most safe therefore to leave it to be exercised as contingencies may arise.

It is to be presumed, that in transactions with foreign countries, those who regulate them, will feel the whole force of national attachment to their country. The contrast being between their own nation and a foreign nation, is it not presumeable they will, as far as possible, advance the interest of their own country? Would it not be considered as a dangerous principle in the British Government, were the King to have the same power in internal regulations, as he has in the external business of treaties? Yet, as among other reasons, it is natural to suppose he will prefer the interest of his own, to that of another country, it is thought proper to give him this external power of making treaties. This distinction is well worthy the consideration of Gentlemen. I think the argument of the Gentleman [Francis Corbin] who restrained the supremacy of these to the laws of particular States, and not to Congress, is rational. Here the supremacy of a treaty is contrasted with the supremacy of the laws of the States.—It cannot be otherwise supreme. If it does not supercede their existing laws, as far as they contravene its operation, it cannot be of any effect. To counteract it by the supremacy of the State laws, would bring on the Union the just charge of national perfidy, and involve us in war.

Suppose the King of Great-Britain should make a treaty with France, where he had a constitutional right; if the treaty should require an internal regulation, and the Parliament should make a law to that effect, that law would be binding on the one, though not on the other nation. Suppose there should be a violation of right by the exercise of this power by the President and Senate; if there was apparent merit in it, it would be binding on the people:—For where there is a power for any particular purpose, it must supercede what may oppose it, or

else it can be no power.—For instance, where there is a power of declaring war, that power as to declaring war supercedes every thing. This would be an unfortunate case, should it happen:—But should it happen there is a remedy, and there being a remedy, they will be restrained against abuses. But let us compare the responsibility in this Government to that of the British Government. If there be an abuse of this royal prerogative, the Minister who advises him, is liable to impeachment.—This is the only restraint on the Sovereign.—Now, Sir, is not the Minister of the United States under restraint?—Who is the Minister?—The President himself, who is liable to impeachment. He is responsible in person. But for the abuse of the power of the King, the responsibility is in his adviser. Suppose the Constitution had said, that this Minister alone could make treaties, and when he violated the interest of the nation, he would be impeached by the Senate; then the comparison would hold good between the two Governments. But is there not an additional security by adding to him the Representatives and guardians of the political interest of the States? If he should seduce a part of the Senate to a participation in his crimes, those who were not seduced would pronounce sentence against him; and there is this supplementary security, that he may be convicted and punished afterwards, when other Members come into the Senate, one-third being excluded every second year:—So that there is a two-fold security.—The security of impeachment and conviction by those Senators that may be innocent, should no more than one-third be engaged with the President in the plot; and should there be more of them engaged in it, he may be tried and convicted by the succeeding Senators, and the upright Senators who were in the Senate before.

As to the case of the Russian Ambassador¹² I shall say nothing.—It is as inapplicable as many other quotations made by the Gentleman [Patrick Henry]. I conceive that as far as the Bill of Rights in the States, do not express any thing foreign to the nature of such things, and express fundamental principles essential to liberty, and those privileges which are declared necessary to all free people, these rights are not encroached on by this Government.—(Mr. *Madison* added other remarks which could not be heard.)

Mr. *Corbin* begged leave to explain what he had said.—He acknowledged that an act of Parliament passed acknowledging the independence of America:¹³—But though there was nothing in that act respecting the Newfoundland fishery, and we were by the treaty to enjoy a right to that fishery unmolested, yet that part of the treaty was binding on the nation.

After some desultory conversation concerning the mode of considering the Judiciary,

(The 1st and 2d sections, of the 3d article, were read.)

Mr. Pendleton,—Mr. Chairman.—On a former occasion when I was considering the Government at large, I mentioned the necessity of making a Judiciary an essential part of the Government.¹⁴ It is necessary in order to arrest the Executive arm, prevent arbitrary punishments, and give a fair trial, that the innocent may be guarded, and the guilty brought to just punishment, and that honesty and industry be protected, and injustice and fraud prevented. Taking it for granted then, that a Judiciary is necessary, the power of that Judiciary must be co-extensive with the Legislative power, and reach to all parts of the society intended to be governed.—They must be so arranged, that there must be some Court which shall be the central point of their operations; and because all the business cannot be done in that part, there must be inferior Courts to carry it on. The first clause contains an arrangement of the Courts—one supreme, and such inferior as Congress may ordain and establish. This seems to me to be proper.—Congress must be the judges, and may find reasons to change and vary them as experience shall dictate. It is therefore not only improper but exceedingly inconvenient to fix the arrangement in the Constitution itself, and not leave it to laws which may be changed according to circumstances. I think it highly probable that their first experiment will be, to appoint the State Courts to have the inferior federal jurisdiction; because it would be best calculated to give general satisfaction, and answer œconomical purposes; since a small additional salary may in that case suffice, instead of a competent provision for the Judges. But even this eligible mode experience may furnish powerful reasons for changing; and a power to make such changes ought to rest with Congress. This clause also secures an important point—the independence of the Judges, both as to tenure of office, and fixing of salary. I wish the restraint had been applied to increase as well as diminution.

The second section points out the subjects of their jurisdiction.

1. Cases arising under the Constitution.
2. [Cases arising] under the laws of the Federal Legislature.
3. [Cases arising under] treaties made by them.
4. All cases affecting Ambassadors, Ministers, and Consuls.
5. All cases of maritime or Admiralty jurisdiction.
6. Controversies wherein the United States shall be party.
7. [Controversies] between two or more States.
8. [Controversies] between a State and citizens of another State.
9. [Controversies] between citizens of different States.

10. [Controversies] between citizens of the same State, claiming lands under grants of different States.

11. [Controversies] between a State, or its citizens, and foreign States, citizens or subjects.

Without entering into a distinction of all its parts, I believe it will be found that they are all cases of general and not local concern. The necessity and propriety of a federal jurisdiction, in all such cases, must strike every Gentleman.

The next clause settles the original jurisdiction of the Supreme Court, confining it to two cases—that of Ambassadors, Ministers, and Consuls—and those in which a State shall be a party.—It excludes its original jurisdiction in all other cases. But it appears to me, that it will not restrain Congress from regulating even these so as to permit foreign Ambassadors to sue in the inferior Courts, or even to compel them to do so, where their causes may be trivial, or they have no reason to expect a partial trial. Notwithstanding this jurisdiction is given to the Supreme Court, yet Congress may go farther by their laws, so as to exclude its original jurisdiction by limiting the cases wherein it shall be exercised.—They may require some satisfactory evidence, that the party could not expect a fair trial in the inferior Court. I am struck with this view from considering, that the Legislature is not excluded by the general jurisdiction in the Constitution, from regulating it to accommodate the convenience of the people.—Yet the Legislature cannot extend its original jurisdiction, which is limited to these cases only.

The next branch brings me to the appellate jurisdiction. And first, I say it is proper and necessary in all free Governments, to allow appeals under certain restrictions, in order to prevent injustice by correcting the erroneous decisions of local subordinate tribunals, and introduce uniformity in decisions. The appellate jurisdiction is therefore undoubtedly proper, and would not have been objected to, if they had not introduced, unfortunately in this clause, the words, “both as to law and fact.” Though I dread no danger, I wish these words had been buried in oblivion.—If they had, it would have silenced the greatest objections against the section. I will give my free and candid sentiments on it. We find them followed by words which remove a great deal of doubt.—“*With such exceptions, and under such regulations as Congress shall make.*”—So that Congress may make such regulations as they may think conducive to the public convenience. Let us consider the appellate jurisdiction if these words had been left out. The general jurisdiction must embrace decrees in Chancery and Admiralty, and judgments in Courts of common law, in the ordinary practice of this

appellate jurisdiction. When there is an appeal from the inferior Court to the Court of Chancery, the appellate jurisdiction goes to law and fact; because the whole testimony appears in the record. The Court proceeds to consider the circumstances of both law and fact blended together, and then decrees according to equity. This must be unexceptionable to every body. How is it in appeals from the Admiralty?—That Court, except in some cases, proceeds as a Court of Chancery.—In some cases they have trials by jury.—But in most cases they proceed as in Chancery.—They consider all the circumstances, and determine as well what the fact, as what the law is. When this goes to the Superior Court, it is determined the same way.

Appeals from the common law Courts, involve the consideration of facts by the Superior Court, when there is a special verdict. They consider the fact and law together, and decide accordingly. But they cannot introduce new testimony. When a jury proceeds to try a cause in an inferior Court, a question may arise on the competency of a witness, or some other testimony. The inferior Court decides that question—they either admit or reject that evidence.—The party intending to object, states the matter in a bill of exceptions. The jury then proceeds to try the cause, according to the judgment of the inferior Court; and on appeal, the Superior Court determines upon the judgment of the inferior Court.—They do not touch the testimony. If they determine that the evidence was either improperly admitted or rejected, they set aside the judgment, and send back the cause to be tried again by a jury in the same Court. These are the only cases in appeals from inferior Courts of common law, where the Superior Court can even consider facts incidentally. I feel the danger as much as any Gentleman in this Committee, of carrying a party to the Federal Court, to have a trial there. But it appears to me that it will not be the case, if that be the practice which I have now stated, and that that is the practice must be admitted. The appeals may be limited to a certain sum.—I make no doubt it will be so. You cannot prevent appeals without great inconveniences: But Congress can prevent that dreadful oppression which would enable many men to have a trial in the Federal Court, which is ruinous. There is a power which may be considered as a great security—The power of making what regulations and exceptions in appeals they may think proper, may be so contrived as to render appeals as to law and fact proper and perfectly inoffensive. How will this power be exercised? If I thought there was a possibility of danger, I would be alarmed. But when I consider who this Congress are—that they are the Representatives of 13 States, (which may become 14 or 15, or a much greater number of States) who cannot be inter-

ested in the most remote degree, to subject their citizens to oppressions of that dangerous kind, but will feel the same inclination to guard their citizens from them, I am not alarmed. I consider them as secured from it, by the arrangement of these Courts by Congress. To carry the citizens a great distance from their respective States can be of no advantage, but a great hardship to every State, except that wherein the seat of Government may be. I conceive it probable, that they will, as far as they may consistently with the national good, confine these cases. But when I cast my eyes to the Southern and Eastern States, every one of which are at a greater distance than we are, I cannot entertain a doubt but what this point will be perfectly secure. Every State being concerned almost equally, we have sufficient security that when they come to organize the Supreme Court, they will regulate it so as to exclude this danger.

The fourth branch secures two important points in criminal cases. 1st.—That the trial shall be by jury. 2d.—That it shall be in the State where the offence is committed. It does not point out where it shall be within the State, or the more minute minutiae respecting it:—But laws will be made by which it will be regulated fully and minutely. I cannot conceive what motives they can have in forming these trials, to render them oppressive. We have this security—That our citizens shall not be carried out of the State, and that no other trial can be substituted to that by jury.—(Mr. *Pendleton* made many other remarks; but he spoke too low to be comprehended distinctly.)

Mr. *George Mason*.—Mr. Chairman.—I had some hopes that the candour and reason of the warmest friends of this Constitution would have led them to point out objections so important. They must occur, more or less, to the mind of every one. It is with great reluctance I speak of this department, as it lies out of my line. I should not tell my sentiments upon it, did I not conceive it to be so constructed as to destroy the dearest rights of the community. After having read the first section, Mr. *Mason* asked, what is there left to the State Courts? Will Gentlemen be pleased, candidly, fairly, and without sophistry, to shew us what remains? There is no limitation. It goes to every thing. The inferior Courts are to be as numerous as Congress may think proper. They are to be of whatever nature they please. Read the second section, and contemplate attentively the extent of the jurisdiction of these Courts; and consider if there be any limits to it. I am greatly mistaken if there be any limitation whatsoever, with respect to the nature or jurisdiction of these Courts. If there be any limits, they must be contained in one of the clauses of this section; and I believe, on a dispassionate discussion, it will be found that there is none of any

check. All the laws of the United States are paramount to the laws and Constitution of any single State. "The Judicial power shall extend to all cases in law and equity, arising under this Constitution." What objects will not this expression extend to? Such laws may be formed, as will go to every object of private property.—When we consider the nature of these Courts, we must conclude, that their effect and operation will be utterly to destroy the State Governments. For they will be the judges how far their laws will operate. They are to modify their own Courts, and you can make no State law to counteract them. The discrimination between their Judicial power and that of the States, exists therefore but in name.—To what disgraceful and dangerous length does the principle of this go? For if your State Judiciaries are not to be trusted with the administration of common justice, and decision of disputes respecting property between man and man, much less ought the State Governments to be trusted with the power of legislation. The principle itself goes to the destruction of the legislation of the States, whether or not it was intended. As to my own opinion, I most religiously and conscientiously believe, that it was intended, though I am not absolutely certain. But I think it will destroy the State Governments, whatever may have been the intention. There are many Gentlemen in the United States who think it right, that we should have one great national consolidated Government, and that it was better to bring it about slowly and imperceptibly, rather than all at once. This is no reflection on any man, for I mean none. To those who think that one national consolidated Government would be best for America, this extensive Judicial authority will be agreeable; but I hope there are many in this Convention of a different opinion, and who see their political happiness resting on their State Governments. I know, from my own knowledge, many worthy Gentlemen of the former opinion.—(Here Mr. *Madison* interrupted Mr. *Mason*, and demanded an unequivocal explanation. As those insinuations might create a belief, that every Member of the late Federal Convention was of that opinion, he wished him to tell who the Gentlemen were, to whom he alluded.)—Mr. *Mason* then replied—I shall never refuse to explain myself. It is notorious that this is a prevailing principle.—It was at least the opinion of many Gentlemen in Convention, and many in the United States. I do not know what explanation the Honorable Gentleman asks. I can say with great truth, that the Honorable Gentleman, in private conversation with me, expressed himself against it: Neither did I ever hear any of the Delegates from this State advocate it.

Mr. *Madison* declared himself satisfied with this, unless the Committee thought themselves entitled to ask a further explanation.

After some desultory remarks, Mr. *Mason* continued.—I have heard that opinion advocated by Gentlemen, for whose abilities, judgment, and knowledge, I have the highest reverence and respect. I say that the general description of the Judiciary involves the most extensive jurisdiction. Its cognizance in all cases arising under the system, and the laws of Congress, may be said to be unlimited. In the next place it extends to treaties made, or which shall be made, under their authority. This is one of the powers which ought to be given them. I also admit that they ought to have Judicial cognizance in all cases affecting Ambassadors, foreign Ministers and Consuls, as well as in cases of maritime jurisdiction. There is an additional reason now to give them this last power: Because Congress besides the general powers, are about to get that of regulating commerce with foreign nations. This is a power which existed before, and is a proper subject of federal jurisdiction. The next power of the Judiciary is also necessary under some restrictions.—Though the decision of controversies to which the United States shall be a party, may at first view seem proper, it may without restraint, be extended to a dangerously oppressive length. The next, with respect to disputes between two or more States, is right. I cannot see the propriety of the next power, in disputes between a State and the citizens of another State. As to controversies between citizens of different States, their power is improper and inadmissible. In disputes between citizens of the same State, claiming lands under the grants of different States, the power is proper.—It is the only case in which the Federal Judiciary ought to have appellate cognizance of disputes between private citizens. Unless this was the case, the suit must be brought and decided in one, or the other State, under whose grants the lands are claimed, which would be injurious, as the decision must be consistent with the grant.

The last clause is still more improper. To give them cognizance in disputes between a State and the citizens thereof, is utterly inconsistent with reason or good policy.

Here Mr. *Nicholas* arose, and informed Mr. *Mason*, that his interpretation of this part was not warranted by the words.

Mr. *Mason* replied, that if he recollected rightly, the propriety of the power as explained by him, had been contended for; but that as his memory had never been good, and was now much impaired from his age, he would not insist on that interpretation. He then proceeded.—Give me leave to advert to the operation of this Judicial power. Its jurisdiction in the first case will extend to all cases affecting revenue, excise and custom-house officers. If I am mistaken I will retract.—“All cases in law and equity arising under this Constitution,

and the laws of the United States," take in all the officers of Government. They comprehend all those who act as collectors of taxes, excisemen, &c. It will take in of course what others do to them, and what is done by them to others. In what predicament will our citizens then be? We know the difficulty we are put in by our own Courts, and how hard it is to bring officers to justice even in them. If any of the Federal officers should be guilty of the greatest oppressions, or behave with the most insolent and wanton brutality to a man's wife or daughter, where is this man to get relief? If you suppose in the inferior Courts, they are not appointed by the States. They are not men in whom the community can place confidence. It will be decided by Federal Judges. Even suppose the poor man should be able to obtain judgment in the inferior Court, for the greatest injury, what justice can he get on appeal? Can he go 400 or 500 miles? Can he stand the expence attending it? On this occasion they are to judge of fact as well as law. He must bring his witnesses where he is not known, where a new evidence may be brought against him, of which he never heard before, and which he cannot contradict.

The Honorable Gentleman who presides here [Edmund Pendleton], has told us, that the Supreme Court of Appeals must embrace every object of maritime, Chancery, and common law controversy. In the two first, the indiscriminate appellate jurisdiction as to fact, must be generally granted; because otherwise it could exclude appeals in those cases. But why not discriminate as to matters of fact in common law controversies?—The Honorable Gentleman has allowed that it was dangerous, but hopes regulations will be made to suit the convenience of the people.—But mere hope is not a sufficient security. I have said that it appears to me (though I am no lawyer) to be very dangerous. Give me leave to lay before the committee an amendment, which I think convenient, easy, and proper.—(Here Mr. *Mason* proposed an alteration nearly the same as the first part of the fourteenth amendment recommended by the Convention, which see at the conclusion.)¹⁵—Thus, Sir, after limiting the cases in which the Federal Judiciary could interpose, I would confine the appellate jurisdiction to matters of law only, in common law controversies.

It appears to me, that this will remove oppressions, and answer every purpose of an appellate power.

A discrimination arises between common law trials and trials by Courts of Equity and Admiralty.—In these two last, depositions are committed to record, and therefore on an appeal the whole fact goes up; the equity of the whole case, comprehending fact and law, is considered, and no new evidence requisite. Is it so in Courts of common

law? There evidence is only given *viva voce*. I know not a single case, where there is an appeal of fact as to common law. But I may be mistaken. Where there is an appeal from an inferior to a Superior Court, with respect to matters of fact, a new witness may be introduced, who is perhaps suborned by the other party, a thousand miles from the place where the first trial was had. These are some of the inconveniencies, and insurmountable objections against this general power being given to the Federal Courts. Gentlemen will perhaps say, there will be no occasion to carry up the evidence by *viva voce* testimony, because Congress may order it to be admitted to writing, and transmitted in that manner with the rest of the record. 'Tis true they may, but it is as true that they may not. But suppose they do. Little conversant as I am in this subject, I know there is a great difference between *viva voce* evidence given at the bar, and testimony given in writing. I leave it to Gentlemen more conversant in these matters, to discuss it. They are also to have cognizance in controversies to which the United States shall be a party. This power is superadded, that there might be no doubt, and that all cases arising under the Government might be brought before the Federal Court. Gentlemen will not, I presume, deny that all revenue and excise controversies, and all proceedings relative to the duties of the officers of Government, from the highest to the lowest, may, and must be brought by these means to the Federal Courts; in the first instance, to the inferior Federal Court, and afterwards to the Superior Court.—Every fact proved with respect to these, in the Court below, may be revived in the Superior Court.—But this appellate jurisdiction is to be under the regulations of Congress.—What these regulations may be, God only knows.

Their jurisdiction further extends to controversies between citizens of different States.—Can we not trust our State Courts with the decision of these?—If I have a controversy with a man in Maryland—if a man in Maryland has my bond for 100 l. are not the State Courts competent to try it?—Is it suspected that they would enforce the payment if unjust, or refuse to enforce it if just?—The very idea is ridiculous. What carry me a thousand miles from home—from my family, and business, where perhaps, it will be impossible for me to prove that I paid it?—Perhaps I have a respectable witness who saw me pay the money:—But I must carry him 1000 miles to prove it, or be compelled to pay it again. Is there any necessity for this power?—It ought to have no unnecessary or dangerous power. Why should the Federal Courts have this cognizance?—Is it because one lives on one side of the Potowmack, and the other on the other?—Suppose I have your bond for 1000 l.—If I have any wish to harrass you, or if I be of a litigious

disposition, I have only to assign it to a Gentleman in Maryland. This assignment will involve you in trouble and expence. What effect will this power have between British creditors and the citizens of this State?—This is a ground on which I shall speak with confidence. Every one who heard me speak on the subject, knows, that I always spoke for the payment of the British debts. I wish every honest debt to be paid. Though I would wish to pay the British creditor, yet I would not put it in his power to gratify private malice to our injury. Let me be put right if I be mistaken. But there is not, in my opinion, a single British creditor, but who can bring his debtors to the Federal Court. There are a thousand instances where debts have been paid, and yet must by this appellate cognizance be paid again. Are these imaginary cases?—Are they only possible cases, or are they certain and inevitable?—“To controversies between a State, and the citizens of another State.”—How will their jurisdiction in this case do? Let Gentlemen look at the Westward. Claims respecting those lands, every liquidated account, or other claim against this State, will be tried before the Federal Court. Is not this disgraceful?—Is this State to be brought to the bar of justice like a delinquent individual?—Is the sovereignty of the State to be arraigned like a culprit, or private offender?—Will the States undergo this mortification? I think this power perfectly unnecessary. But let us pursue this subject further. What is to be done if a judgment be obtained against a State?—Will you issue a *feri facias*?¹⁶ It would be ludicrous to say, that you could put the State’s body in jail. How is the judgment then to be enforced? A power which cannot be executed, ought not to be granted. Let us consider the operation of the last subject of its cognizance.—Controversies between a State, or the citizens thereof, and foreign States, citizens or subjects.—There is a confusion in this case. This much, however, may be raised out of it—that a suit will be brought against Virginia.—She may be sued by a foreign State.—What reciprocity is there in it?—In a suit between Virginia and a foreign State, is the foreign State to be bound by the decision?—Is there a similar privilege given to us in foreign States?—Where will you find a parallel regulation? How will the decision be enforced?—Only by the *ultima ratio regum*. A dispute between a foreign citizen or subject, and a Virginian cannot be tried in our own Courts, but must be decided in the Federal Court. Is this the case in any other country?—Are not men obliged to stand by the laws of the country where the disputes are?—This is an innovation which is utterly unprecedented and unheard of.—Cannot we trust the State Courts with disputes between a Frenchman, or an Englishman, and a citizen; or

with disputes between two Frenchmen? This is disgraceful: It will annihilate your State Judiciary: It will prostrate your Legislature.

Thus, Sir, it appears to me that the greater part of these powers are unnecessary, and dangerous, as tending to impair and ultimately destroy the State Judiciaries, and by the same principle, the legislation of the State Governments. To render it safe there must be an amendment, such as I have pointed out. After mentioning the original jurisdiction of the Supreme Court, which extends to but three cases, it gives it appellate jurisdiction in all the other cases mentioned, both as to law and fact, indiscriminately, and without limitation. Why not remove the cause of fear and danger? But it is said, that the regulations of Congress will remove these. I say, that, in my opinion, they will have a contrary effect, and will utterly annihilate your State Courts.—Who are the Court?—The Judges. It is a familiar distinction. We frequently speak of a Court in contradistinction to a jury. I think the Court are to be the Judges of this.—The Judges on the bench, are to be Judges of fact and law, with such exceptions, &c. as Congress shall make. Now give me leave to ask—is not a jury excluded absolutely?—By way of illustration, were Congress to say that a jury, instead of the Court, should judge the fact, will not the Court be still judges of the fact consistently with this Constitution? Congress may make such a regulation, or may not. But suppose they do, what sort of a jury would they have in the ten miles square? I would rather a thousand times be tried by a Court than by such a jury. This great palladium of national safety, which is secured to us by our own Government, will be taken from us in those Courts; or if it be reserved, it will be but in name, and not in substance. In the Government of Virginia, we have secured an impartial jury of the vicinage. We can except to jurors, and perem[p]torily challenge them in criminal trials.¹⁷ If I be tried in the Federal Court for a crime which may affect my life, have I a right of challenging or excepting to the jury? Have not the best men suffered by weak and partial juries? This sacred right ought therefore to be secured. I dread the ruin that will be brought on 30,000 of our people with respect to disputed lands. I am personally endangered as an inhabitant of the *Northern Neck*. The people of that part will be obliged, by the operation of this power, to pay the quitrents of their lands. Whatever other Gentlemen may think, I consider this as a most serious alarm. It will little avail a man to make a profession of his candour. It is to his character and reputation they will appeal. Let Gentlemen consider my public and private character.—To these I wish Gentlemen to appeal for an interpretation of my motives and views. Lord Fairfax's title was clear and undisputed.—After the revolution, we taxed his lands

as private property. After his death an act of Assembly was made, in 1782, to sequester the quitrents due at his death, in the hands of his debtors: Next year an act was made restoring them to the executor of the proprietor. Subsequent to this the treaty of peace was made, by which it was agreed, that there should be no further confiscations. But after this an act of Assembly passed, confiscating this whole property.¹⁸ As Lord Fairfax's title was indisputably good, and as treaties are to be the supreme law of the land, will not his representatives be able to recover all in the Federal Court? How will Gentlemen like to pay additional tax on the lands in the Northern Neck? This the operation of this system will compel them to do. They now are subject to the same taxes that other citizens are, and if the quitrents be recovered in the Federal Court, they are doubly taxed. This may be called an assertion, but, were I going to my grave, I would appeal to Heaven that I think it true. How will a poor man, who is injured or dispossessed unjustly, get a remedy? Is he to go to the Federal Court, 7 or 800 miles? He might as well give his claim up. He may grumble, but finding no relief, he will be contented.

Again, all that great tract of country between the Blue Ridge and the Allegany mountains, will be claimed, and probably recovered in the Federal Court, from the present possessors, by those companies who have a title to them.—These lands have been sold to a great number of people.—Many settled on them, on terms which were advertised. How will this be with respect to *ex post facto* laws? We have not only confirmed the title of those who made the contracts, but those who did not, by a law in 1779, on their paying the original price.¹⁹ Much was paid in a depreciated value, and much was not paid at all.—Again, the great Indiana purchase which was made to the Westward, will, by this judicial power, be rendered a cause of dispute.²⁰ The possessors may be ejected from those lands. That company paid a consideration of 10,000 l. to the Crown, before the lands were taken up. I have heard Gentlemen of the law say, (and I believe it is right) that after the consideration was paid to the Crown, the purchase was legally made, and ought to be valid. That company may come in, and shew that they have paid the money, and have a full right to the land. Of the Indiana company I need not say much. It is well known that their claims will be brought before these Courts. Three or four counties are settled on the lands to which that company claims a title, and have long enjoyed it peaceably. All these claims before those Courts, if they succeed, will introduce a scene of distress and confusion never heard of before. Our peasants will be like those mentioned by *Virgil*,

reduced to ruin and misery, driven from their farms, and obliged to leave their country.—

—*Nos patriam fugimus—et dulcia linquimus arva.*²¹—

Having mentioned these things, give me leave to submit an amendment which I think would be proper and safe, and would render our citizens secure in their possessions justly held. I mean, Sir, “That the Judicial power shall extend to no case where the cause of action shall have originated before the ratification of this Constitution, except in suits for debts due to the United States, disputes between States about their territory, and disputes between persons claiming lands under the grants of different States.” In these cases there is an obvious necessity for giving it a retrospective power. I have laid before you my idea on the subject, and expressed my fears, which I most conscientiously believe to be well founded.

Mr. *Madison*.—Mr. Chairman.—The Honorable Gentleman having persuaded himself that it was calculated to destroy the State Governments, and to dispossess of their property, so great a proportion of this Commonwealth, I am not surprised at the opposition he has made. But being equally persuaded that his fears are groundless, I must endeavor to refute his objections where they do not appear to me to be well founded. I shall be candid in my remarks. I acknowledge that this part does not stand in that form, which would be freest from objection. It might be better expressed. But at the same time, truth obliges me to put a fair and liberal interpretation upon the words. I believe the General Government will do what is for the interest of the United States; because they have no substantial reason or inducement to violate their duty; nor are they warranted by this part of the plan to commit the oppressions he dreads. The general policy of that clause, is to prevent all occasions of having disputes with foreign powers, to prevent disputes between different States, and remedy partial decisions. I believe this to be wise and salutary. The lateness of the hour prevents my entering fully into the subject now. I shall reserve my answer to some other day. But I cannot sit down without adding a few words. He is displeased that there is no provision for peremptory challenges to juries. There is no such provision made in our Constitution or laws.²² The answer made by an Honorable Member [Edmund Pendleton] lately, is a full answer to this. He said, and with great propriety and truth, that where a technical word was used, all the incidents belonging to it necessarily attended it. The right of challenging is incident to the trial by jury, and therefore as the one is secured, so is the other. I hope Gentlemen will see that the dangers he has pointed out do not necessarily follow.

The Committee then rose—And on motion, *Resolved*, That this Convention will, to-morrow, again resolve itself into a Committee of the whole Convention, to take into farther consideration, the proposed Constitution of Government.

And then the Convention adjourned until to-morrow morning, nine o'clock.

1. The Grand Signor was the Sultan of Turkey.

2. In the Treaty of Munster (1648), Spain recognized the independence of the United Provinces (or northern provinces) of The Netherlands. The treaty gave the Dutch the right to close the Scheldt River, thereby denying the Spanish-held southern provinces access to the sea. In the Peace of Utrecht (1713), the southern provinces were given to Charles VI, the Holy Roman Emperor, and they became known as the Austrian Netherlands. Soon after, Charles made a treaty with England and Holland in which he recognized the closing of the Scheldt.

After the American Revolution, Holy Roman Emperor Joseph II (Charles' grandson) wanted to trade with the United States; to accomplish his wish, he sought to open the Scheldt River to free navigation so that the Austrian Netherlands would have an outlet to the sea. In 1783 Joseph refused to recognize the closing of the Scheldt, but told the Dutch that he would negotiate the matter with them. The Dutch, unwilling to open the river, were supported by France, while Russia sided with Joseph. In 1784 and 1785, the Dutch blockaded the port of Antwerp in the Austrian Netherlands, fired on an imperial vessel trying to lift the blockade, and flooded parts of the Austrian Netherlands. At the request of the Dutch, France mobilized two armies and a French general was given the command of Dutch troops. Joseph was neither ready nor willing to fight, but he refused to withdraw his demands. In 1785 the French and Dutch agreed to give Joseph an indemnity of 10,000,000 florins, 8,000,000 to be paid by the Dutch. The Scheldt remained closed until 1863. (See Saul K. Padover, *The Revolutionary Emperor: Joseph II of Austria* [1934; rev. ed., n.p., 1967], 206, 232–40. For Thomas Jefferson's comments on Joseph's character and actions, see his letters of 8 and 10 December 1784, to James Madison and George Washington, respectively [Boyd, VII, 559–60, 566].)

3. Blackstone, *Commentaries*, Book I, chapter VII, 257. For James Madison's citation of this passage, see Convention Debates, 18 June (RCS:Va., 1382).

4. See Convention Debates, 18 June, note 13 (above).

5. See the speech of James Madison on 18 June (RCS:Va., 1382), and the speech of George Nicholas on 19 June (RCS:Va., 1389).

6. In June 1782 Parliament passed "An act to enable his Majesty to conclude a peace or truce with certain colonies in North America therein mentioned." The act did not mention independence, except by implication (22 George III, c. 46). In late January 1783, the ministry of the Earl of Shelburne presented preliminary peace treaties with the United States, France, and Spain to both houses of Parliament. Shelburne's opponents, led by Charles James Fox and Lord North, attacked the treaty with the United States; and, during its session of 21 February 1783, the House of Commons passed two resolutions which brought down the ministry. The first resolution, which grudgingly accepted American independence, stated "That His Majesty, in acknowledging the Independence of the United States of *America*, by virtue of the Powers vested in Him by the Act of the last Session of Parliament, to enable His Majesty to conclude a Peace or Truce with certain Colonies in *North America*, has acted as the Circumstances of Affairs indispensably required, and in Conformity to the Sense of Parliament." The second resolution, which censured the ministry, declared "That the Concessions made to the Adversaries of *Great Britain*, by the said Provisional Treaty and Preliminary Articles, are greater than they were entitled to, either from the actual Situation of their respective

Possessions, or from their comparative Strength." Shelburne resigned in a few days. North and Fox formed a coalition government, but they did not significantly alter the Treaty of Peace.

7. The third article (not the last clause) of the Treaty of Amity and Commerce, signed in February 1778, gave France a most-favored-nation status and guaranteed its subjects "all the Rights, Liberties, Privileges, Immunities and Exemptions in Trade, Navigation and Commerce, whether in passing from one Port in the said States to another, or in going to and from the same, from and to any Part of the World, which the said Nations do or shall enjoy."

8. See notes 3 and 5 (above), especially the reference to George Nicholas who quoted Blackstone.

9. See Convention Debates, 18 June, note 13 (above).

10. For this act, passed in June 1782, see note 6 (above).

11. On 21 March 1787, Congress approved three resolutions asserting that treaties were "part of the law of the land," declaring that all state acts or parts of acts that were "repugnant to the treaty of Peace ought to be forthwith repealed," and recommending that the state legislatures pass general acts of repeal rather than specifying each act repealed. Congress sent these resolutions to the states on 13 April, and between May 1787 and February 1788, six states (Connecticut, Maryland, Rhode Island, Virginia, Delaware, and North Carolina) complied. The Virginia act had a proviso that the act would not take effect until the British evacuated their Northwest posts and returned the confiscated slaves or made compensation for them (JCC, XXXII, 124-25, 177-84, 353n; XXXIII, 439n, 528n; XXXIV, 152n, 273n; and RCS:Va., xxvii, 134-35, note 6, 1137-38, note 10).

12. See Convention Debates, 18 June, note 13 (above).

13. See note 6 (above).

14. See Pendleton's 12 June speech (RCS:Va., 1197).

15. See Convention Debates, 27 June (RCS:Va., 1555).

16. The writ of *feri facias* commanded a sheriff to seize and sell "the goods and chattels" of a debtor in execution of a court judgment (Blackstone, *Commentaries*, Book III, chapter XXVI, 417).

17. In criminal cases under the common law, each side was entitled to challenge jurors for cause, while defendants were permitted "an arbitrary and capricious species of challenge to a certain number of jurors, without shewing any cause at all; which is called a *peremptory* challenge." By statute, the prosecution could only challenge for cause (*ibid.*, Book IV, chapter XXVII, 346-47). See also James Madison's speech at the end of this day's debate (RCS:Va., 1409).

18. The Northern Neck proprietary, a tract of more than 5,000,000 acres, had been owned by the Fairfax family since the 1690s. In 1781 Thomas, Sixth Lord Fairfax, died in Virginia. He bequeathed five-sixths of the proprietary to his brother Robert, Seventh Lord Fairfax, and the rest to his nephew, Denny Martin, both of Kent, England. In 1782 the Virginia legislature declared that "there is reason to suppose that the said proprietorship hath descended upon alien enemies" and ordered proprietary residents to sequester "in their hands" the quitrents due at the time of the death of the proprietor until the right of descent was determined and to pay future quitrents into the state treasury. The proprietor's executors prevailed upon the legislature in 1783 to repeal the sequestration provision of the 1782 act. In accord with the Treaty of Peace, the legislature in 1784 ended the confiscation of Loyalist estates (Hening, XI, 128, 289, 446).

In December 1785 the two proprietors petitioned the House of Delegates asserting that, by the principle of *ante natus* and the law of nations, they could not be deprived of their income. Later that month, the legislature transferred the land papers of the Northern Neck to the state land office; "exonerated and discharged" all Northern Neck landholders from composition money and quitrents; and provided that all future grants

of unappropriated lands (about 2,500,000 acres) were to be made by the state's governor (*ibid.*, XII, 111-13).

In November 1786, Governor Patrick Henry made the first grant of unappropriated lands, but Denny Martin Fairfax continued to dispute Virginia's right to these lands. The Seventh Lord Fairfax died in 1793, and Denny Martin Fairfax inherited the rest of the proprietary. In 1796, the legislature passed an act by which the lands appropriated by Lord Fairfax for his own use belonged to his heirs; while the unappropriated lands belonged to the state (Samuel Shepherd, ed., *The Statutes at Large of Virginia* . . . [October 1792-February 1808, 3 vols., Richmond, 1835-1836], II, 22-23).

John Marshall, who replied to Mason on 20 June (RCS:Va., 1436), was attorney for Denny Martin Fairfax from 1786 to 1796 and a member of a syndicate that eventually purchased the Fairfax lands in the Northern Neck.

19. See "An Act for adjusting and settling the titles of claimers to unpatented lands under the present and former government, previous to the establishment of the commonwealth's land office" (Hening, X, 35-50).

20. For the conflict between Virginia and the Indiana Company over western lands, in which Mason was involved, see RCS:Va., 490, note 7, and 732, note 4.

21. In Virgil's *Eclogues*, Pastoral I, the entire passage (lines 3-4) reads:

"nos patriae finis et dulcia linquimus arua.

nos patriam fugimus"

("Round the wide world in banishment we roam,

Forced from our pleasing fields and native home").

22. See note 17 (above).

The Virginia Convention Friday 20 June 1788

Debates

The Convention, according to the order of the day, again resolved itself into a Committee of the whole Convention to take into farther consideration, the proposed plan of Government.—Mr. *Wythe* in the Chair.

(The 1st & 2d sections, of the 3d article, still under consideration.)

Mr. *Madison*.—Mr. Chairman.—Permit me to make a few observations which may place this part in a more favourable light than the Gentleman [George Mason] placed it in yesterday. It may be proper to remark, that the organization of the General Government for the United States, was, in all its parts, very difficult.—There was a peculiar difficulty in that of the Executive.—Every thing incident to it, must have participated of that difficulty.—That mode which was judged most expedient was adopted, till experience should point out one more eligible.—This part was also attended with difficulties. It claims the indulgence of a fair and liberal interpretation. I will not deny that, according to my view of the subject, a more accurate attention might

place it in terms which would exclude some of the objections now made to it. But if we take a liberal construction, I think we shall find nothing dangerous or inadmissible in it. In compositions of this kind, it is difficult to avoid technical terms which have the same meaning. An attention to this may satisfy Gentlemen, that precision was not so easily obtained as may be imagined. I will illustrate this by one thing in the Constitution.—There is a general power to provide Courts to try felonies and piracies committed on the high seas.—*Piracy* is a word which may be considered as a term of the law of nations.—*Felony* is a word unknown to the law of nations, and is to be found in the British laws, and from thence adopted in the laws of these States. It was thought dishonorable to have recourse to that standard. A technical term of the law of nations is therefore used, that we should find ourselves authorised to introduce it into the laws of the United States. The first question which I shall consider, is, whether the subjects of its cognizance be proper subjects of a federal jurisdiction. The second will be, whether the provisions respecting it be consistent with safety and propriety, will answer the purposes intended, and suit local circumstances. The first class of cases to which its jurisdiction extends, are those which may arise under the Constitution; and this is to extend to equity as well as law. It may be no misfortune that in organizing any Government, the explication of its authority should be left to any of its co-ordinate branches. There is no example in any country where it is otherwise.—There is a new policy in submitting it to the Judiciary of the United States. That causes of a federal nature will arise, will be obvious to every Gentleman, who will recollect that the States are laid under restrictions; and that the rights of the Union are secured by these restrictions. They may involve equitable as well as legal controversies. With respect to the laws of the Union, it is so necessary and expedient that the Judicial power should correspond with the Legislative, that it has not been objected to. With respect to treaties, there is a peculiar propriety in the Judiciary expounding them.—These may involve us in controversies with foreign nations. It is necessary therefore, that they should be determined in the Courts of the General Government. There are strong reasons why there should be a Supreme Court to decide such disputes. If in any case uniformity be necessary, it must be in the exposition of treaties. The establishment of one revisionary superintending power, can alone secure such uniformity.—The same principles hold with respect to cases affecting Ambassadors, and foreign Ministers.—To the same principles may also be referred their cognizance in Admiralty and maritime cases. As our intercourse with foreign nations will be affected by decisions of this kind, they

ought to be uniform. This can only be done by giving the Federal Judiciary exclusive jurisdiction. Controversies affecting the interest of the United States, ought to be determined by their own Judiciary, and not be left to partial local tribunals.

The next case, where two or more States are the parties, is not objected to. Provision is made for this by the existing articles of Confederation;¹ and there can be no impropriety in referring such disputes to this tribunal.

Its jurisdiction in controversies between a State and citizens of another State, is much objected to, and perhaps without reason. It is not in the power of individuals to call any State into Court. The only operation it can have, is, that if a State should wish to bring suit against a citizen, it must be brought before the Federal Court. This will give satisfaction to individuals, as it will prevent citizens on whom a State may have a claim, being dissatisfied with the State Courts. It is a case which cannot often happen, and if it should be found improper, it will be altered. But it may be attended with good effects. This may be illustrated by other cases. It is provided, that citizens of different States may be carried to the Federal Court.—But this will not go beyond the cases where they may be parties. A *feme covert* may be a citizen of another State, but cannot be a party in this Court. A subject of a foreign power having a dispute with a citizen of this State, may carry it to the Federal Court; but an alien enemy cannot bring suit at all. It appears to me, that this can have no operation but this—to give a citizen a right to be heard in the Federal Court; and if a State should condescend to be a party, this Court may take cognizance of it.

As to its cognizance of disputes between citizens of different States, I will not say it is a matter of such importance. Perhaps it might be left to the State Courts. But I sincerely believe this provision will be rather salutary, than otherwise. It may happen that a strong prejudice may arise in some States, against the citizens of others, who may have claims against them. We know what tardy, and even defective administration of justice, has happened in some States. A citizen of another State might not chance to get justice in a State Court, and at all events he might think himself injured.

To the next clause there is no objection.

The next case provides for disputes between a foreign State, and one of our States, should such a case ever arise; and between a citizen and a foreign citizen or subject. I do not conceive that any controversy can ever be decided in these Courts, between an American State and a foreign State, without the consent of the parties. If they consent, provision is here made. The disputes ought to be tried by the national

tribunal. This is consonant to the law of nations. Could there be a more favourable or eligible provision to avoid controversies with foreign powers? Ought it to be put in the power of a member of the Union to drag the whole community into war? As the national tribunal is to decide, justice will be done. It appears to me from this review, that, though on some of the subjects of this jurisdiction, it may seldom or never operate, and though others be of inferior consideration, yet they are mostly of great importance, and indispensably necessary.

The second question which I proposed to consider, was, whether such organization be made as would be safe and convenient for the States and the people at large. Let us suppose that the subjects of its jurisdiction had been only enumerated, and power given to the general Legislature to establish such Courts as might be judged necessary and expedient; I do not think that in that case any rational objection could be made to it, any more than would be made to a general power of legislation in certain enumerated cases.—If that would be safe, this appears to me better and more restrictive, so far as it might be abused by an extension of power.—The most material part is the discrimination of superior and inferior jurisdiction, and the arrangement of its powers; as, *where* it shall have original, and where appellate cognizance. Where it speaks of appellate jurisdiction, it expressly provides, that such regulations will be made as will accommodate every citizen, so far as is practicable in any Government. The principal criticism which has been made, was against the appellate cognizance, as well of fact as law. I am happy that the Honorable Member who presides [Edmund Pendleton], and who is familiarly acquainted with the subject, does not think it involves any thing unnecessarily dangerous. I think that the distinction of fact as well as law, may be satisfied by the discrimination of the civil and common law. But if Gentlemen should contend, that appeals as to fact can be extended to jury cases, I contend, that by the word *regulations*, it is in the power of Congress to prevent it, or prescribe such a mode as will secure the privilege of jury trial.—They may make a regulation to prevent such appeals entirely:—Or they may remand the fact, or send it to an inferior contiguous Court, to be tried; or otherwise preserve that ancient and important trial. Let me observe, that so far as the Judicial power may extend to controversies between citizens of different States, and so far as it gives them power to correct by another trial, a verdict obtained by local prejudices, it is favourable to those States who carry on commerce. There are a number of commercial States, who carry on trade for other States.—Should the States in debt to them make unjust regulations, the justice that would be obtained by the creditors, might be merely

imaginary and nominal.—It might be either entirely denied, or partially granted.—This is no imaginary evil.—Before the war, New-York was to a great amount a creditor of Connecticut:—While it depended on the laws and regulations of Connecticut, she might with-hold payment. If I be not misinformed, there were reasons to complain. These illiberal regulations and causes of complaint, obstruct commerce. So far as this power may be exercised, Virginia will be benefited by it. It appears to me from the most correct view, that by the word *regulations*, authority is given them to provide against all inconveniences; and so far as it is exceptionable, they can remedy it.—This they will do if they be worthy of the trust we put in them.—I think them worthy of that confidence which that paper puts in them. Were I to select a power which might be given with confidence, it would be Judicial power. This power cannot be abused, without raising the indignation of all the people of the States. I cannot conceive that they would encounter this odium. Leaving behind them their characters and friends, and carrying with them local prejudices, I cannot think they would run such a risk.—That men should be brought from all parts of the Union to the seat of Government, on trivial occasions, cannot reasonably be supposed.—It is a species of possibility; but there is every degree of probability against it. I would as soon believe, that by virtue of the power of collecting taxes or customs, they would compel every man to go and pay the money for his taxes with his own hands to the federal Treasurer, as I would believe this.—If they would not do the one, they would not the other.

I am of opinion, and my reasoning and conclusions are drawn from facts, that as far as the power of Congress can extend, the Judicial power will be accommodated to every part of America.—Under this conviction, I conclude, that the Legislature, instead of making the Supreme Federal Court absolutely stationary, will fix it in different parts of the Continent, to render it more convenient.—I think this idea perfectly warrantable. There is an example within our knowledge which illustrates it.—By the Confederation, Congress have an exclusive right of establishing rules for deciding in all cases, what captures should be legal, and establishing Courts for determining such cases finally. A Court was established for that purpose, which was at first stationary.—Experience, and the desire of accommodating the decisions of this Court to the convenience of the citizens of the different parts of America, had this effect—it soon became a regulation, that this Court should be held in different parts of America, and was held so accordingly.² If such a regulation was made, when only the interest of the small number of people who are concerned with captures was affected, will

not the public convenience be consulted, when that of a very considerable proportion of the people of America will be concerned? It will be also in the power of Congress to vest this power in the State Courts, both Inferior and Superior. This they will do, when they find the tribunals of the States established on a good footing. Another example will illustrate this subject further.—By the Confederation, Congress are authorised to establish Courts for trying piracies and felonies committed on the high seas. Did they multiply Courts unnecessarily in this case?—No, Sir, they invested the Admiralty Courts of each State with this jurisdiction.³ Now, Sir, if there will be as much sympathy between Congress and the people, as now, we may fairly conclude, that the Federal cognizance will be vested in the local tribunals.

I have observed, that Gentlemen suppose, that the General Legislature will do every mischief they possibly can, and that they will omit to do every good which they are authorised to do. If this were a reasonable supposition, their objections would be good. I consider it reasonable to conclude, that they will as readily do their duty, as deviate from it:—Nor do I go on the grounds mentioned by Gentlemen on the other side—that we are to place unlimited confidence in them, and expect nothing but the most exalted integrity and sublime virtue.—But I go on this great republican principle, that the people will have virtue and intelligence to select men of virtue and wisdom. Is there no virtue among us?—If there be not, we are in a wretched situation. No theoretical checks—no form of Government, can render us secure. To suppose that any form of Government will secure liberty or happiness without any virtue in the people, is a chimerical idea. If there be sufficient virtue and intelligence in the community, it will be exercised in the selection of these men. So that we do not depend on their virtue, or put confidence in our rulers, but in the people who are to choose them. Having taken this general view of the subject, I will now advert to what has fallen from the Honorable Gentleman who presides [Edmund Pendleton]. His criticism is, that the Judiciary has not been guarded from an increase of the salary of the Judges. I wished myself, to insert a restraint on the augmentation as well as diminution of their compensation; and supported it in the Convention.—But I was overruled.⁴ I must state the reasons which were urged.—They had great weight.—The business must increase. If there was no power to increase their pay, according to the increase of business, during the life of the Judges, it might happen, that there would be such an accumulation of business, as would reduce the pay to a most trivial consideration. This reason does not hold as to the President. For in the short period which he presides, this cannot happen. His salary ought not therefore

to be increased. It was objected yesterday, that there was no provision for a jury from the vicinage. If it could have been done with safety, it would not have been opposed. It might so happen, that a trial would be impracticable in the county. Suppose a rebellion in a whole district, would it not be impossible to get a jury? The trial by jury is held as sacred in England as in America. There are deviations of it in England; yet greater deviations have happened here since we established our independence, than have taken place there for a long time, though it be left to the Legislative discretion. It is a misfortune in any case that this trial should be departed from, yet in some cases it is necessary.—It must be therefore left to the discretion of the Legislature to modify it according to circumstances. This is a complete and satisfactory answer.

It was objected, that this jurisdiction would extend to all cases, and annihilate the State Courts. At this moment of time it might happen, that there are many disputes between citizens of different States. But in the ordinary state of things I believe that any Gentleman will think, that the far greater number of causes—ninety-nine out of an hundred, will remain with the State Judiciaries. All controversies directly between citizen and citizen, will still remain with the local Courts. The number of cases within the jurisdiction of these Courts are very small when compared to those in which the local tribunals will have cognizance. No accurate calculation can be made, but I think that any Gentleman who will contemplate the subject at all, must be struck with this truth.—(Here Mr. *Madison* spoke too low to be understood.)

As to vexatious appeals, they can be remedied by Congress. It would seldom happen that mere wantonness would produce such an appeal, or induce a man to sue unjustly.—If the Courts were on a good footing in the States, what can induce them to take so much trouble? I have frequently in the discussion of this subject, been struck with one remark. It has been urged, that this would be oppressive to those who by imprudence, or otherwise, are under the denomination of debtors. I know not how this can be conceived. I will venture one observation. If this system should have the effect of establishing universal justice, and accelerating it throughout America, it will be one of the most fortunate circumstances that could happen for those men. With respect to that class of citizens, compassion is their due. To those, however, who are involved in such incumbrances, relief cannot be granted. Industry and œconomy are their only resources. It is in vain to wait for money, or temporise. The great desiderata are public and private confidence. No country in the world can do without them. Let the influx of money be ever so great, if there be no confidence, property will

sink in value, and there will be no inducements or emulation to industry. The circulation of confidence is better than the circulation of money. Compare the situation of nations in Europe, where justice is administered with celerity, to that of those where it is refused, or administered tardily. Confidence produces the best effects in the former. The establishment of confidence will raise the value of property, and relieve those who are so unhappy as to be involved in debts. If this be maturely considered, I think it will be found, that as far as it will establish uniformity of justice, it will be of real advantage to such persons. I will not enter into those considerations which the Honorable Gentleman [George Mason] added. I hope some other Gentleman will undertake to answer him.

Mr. *Henry*,—Mr. Chairman.—I have already expressed painful sensations at the surrender of our great rights, and I am again driven to the mournful recollection. The purse is gone—The sword is gone—and here is the only thing of any importance which is to remain with us. As I think this is a more fatal defect than any we have yet considered, forgive me, if I attempt to refute the observations made by the Honorable Member in the Chair [Edmund Pendleton], and him last up [James Madison]. It appears to me, that the powers in the section before you, are either impracticable, or if reducible to practice, dangerous in the extreme.

The Honorable Gentleman [Edmund Pendleton] began in a manner which surprised me. It was observed, that our State Judges might be contented to be Federal Judges and State Judges also.—If we are to be deprived of that class of men, and if they are to combine against us with the General Government, we are gone. I consider the Virginian Judiciary as one of the best barriers against strides of power—against that power which we are told by the Honorable Gentleman, has threatened the destruction of liberty. Pardon me for expressing my extreme regret, that it is in their power to take away that barrier. Gentlemen will not say, that any danger can be expected from the State Legislatures. So small are the barriers against the encroachments and usurpations of Congress, that when I see this last barrier, the independency of the Judges impaired, I am persuaded I see the prostration of all our rights. In what a situation will your Judges be in, when they are sworn to preserve the Constitution of the State, and of the General Government? If there be a concurrent dispute between them, which will prevail? They cannot serve two masters struggling for the same object. The laws of Congress being paramount to those of the States, and to their Constitutions also, whenever they come in competition, the Judges must decide in favor of the former. This, instead of relieving

or aiding me, deprives me of my only comfort—the independency of the Judges.—The Judiciary are the sole protection against a tyrannical execution of laws. But if by this system we lose our Judiciary, and they cannot help us, we must sit down quietly, and be oppressed.

The appellate jurisdiction as to law and fact, notwithstanding the ingenuity of Gentlemen, still to me carries those terrors which my honorable friend [George Mason] described. This does not include law in the common acceptation of it, but goes to equity and admiralty, leaving what we commonly understand by common law, out altogether. We are told, of technical terms, and that we must put a liberal construction on it. We must judge by the common understanding of common men. Do the expressions, “fact and law,” relate to cases of admiralty and chancery jurisdiction only?—No, Sir, the least attention will convince us, that they extend to common law cases. Three cases are contradistinguished from the rest.—“In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact.” Now, Sir, what are we to understand by these words? What are the cases before mentioned? Cases of common law, as well as of equity and admiralty. I confess I was surprised to hear such an explanation from an understanding more penetrating and acute than mine. We are told, that the cognizance of law and fact, is satisfied by cases of admiralty and chancery.—The words are expressly against it. Nothing can be more clear and incontestible. This will in its operation destroy the trial by jury. The verdict of an impartial jury will be reversed by Judges unacquainted with the circumstances.—But we are told, that Congress are to make regulations to remedy this. I may be told that I am bold, but I think myself, and I hope to be able to prove to others, that Congress cannot, by any act of theirs, alter this jurisdiction as established. It appears to me, that no law of Congress can alter or arrange it. It is subject to be regulated, but is it subject to be abolished? If Congress alter this part, they will repeal the Constitution. Does it give them power to repeal itself? What is meant by such words, in common parlance? If you are obliged to do certain business, you are to do it under such modifications as were originally designed. Can Gentlemen support their argument by logical or regular conclusions? When Congress by virtue of this sweeping clause, will organize these Courts, they cannot depart from the Constitution; and their laws in opposition to the Constitution, would be void. If Congress, under the specious pretence of pursuing this clause, altered it, and prohibited appeals as to fact, the Federal

Judges, if they spoke the sentiments of independent men, would declare their prohibition nugatory and void. In every point of view it seems to me, that it will continue in full force as it is now, notwithstanding any regulations they may attempt to make. What then, Mr. Chairman? We are told, that if this does not satisfy every mind, they will yield. It is not satisfactory to my mind, whatever it may be to others. The Honorable Gentleman [James Madison] has told us, that our Representatives will mend every defect. I do not know how often we have recurred to that source, but I can find no consolation in it. Who are they?—Ourselves. What is their duty?—To alter the spirit of the Constitution—to new model it?—Is that their duty, or ours?—It is our duty to rest our rights on a certain foundation, and not to trust to future contingencies. We are told of certain difficulties. I acknowledge it is difficult to form a Constitution. But I have seen difficulties conquered, which were as unconquerable as this. We are told, that trial by jury is difficult to be had in certain cases. Do we not know the meaning of the term? We are also told, it is a technical term. I see one thing in this Constitution—I made the observation before, and I am still of the same opinion—that every thing with respect to privileges is so involved in darkness, it makes me suspicious—not of those Gentlemen who formed it, but of its operation in its present form. Could not precise terms have been used? You find by the observations of the Gentleman last up [James Madison], that when there is a plentitude of power, there is no difficulty: But when you come to a plain thing, understood by all America, there are contradictions, ambiguities, difficulties, and what not. Trial by jury is attended, it seems, with insuperable difficulties, and therefore omit[t]ed altogether in civil cases. But an idea is held out, that it is secured in criminal cases. I had rather it had been left out altogether, than have it so vaguely and equivocally provided for. Poor people do not understand technical terms—Their rights ought to be secured in language of which they know the meaning. As they do not know the meaning of such terms, they may be injured with impunity. If they dare oppose the hands of tyrannical power, you will see what has been practised elsewhere. They may be tried by the most partial jurors—by their most implacable enemies, and be sentenced and put to death, with all the forms of a fair trial. I would rather be left to the Judges. An abandoned juror would not dread the loss of character like a Judge. From these, and a thousand other considerations, I would rather trial by jury were struck out altogether. There is no right of challenging partial jurors. There is no common law of America (as has been said) nor Constitution, but that on your table. If there be neither common law, nor Constitution, there

can be no right to challenge partial jurors.⁵ Yet this right is as valuable as trial by jury itself.

My honorable friend's [George Mason] remarks were right, with respect to incarcerating a State. It would ease my mind, if the Honorable Gentleman would tell me the manner in which money should be paid, if in a suit between a State and individuals, the State were cast. The Honorable Gentleman perhaps does not mean to use coercion, but some gentle caution. I shall give my voice for the Federal cognizance only where it will be for the public liberty and safety.—Its jurisdiction in disputes between citizens of different States, will be productive of the most grievous inconveniencies. The citizens of bordering States have frequent intercourse with one another. From the proximity of the States to each other, a multiplicity of these suits will be instituted. I beg Gentlemen to inform me of this—in what Courts are they to go, and by what law are they to be tried? Is it by a law of Pennsylvania or Virginia? Those Judges must be acquainted with all the laws of the different States. I see arising out of that paper, a tribunal, that is to be recurred to in all cases, when the destruction of the State Judiciaries shall happen; and from the extensive jurisdiction of these paramount Courts, the State Courts must soon be annihilated.

It may be remarked, that here is presented to us, that which is execrated in some parts of the States.—I mean a retrospective law. This with respect to property, is as odious, as an *ex post facto* law is with respect to persons.—I look upon them as one and the same thing. The jurisdiction of controversies between citizens, and foreign subjects and citizens, will operate retrospectively. Every thing with respect to the treaty with Great-Britain and other nations will be involved by it. Every man who owes any thing to a subject of Great-Britain, or any other nation, is subject to a tribunal that he knew not when he made the contract. Apply this to our citizens. If ever a suit be instituted by a British creditor for a sum which the defendant does not in fact owe, he had better pay it than appeal to the Federal Supreme Court. Will Gentlemen venture to ruin their own citizens? Foreigners may ruin every man in this State by unjust and vexatious suits and appeals. I need only touch it, to remind every Gentleman of the danger.

No objection is made to their cognizance of disputes between citizens of the same State, claiming lands under grants of different States.

As to controversies between a State and the citizens of another State, his [James Madison] construction of it is to me perfectly incomprehensible. He says it will seldom happen, that a State has such demands on individuals. There is nothing to warrant such an assertion. But, he

says, that the State may be plaintiff only. If Gentlemen pervert the most clear expressions, and the usual meaning of the language of the people, there is an end of all argument. What says the paper? That it shall have cognizance of controversies between a State, and citizens of another State, without discriminating between plaintiff or defendant. What says the Honorable Gentleman?—The contrary—That the State can only be plaintiff. When the State is debtor, there is no reciprocity. It seems to me that Gentlemen may put what construction they please on it. What!—Is justice to be done to one party, and not to the other!—If Gentlemen take this liberty now, what will they not do when our rights and liberties are in their power? He said it was necessary to provide a tribunal when the case happened, though it would happen but seldom. The power is necessary, because New-York could not before the war collect money from Connecticut! The State Judiciaries are so degraded that they cannot be trusted. This is a dangerous power, which is thus instituted.—For what?—For things which will seldom happen; and yet, because there is a possibility that the strong energetic Government may want it, it shall be produced and thrown in the general scale of power. I confess I think it dangerous. Is it not the first time, among civilized mankind, that there was a tribunal to try disputes between the aggregate society, and foreign nations?—Is there any precedent for a tribunal to try disputes between foreign nations, and the States of America? The Honorable Gentleman said, that the consent of the parties was necessary: I say, that a previous consent might leave it to arbitration.—It is but a kind of arbitration at best.

To hear Gentlemen of such penetration, make use of such arguments, to persuade us to part with the trial by jury, is very astonishing. We are told, that we are to part with that trial by jury which our ancestors secured their lives and property with, and we are to build castles in the air, and substitute visionary modes of decision to that noble palladium. I hope we shall never be induced by such arguments, to part with that excellent mode of trial. No appeal can now be made as to fact in common law suits.—The unanimous verdict of twelve impartial men, cannot be reversed. I shall take the liberty of reading to the Committee the sentiments of the learned Judge Blackstone, so often quoted, on this subject.—(Here Mr. *Henry* read the eulogium of that writer, on this trial.^(a))⁶—The opinion of this learned writer is more forcible and cogent, than any thing I could say. Notwithstanding the transcendent excellency of this trial, its essentiality to the preservation of liberty, and the extreme danger of substituting any other mode, yet we are now about to alienate it. But on this occasion, as on all others, we are admonished to rely on the wisdom and virtue of our rulers.

We are told, that the Members from Georgia, and New-Hampshire, &c. will not dare to infringe this privilege—That as it would excite the indignation of the people, they would not attempt it—That is, the enormity of the offence, is urged as a security against its commission. It is so abominable, that Congress will not exercise it. Shall we listen to arguments like these, when trial by jury is about to be relinquished? I beseech you to consider before you decide. I ask you, what is the value of that privilege?—When Congress, in all the plenitude of their arrogance, magnificence, and power, can take it from you, will you be satisfied?—Are we to go so far as to concede every thing to the virtue of Congress? Throw yourselves at once on their mercy—Be no longer free, then their virtue will predominate—If this will satisfy republican minds, there is an end of every thing. I disdain to hold any thing of any man. We ought to cherish that disdain. America viewed with indignation the idea of holding her rights of England. The Parliament gave you the most solemn assurances, that they would not exercise this power.—Were you satisfied with their promises?—No. Did you trust any man on earth?—No—you answered, that you disdained to hold your innate indefeasible rights of any one. Now you are called upon to give an exorbitant and most alarming power.—The genius of my countrymen is the same now, that it was then.—They have the same feelings.—They are equally martial and bold.—Will not their answer therefore be the same? I hope that Gentlemen will, on a fair investigation, be candid, and not on every occasion recur to the virtue of our Representatives. When deliberating on the relinquishment of the sword and purse, we have a right to some other reason, than the possible virtue of our rulers. We are informed, that the strength and energy of the Government call for the surrender of this right. Are we to make our country strong, by giving up our privileges? I tell you, that if you judge from reason, or the experience of other nations, you will find that your country will be great and respectable, according as you will preserve this great privilege. It is prostrated by that paper. Juries from the vicinage being not secured, this right is in reality sacrificed.—All is gone—and why?—Because a rebellion may arise—Resistance will come from certain counties, and juries will come from the same counties. I trust the Honorable Gentleman [James Madison], on a better recollection, will be sorry for this observation. Why do we love this trial by jury?—Because it prevents the hand of oppression from cutting you off. They may call any thing rebellion, and deprive you of a fair trial by an impartial jury of your neighbours. Has not our mother country magnanimously preserved this noble privilege upwards of a thousand years?—Did she relinquish a jury of the vicinage,

because there was a possibility of resistance to oppression? She has been magnanimous enough to resist every attempt to take away this privilege—She has had magnanimity enough to rebel when her rights were infringed.—That country had juries of *hundredors*⁷ for many generations. And shall Americans give up that which nothing could induce the English people to relinquish? The idea is abhorrent to my mind. There was a time, when we would have spurned at it. This gives me comfort, that as long as I have existence, my neighbours will protect me. Old as I am, it is probable I may yet have the appellation of rebel.—I trust that I shall see Congressional oppressions crushed in embryo. As this Government stands, I despise and abhor it. Gentlemen demand it, though it takes away the trial by jury in civil cases, and does worse than take it away in criminal cases. It is gone unless you preserve it now. I beg pardon for speaking so long. Many more observations will present themselves to the minds of Gentlemen when they analyze this part. We find enough from what has been said to come to this conclusion, that it was not intended to have jury trials at all. Because difficult as it was, the name was known, and it might have been inserted. Seeing that appeals are given in matters of fact to the Supreme Court, we are led to believe, that you must carry your witnesses an immense distance to the seat of Government, or decide appeals according to the Roman law. I shall add no more, but that I hope, that Gentlemen will recollect what they are about to do, and consider that they are going to give up this last and best privilege.

Mr. *Pendleton*.—Mr. Chairman.—Before I enter upon the objections made to this part, I will observe, that I should suppose that if there were any person in this audience who had not read this Constitution, or who had not heard what has been said, and should have been told, that the trial by jury was intended to be taken away, he would be surprised to find on examination, that there was no exclusion of it in civil cases, and that it was expressly provided for in criminal cases. I never could see such intention, or any tendency towards it. I have not heard any arguments of that kind used in favor of the Constitution. If there were any words in it, which said, that trial by jury should not be used, it would be dangerous. I find it secured in criminal cases, and that the trial is to be had in the State where the crime shall have been committed. It is strongly insisted, that the privilege of challenging, or excepting to the jury is not secured. When the Constitution says, that the trial shall be by jury, does it not say, that every incident will go along with it?—I think the Honorable Gentleman [George Mason] was mistaken yesterday in his reasoning on the propriety of a jury from the vicinage. He supposed that a jury from the neighbourhood is had

from this view,—that they should be acquainted with the personal character of the person accused. I thought it was with another view, that the jury should have some personal knowledge of the fact, and acquaintance with the witnesses, who will come from the neighbourhood. How is it understood in this State? Suppose a man who lives in Winchester, commits a crime at Norfolk, the jury to try him must come, not from Winchester, but from the neighbourhood of Norfolk. Trial by jury is secured by this system in criminal cases, as are all the incidental circumstances relative to it. The Honorable Gentleman yesterday made an objection to that clause which says, that the Judicial power shall be vested in one Supreme Court, and such Inferior Courts, as Congress may ordain and establish. He objects that there is an unlimited power of appointing Inferior Courts. I refer it to that Gentleman, whether it would have been proper to limit this power. Could those Gentlemen who framed that instrument, have extended their ideas to all the necessities of the United States, and see every case in which it would be necessary to have an inferior tribunal? By the regulations of Congress, they may be accommodated to public convenience and utility. We may expect that there will be an Inferior Court in each State—Each State will insist on it—and each for that reason will agree to it.—To shew the impropriety of fixing the number of Inferior Courts, suppose our Constitution had confined the Legislature to any particular number of inferior jurisdictions, there it would remain, nor could it be increased or diminished as circumstances would render it necessary. But as it is, the Legislature can by laws change it from time to time as circumstances will require. What would have been the consequences to the Western District, if the Legislature had been restrained in this particular? The emigrations to that country rendered it necessary to establish a jurisdiction there, equal in rank to the General Court in this part of the State. This was convenient to them, and could be no inconvenience to us. At the same time the Legislature did not lose sight of making every part of the society subject to the supreme tribunal. An appeal was allowed to the Court of Appeals here.⁸ This was necessary. Has it produced any inconvenience? I have not seen any appeal from that Court. Its organization has produced no inconvenience whatever. This proves that it is better to leave them unsettled, than fixed in the Constitution. With respect to the subjects of its jurisdiction, I consider them as being of a general, and not local nature, and therefore as proper subjects of a Federal Court. I shall not enter into an examination of each part, but make some reply to the observations of the Honorable Gentleman. His next objection was, to the two first clauses.—Cases arising under the Constitution, and laws

made in pursuance thereof. Are you to refer these to the State Courts? Must not the judicial powers extend to enforce the Federal laws, govern its own officers, and confine them to the line of their duty? Must it not protect them in the proper exercise of duty, against all opposition, whether from individuals or State laws?—No, say Gentlemen, because the Legislature may make oppressive laws, or partial Judges may give them a partial interpretation. This is carrying suspicion to an extreme, which tends to prove there should be no Legislature or Judiciary at all. The fair inference is, that oppressive laws will not be warranted by the Constitution; nor attempted by our Representatives, who are selected for their ability and integrity; and that honest independent Judges will never admit an oppressive construction.

But then we are alarmed with the idea of its being a consolidated Government. It is so, say Gentlemen, in the Executive and Legislative, and must be so in the Judiciary.—I never conceived it to be a consolidated Government, so as to involve the interests of all America. Of the two objects of judicial cognizance, one is general and national, and the other local. The former is given to the general judiciary, and the latter left to the local tribunals. They act in co-operation to secure our liberty. For the sake of œconomy, the appointment of these Courts, might be in the State Courts. I rely on an honest interpretation from independent Judges. An honest man would not serve otherwise, because it would be to serve a dishonest purpose. To give execution to proper laws, in a proper manner, is their peculiar province. There is no inconsistency, impropriety, or danger in giving the State Judges the Federal cognizance. Every Gentleman who beholds my situation—my infirmity, and various other considerations, will hardly suppose I carry my view to an accumulation of power. Ever since I had any power, I was more anxious to discharge my duty, than to increase my power.

The impossibility of calling a sovereign State before the jurisdiction of another sovereign State, shews the propriety and necessity of vesting this tribunal with the decision of controversies to which a State shall be a party.

But the principal objection of that Honorable Gentleman [George Mason] was, that jurisdiction was given it in disputes between citizens of different States. I think in general those decisions might be left to the State tribunals; especially as citizens of one State, are declared to be citizens of all. I think it will in general be so left by the regulations of Congress. But may no case happen in which it may be proper to give the Federal Courts jurisdiction in such a dispute? Suppose a bond given by a citizen of Rhode-Island, to one of our citizens. The regulations of that State being unfavourable to the claims of the people

of the other States, if he is obliged to go to Rhode-Island to recover it, he will be obliged to accept payment of one-third, or less, of his money. He cannot sue in the Supreme Court: But he may sue in the Federal Inferior Court; and on judgment to be paid one for ten, he may get justice by appeal. Is it an eligible situation? Is it just that a man should run the risk of losing nine-tenths of his claim? Ought he not to be able to carry it to that Court where unworthy principles do not prevail? Paper money and tender laws may be passed in other States, in opposition to the Federal principle, and restriction of this Constitution, and will need jurisdiction in the Federal Judiciary to stop its pernicious effects.

Where is the danger in the case put, of malice producing an assignment of a bond to a citizen of a neighbouring State—Maryland? I have before supposed, that there would be an Inferior Federal Court in every State. Now, this citizen of Maryland, to whom this bond is assigned, cannot sue out a process from the Supreme Federal Court to carry his debtor thither. He cannot carry him to Maryland. He must sue him in the Inferior Federal Court in Virginia. It can only go further by appeal. The creditor cannot appeal. He gets a judgment. An appeal can be had only on application of the defendant, who thus gains a privilege instead of an injury; so that the observation of the Honorable Gentleman [George Mason] is not well founded. It was said by the Honorable Gentleman [Patrick Henry] to day, that no regulation that Congress could make, could prevent from applying to common law cases, matters of law and fact. In the construction of general words of this sort, they will apply concurrently to different purposes. We give them that distributive interpretation, and liberal explication, which will not make them mischievous: And if this can be done by a Court, surely it can by a Legislature. When it appears that the interpretation made by Legislative bodies in carrying acts into execution, is thus liberal and distributive, there is no danger here. The Honorable Gentleman [George Mason] was mistaken when he supposed that I said, in cases where the competency of evidence is questioned, the fact was to be changed in the Superior Court. I said, the fact was not at all to be affected. I described how the Superior Court was to proceed, and when it settled that point, if another trial was necessary, they sent the cause back, and then it was to be tried again in the Inferior Court.

The Honorable Gentleman [George Mason] has proposed an amendment, which he supposes would remove those inconveniencies. I attended to it, and it gave great force to my opinion, that it is better to leave it to be amended by the regulations of Congress. What is to be done in cases where juries have been introduced in the admiralty

and chancery? In the admiralty, juries sometimes decide facts. Sometimes in chancery, when the Judges are dissatisfied from the want of testimony, or other cause, they send it to be tried by a jury. When the jury determines they settle it. Let the Gentleman review his amendment. It strikes me forcibly, that it would be better to leave it to Congress, than introduce amendments which would not answer. I mentioned yesterday, that from the situation of the States, appeals could not be abused. The Honorable Gentleman [Patrick Henry] to-day, said, it was putting too much confidence in our agents and rulers. I leave it to all mankind, whether it be not a reasonable confidence. Will the Representatives of any twelve States sacrifice their own interest, and that of their citizens, to answer no purpose? But suppose we should happen to be deceived, have we no security? So great is the spirit of America, that it was found sufficient to oppose the greatest power in the world. Will not the American spirit protect us against any danger from our own Representatives? It being now late I shall add no more.

Mr. *George Mason*,—Mr. Chairman.—The objection I made respecting the assignment of a bond from a citizen of this State, to a citizen of another State, remains still in force. The Honorable Gentleman [Edmund Pendleton] has said, that there can be no danger, in the first instance, because it is not within the original jurisdiction of the Supreme Court; but that the suit must be brought in the Inferior Federal Court in Virginia. He supposes, there never can be an appeal in this case, by the plaintiff, because he gets a judgment on his bond; and that the defendant alone can appeal, who therefore instead of being injured, obtains a privilege. Permit me to examine the force of this. By means of a suit, on a real or fictitious claim, the citizens of the most distant States may be brought to the Supreme Federal Court. Suppose a man has my bond for 100 l. and a great part of it has been paid, and in order fraudulently to oppress me, he assigns it to a Gentleman in Carolina or Maryland.—He then carries me to the Inferior Federal Court:—I produce my witness, and judgment is given in favor of the defendant.—The plaintiff appeals and carries me to the Superior Court, a thousand miles, and my expences amount to more than the bond.

The Honorable Gentleman recommends to me to alter my proposed amendment. I would as soon take the advice of that Gentleman, as any other; and though the regard which I have for him be great, I cannot assent on this great occasion.

There are not many instances of decisions by juries in the admiralty or chancery, because the facts are generally proved by depositions. When that is done, the fact being ascertained, goes up to the Superior

Court as part of the record; so that there will be no occasion to revise that part.

Mr. *John Marshall*.—Mr. Chairman.—This part of the plan before us, is a great improvement on that system from which we are now departing. Here are tribunals appointed for the decision of controversies, which were before, either not at all, or improperly provided for.—That many benefits will result from this to the members of the collective society, every one confesses. Unless its organization be defective, and so constructed as to injure, instead of accommodating the convenience of the people, it merits our approbation. After such a candid and fair discussion by those Gentlemen who support it—after the very able manner in which they have investigated and examined it, I conceived it would be no longer considered as so very defective, and that those who opposed it, would be convinced of the impropriety of some of their objections.—But I perceive they still continue the same opposition. Gentlemen have gone on an idea, that the Federal Courts will not determine the causes which may come before them, with the same fairness and impartiality, with which other Courts decide. What are the reasons of this supposition?—Do they draw them from the manner in which the Judges are chosen, or the tenure of their office?—What is it that makes us trust our Judges?—Their independence in office, and manner of appointment. Are not the Judges of the Federal Court chosen with as much wisdom, as the Judges of the State Governments?—Are they not equally, if not more independent?—If so, shall we not conclude, that they will decide with equal impartiality and candour?—If there be as much wisdom and knowledge in the United States, as in a particular State, shall we conclude that that wisdom and knowledge will not be equally exercised in the selection of the Judges?

The principle on which they object to the Federal jurisdiction, seems to me to be founded on a belief, that there will not be a fair trial had in those Courts. If this Committee will consider it fully, they will find it has no foundation, and that we are as secure there as any where else. What mischief results from some causes being tried there?—Is there not the utmost reason to conclude, that Judges wisely appointed, and independent in their office, will never countenance any unfair trial?—What are the subjects of its jurisdiction? Let us examine them with an expectation that causes will be as candidly tried there, as elsewhere, and then determine. The objection, which was made by the Honorable member who was first up yesterday (Mr. *Mason*) has been so fully refuted, that it is not worth while to notice it. He objected to Congress having power to create a number of Inferior Courts according to the necessity of public circumstances. I had an apprehension

that those Gentlemen who placed no confidence in Congress, would object that there might be no Inferior Courts. I own that I thought, that those Gentlemen would think there would be no Inferior Courts, as it depended on the will of Congress, but that we should be dragged to the centre of the Union. But I did not conceive, that the power of increasing the number of Courts could be objected to by any Gentleman, as it would remove the inconvenience of being dragged to the centre of the United States. I own that the power of creating a number of Courts, is, in my estimation, so far from being a defect, that it seems necessary to the perfection of this system. After having objected to the number and mode, he objected to the subject matter of their cognizance.—(Here Mr. *Marshall* read the 2d section.)—These, Sir, are the points of Federal jurisdiction to which he objects, with a few exceptions. Let us examine each of them with a supposition, that the same impartiality will be observed there, as in other Courts, and then see if any mischief will result from them.—With respect to its cognizance in all cases arising under the Constitution and the laws of the United States, he says, that the laws of the United States being paramount to the laws of particular States, there is no case but what this will extend to. Has the Government of the United States power to make laws on every subject?—Does he understand it so?—Can they make laws affecting the mode of transferring property, or contracts, or claims between citizens of the same State? Can they go beyond the delegated powers? If they were to make a law not warranted by any of the powers enumerated, it would be considered by the Judges as an infringement of the Constitution which they are to guard:—They would not consider such a law as coming under their jurisdiction.—They would declare it void. It will annihilate the State Courts, says the Honorable Gentleman. Does not every Gentleman here know, that the causes in our Courts are more numerous than they can decide, according to their present construction? Look at the dockets.—You will find them crowded with suits, which the life of man will not see determined. If some of these suits be carried to other Courts, will it be wrong? They will still have business enough. Then there is no danger, that particular subjects, small in proportion, being taken out of the jurisdiction of the State Judiciaries, will render them useless and of no effect. Does the Gentleman think that the State Courts will have no cognizance of cases not mentioned here? Are there any words in this Constitution which excludes the Courts of the States from those cases which they now possess? Does the Gentleman imagine this to be the case? Will any Gentleman believe it? Are not controversies respecting lands claimed under the grants of different States, the only

controversies between citizens of the same State, which the Federal Judiciary can take cognizance of? The case is so clear, that to prove it would be an useless waste of time. The State Courts will not lose the jurisdiction of the causes they now decide. They have a concurrence of jurisdiction with the Federal Courts in those cases, in which the latter have cognizance.

How disgraceful is it that the State Courts cannot be trusted, says the Honorable Gentleman! What is the language of the Constitution? Does it take away their jurisdiction? Is it not necessary that the Federal Courts should have cognizance of cases arising under the Constitution, and the laws of the United States? What is the service or purpose of a Judiciary, but to execute the laws in a peaceable orderly manner, without shedding blood, or creating a contest, or availing yourselves of force? If this be the case, where can its jurisdiction be more necessary than here? To what quarter will you look for protection from an infringement on the Constitution, if you will not give the power to the Judiciary? There is no other body that can afford such a protection. But the Honorable Member [George Mason] objects to it, because, he says, that the officers of the Government will be scre[e]ned from merited punishment by the Federal Judiciary. The Federal Sheriff, says he, will go into a poor man's house, and beat him, or abuse his family, and the Federal Court will protect him. Does any Gentleman believe this? Is it necessary that the officers will commit a trespass on the property or persons of those with whom they are to transact business? Will such great insults on the people of this country be allowable? Were a law made to authorise them, it would be void. The injured man would trust to a tribunal in his neighbourhood. To such a tribunal he would apply for redress, and get it. There is no reason to fear that he would not meet that justice there, which his country will be ever willing to maintain. But on appeal, says the Honorable Gentleman, what chance is there to obtain justice? This is founded on an idea, that they will not be impartial. There is no clause in the Constitution which bars the individual member injured, from applying to the State Courts to give him redress. He says that there is no instance of appeals as to fact in common law cases. The contrary is well known to you, Mr. Chairman, to be the case in this Commonwealth. With respect to mills, roads, and other cases, appeals lye from the Inferior to the Superior Court, as to fact as well as law.⁹ Is it a clear case, that there can be no case in common law, in which an appeal as to fact might be proper and necessary? Can you not conceive a case where it would be productive of advantages to the people at large, to submit to that tribunal the final determination, involving facts as well as law? Suppose

it should be deemed for the convenience of the citizens, that those things which concerned foreign Ministers, should be tried in the Inferior Courts—If justice would be done, the decision would satisfy all. But if an appeal in matters of fact could not be carried to the Superior Court, then it would result, that such cases could not be tried before the Inferior Courts, for fear of injurious and partial decisions.

But, Sir, where is the necessity of discriminating between the three cases of chancery, admiralty, and common law? Why not leave it to Congress? Will it enlarge their powers? Is it necessary for them wantonly to infringe your rights? Have you any thing to apprehend, when they can in no case abuse their power without rendering themselves hateful to the people at large? When this is the case, something may be left to the Legislature freely chosen by ourselves, from among ourselves, who are to share the burdens imposed upon the community, and who can be changed at our pleasure. Where power may be trusted, and there is no motive to abuse it, it seems to me to be as well to leave it undetermined, as to fix it in the Constitution.

With respect to disputes between a State, and the citizens of another State, its jurisdiction has been decried with unusual vehemence. I hope no Gentleman will think that a State will be called at the bar of the Federal Court. Is there no such case at present? Are there not many cases in which the Legislature of Virginia is a party, and yet the State is not sued? It is not rational to suppose, that the sovereign power shall be dragged before a Court. The intent is, to enable States to recover claims of individuals residing in other States. I contend this construction is warranted by the words. But, say they, there will be partiality in it if a State cannot be defendant—if an individual cannot proceed to obtain judgment against a State, though he may be sued by a State. It is necessary to be so, and cannot be avoided. I see a difficulty in making a State defendant, which does not prevent its being plaintiff. If this be only what cannot be avoided, why object to the system on that account? If an individual has a just claim against any particular State, is it to be presumed, that on application to its Legislature, he will not obtain satisfaction? But how could a State recover any claim from a citizen of another State, without the establishment of these tribunals?

The Honorable Member objects to suits being instituted in the Federal Courts by the citizens of one State, against the citizens of another State. Were I to contend, that this was necessary in all cases, and that the Government without it would be defective, I should not use my own judgment. But are not the objections to it carried too far? Though it may not in general be absolutely necessary, a case may happen, as

has been observed, in which a citizen of one State ought to be able to recur to this tribunal, to recover a claim from the citizen of another State. What is the evil which this can produce?—Will he get more than justice there?—The independence of the Judges forbids it. What has he to get?—Justice. Shall we object to this, because a citizen of another State can obtain justice without applying to our State Courts? It may be necessary with respect to the laws and regulations of commerce, which Congress may make. It may be necessary in cases of debt, and some other controversies. In claims for land it is not necessary, but it is not dangerous. In the Court of which State will it be instituted, said the Honorable Gentleman? It will be instituted in the Court of the State where the defendant resides,—where the law can come at him, and no where else. By the laws of which State will it be determined, said he? By the laws of the State where the contract was made. According to those laws, and those only, can it be decided. Is this a novelty?—No—it is a principle in the jurisprudence of this Commonwealth. If a man contracted a debt in the East-Indies, and it was sued for here, the decision must be consonant to the laws of that country.—Suppose a contract made in Maryland, where the annual interest is at six per centum; and a suit instituted for it in Virginia—What interest would be given now, without any Federal aid?—The interest of Maryland most certainly; and if the contract had been made in Virginia, and suit brought in Maryland, the interest of Virginia must be given without doubt.—It is now to be governed by the laws of that State where the contract was made. The laws which governed the contract at its formation, govern it in its decision. To preserve the peace of the Union only, its jurisdiction in this case ought to be recurred to.—Let us consider that when citizens of one State carry on trade in another State, much must be due to the one from the other, as is the case between North-Carolina and Virginia. Would not the refusal of justice to our citizens, from the Courts of North-Carolina, produce disputes between the States? Would the Federal Judiciary swerve from their duty in order to give partial and unjust decisions?

The objection respecting the assignment of a bond to a citizen of another State, has been fully answered. But suppose it were to be tried as he says, what could be given more than was actually due in the case he mentioned? It is *possible*, in our Courts as they now stand, to obtain a judgment for more than justice. But the Court of Chancery grants relief. Would it not be so in the Federal Court? Would not depositions be taken, to prove the payments, and if proved, would not the decision of the Court be accordingly?

He objects in the next place to its jurisdiction in controversies be-

tween a State, and a foreign State. Suppose, says he, in such a suit, a foreign State is cast, will she be bound by the decision? If a foreign State brought a suit against the Commonwealth of Virginia, would she not be barred from the claim if the Federal Judiciary thought it unjust? The previous consent of the parties is necessary. And, as the Federal Judiciary will decide, each party will acquiesce. It will be the means of preventing disputes with foreign nations. On an attentive consideration of these Courts, I trust every part will appear satisfactory to the Committee.

The exclusion of trial by jury in this case, he urged to prostrate our rights. Does the word Court only mean the Judges? Does not the determination of a jury, necessarily lead to the judgment of the Court? Is there any thing here which gives the Judges exclusive jurisdiction of matters of fact? What is the object of a jury trial? To inform the Court of the facts. When a Court has cognizance of facts, does it not follow, that they can make enquiry by a jury? It is impossible to be otherwise. I hope that in this country, where impartiality is so much admired, the laws will direct facts to be ascertained by a jury. But, says the Honorable Gentleman [George Mason], the juries in the ten miles square will be mere tools of parties, with which he would not trust his person or property; which, he says, he would rather leave to the Court. Because the Government may have a district ten miles square, will no man stay there but the tools and officers of the Government?—Will no body else be found there?—Is it so in any other part of the world, where a Government has Legislative power?—Are there none but officers and tools of the Government of Virginia in Richmond?—Will there not be independent merchants, and respectable Gentlemen of fortune, within the ten miles square?—Will there not be worthy farmers and mechanics? Will not a good jury be found there as well as any where else?—Will the officers of the Government become improper to be on a jury?—What is it to the Government, whether this man or that man succeeds?—It is all one thing. Does the Constitution say, that juries shall consist of officers, or that the Supreme Court shall be held in the ten miles square? It was acknowledged by the Honorable Member [Patrick Henry], that it was secure in England. What makes it secure there?—Is it their Constitution?—What part of their Constitution is there, that the Parliament cannot change?—As the preservation of this right is in the hands of Parliament, and it has ever been held sacred by them, will the Government of America be less honest than that of Great-Britain? Here a restriction is to be found. The jury is not to be brought out of the State. There is no such restriction in that Government; for the laws of Parliament decide every

thing respecting it. Yet Gentlemen tell us, that there is safety there, and nothing here but danger. It seems to me, that the laws of the United States will generally secure trials by a jury of the vicinage, or in such manner as will be most safe and convenient for the people.

But it seems that the right of challenging the jurors, is not secured in this Constitution. Is this done by our own Constitution, or by any provision of the English Government? Is it done by their Magna Charta, or Bill of Rights? This privilege is founded on their laws. If so, why should it be objected to the American Constitution, that it is not inserted in it? If we are secure in Virginia, without mentioning it in our Constitution, why should not this security be found in the Federal Court?

The Honorable Gentleman [George Mason] said much about the quitrents in the Northern Neck. I will refer it to the Honorable Gentleman himself. Has he not acknowledged, that there was no complete title? Was he not satisfied, that the right of the legal representative of the proprietor did not exist at the time he mentioned? If so, it cannot exist now. I will leave it to those Gentlemen who come from that quarter. I trust they will not be intimidated on this account, in voting on this question. A law passed in 1782, which secures this.¹⁰ He says that many poor men may be harrassed and injured by the representative of Lord Fairfax. If he has no right, this cannot be done. If he has this right and comes to Virginia, what laws will his claims be determined by? By those of this State. By what tribunals will they be determined? By our State Courts. Would not the poor man, who was oppressed by an unjust prosecution, be abundantly protected and satisfied by the temper of his neighbours, and would he not find ample justice? What reason has the Honorable Member to apprehend partiality or injustice? He supposes, that if the Judges be Judges of both the Federal and State Courts, they will incline in favour of one Government. If such contests should arise, who could more properly decide them, than those who are to swear to do justice? If we can expect a fair decision any where, may we not expect justice to be done by the Judges of both the Federal and State Governments? But, says the Honorable Member [Patrick Henry], laws may be executed tyrannically. Where is the independency of your Judges? If a law be executed tyrannically in Virginia, to what can you trust? To your Judiciary. What security have you for justice? Their independence. Will it not be so in the Federal Court?

Gentlemen ask what is meant by law cases, and if they be not distinct from facts. Is there no law arising on cases in equity and admiralty? Look at the acts of Assembly.—Have you not many cases, where law

and fact are blended? Does not the jurisdiction in point of law as well as fact, find itself completely satisfied in law and fact? The Honorable Gentleman says, that no law of Congress can make any exception to the Federal appellate jurisdiction of fact as well as law. He has frequently spoken of technical terms, and the meaning of them. What is the meaning of the term *exception*? Does it not mean an alteration and diminution? Congress is empowered to make exceptions to the appellate jurisdiction, as to law and fact, of the Supreme Court.—These exceptions certainly go as far as the Legislature may think proper, for the interest and liberty of the people.—Who can understand this word, *exception*, to extend to one case as well as the other? I am persuaded, that a reconsideration of this case will convince the Gentleman, that he was mistaken. This may go to the cure of the mischief apprehended. Gentlemen must be satisfied, that this power will not be so much abused as they have said.

The Honorable Member says, that he derives no consolation from the wisdom and integrity of the Legislature, because we call them to rectify defects which it is our duty to remove. We ought well to weigh the good and evil before we determine—We ought to be well convinced, that the evil will be really produced before we decide against it. If we be convinced that the good greatly preponderates, though there be small defects in it, shall we give up that which is really good, when we can remove the little mischief it may contain, in the plain easy method pointed out in the system itself?

I was astonished when I heard the Honorable Gentleman [Patrick Henry] say, that he wished the trial by jury to be struck out entirely. Is there no justice to be expected by a jury of our fellow citizens? Will any man prefer to be tried by a Court, when the jury is to be of his countrymen, and probably of his vicinage? We have reason to believe the regulations with respect to juries will be such as shall be satisfactory. Because it does not contain all, does it contain nothing? But I conceive that this Committee will see there is safety in the case, and that there is no mischief to be apprehended.

He states a case, that a man may be carried from a federal to an antifederal corner, (and *vice versa*) where men are ready to destroy him. Is this probable? Is it presumeable that they will make a law to punish men who are of different opinions in politics from themselves? Is it presumeable, that they will do it in one single case, unless it be such a case as must satisfy the people at large? The good opinion of the people at large must be consulted by their Representatives; otherwise mischiefs would be produced, which would shake the Government to its foundation. As it is late, I shall not mention all the Gentleman's

argument: But some parts of it are so glaring, that I cannot pass them over in silence. He says that the establishment of these tribunals, and more particularly in their jurisdiction of controversies between citizens of these States, and foreign citizens and subjects, is like a retrospective law. Is there no difference between a tribunal which shall give justice and effect to an existing right, and creating a right that did not exist before? The debt or claim is created by the individual. He has bound himself to comply with it. Does the creation of a new Court amount to a retrospective law?

We are satisfied with the provision made in this country on the subject of trial by jury. Does our Constitution direct trials to be by jury? It is required in our Bill of Rights, which is not a part of the Constitution. Does any security arise from hence? Have you a jury when a judgment is obtained on a replevin bond, or by default? Have you a jury when a motion is made for the Commonwealth, against an individual; or when a motion is made by one joint obligor against another, to recover sums paid as security? Our Courts decide in all these cases, without the intervention of a jury; yet they are all civil cases. The Bill of Rights is merely recommendatory. Were it otherwise, the consequence would be, that many laws which are found convenient, would be unconstitutional. What does the Government before you say? Does it exclude the Legislature from giving a trial by jury in civil cases? If it does not forbid its exclusion, it is on the same footing on which your State Government stands now. The Legislature of Virginia does not give a trial by jury where it is not necessary. But gives it wherever it is thought expedient. The Federal Legislature will do so too, as it is formed on the same principles.

The Honorable Gentleman says, that unjust claims will be made, and the defendant had better pay them than go to the Supreme Court. Can you suppose such a disposition in one of your citizens, as that to oppress another man, he will incur great expences? What will he gain by an unjust demand? Does a claim establish a right? He must bring his witnesses to prove his claim. If he does not bring his witnesses, the expences must fall upon him. Will he go on a calculation that the defendant will not defend it; or cannot produce a witness? Will he incur a great deal of expence, from a dependance on such a chance? Those who know human nature, black as it is, must know, that mankind are too well attached to their interest to run such a risk. I conceive, that this power is absolutely necessary, and not dangerous; that should it be attended by little inconveniences, they will be altered, and that they can have no interest in not altering them. Is there any real danger?—When I compare it to the exercise of the same power in the

Government of Virginia, I am persuaded there is not. The Federal Government has no other motive, and has every reason of doing right, which the Members of our State Legislature have. Will a man on the Eastern Shore, be sent to be tried in Kentucky; or a man from Kentucky be brought to the Eastern Shore to have his trial? A Government by doing this, would destroy itself. I am convinced, the trial by jury will be regulated in the manner most advantageous to the community.

Governor *Randolph* declared, that the faults which he once saw in this system, he still perceived. It was his purpose, he said, to inform the Committee, in what his objections to this part consisted. He confessed some of the objections against the Judiciary were merely chimerical: But some of them were real, which his intention of voting in favor of adoption, would not prevent him from developing.

The Committee then rose—And on motion, *Resolved*, That this Convention will, to-morrow, again resolve itself into a Committee of the whole Convention, to take into farther consideration, the proposed Constitution of Government.

And then the Convention adjourned until to morrow morning, nine o'clock.

(a) *Blackstone's Com.* III. 319 [379].¹¹

1. Article IX of the Articles of Confederation provided that Congress was "the last resort on appeal" in disputes between two or more states and it outlined the procedures by which this authority was to be exercised. The primary means of settling differences was the appointment (by the disputing states) of commissioners to a court that would hear and determine "the matter in question" (CDR, 89–90).

2. On 15 January 1780, Congress established the Court of Appeals in Cases of Capture, consisting of three judges, to hear appeals from the state admiralty courts. Trials in this court, presumably to determine questions of fact, were to "be according to the usage of nations and not by jury." The first session of the court was to be held at Philadelphia, but thereafter the judges, for the convenience of the public, could sit in any town or city from Hartford, Conn., to Williamsburg, Va.

On 12 April 1781, James Madison presented a motion in Congress, which among other things, proposed that the Court of Appeals meet at Williamsburg in November, at Philadelphia in April, at either Hartford, Boston, or Providence in June, and wherever Congress was sitting in September. Madison's motion was referred to a committee, but never adopted. Two years later, Congress did not approve a report recommending that the court be held in places such as Richmond and Hartford.

Before 1786 the Court of Appeals met at least in Philadelphia and Hartford. In November of that year, pursuant to a resolution of Congress, it convened in New York City. The court's last session was held in May 1787 in Philadelphia (Henry J. Bourguignon, *The First Federal Court: The Federal Appellate Prize Court of the American Revolution, 1775–1787* [Philadelphia, 1977], 112–17, 123–25; and Hutchinson, *Madison*, III, 66–68).

3. In April 1781 Congress adopted an ordinance for "establishing courts for the trial of piracies and felonies committed on the high seas," which provided that "the justices of the supreme or superior courts of judicature, and judge of the Court of Admiralty of the several and respective states, or any two or more of them, are hereby constituted

and appointed judges for hearing and trying such offenders." Trials in these courts were to be by jury "according to the course of the common law" and "as by the laws of the said State is accustomed" (JCC, XIX, 354-56).

4. The Virginia Resolutions, presented to the Constitutional Convention on 29 May 1787, provided that judges were to be paid a fixed salary "in which no increase or diminution shall be made" while they continued in office. This provision remained unchanged as the Convention debated and amended the Virginia Resolutions. On 18 July, however, the Convention voted 6 to 2 to strike out the words "encrease or." Madison spoke against this action, and on 27 August, he moved unsuccessfully to reinstate the words "encrease or" (CDR, 244, 249; and Farrand, II, 38, 44-45, 423, 429-30).

5. For the relationship between the common law and the challenge of jurors, see Convention Debates, 19 June, note 17 (above).

6. William Blackstone's "eulogium" on trial by jury reads: "Upon these accounts the trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law. And, if it has so great an advantage over others in regulating civil property, how much must that advantage be heightened, when it is applied to criminal cases! But this we must refer to the ensuing book of these commentaries: only observing for the present, that it is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbours and equals. A constitution, that I may venture to affirm has, under providence, secured the just liberties of this nation for a long succession of ages. And therefore a celebrated French writer [Montesquieu], who concludes, that because Rome, Sparta, and Carthage have lost their liberties, therefore those of England in time must perish, should have recollected that Rome, Sparta, and Carthage, at the time when their liberties were lost, were strangers to the trial by jury" (*Commentaries*, Book III, chapter XXIII, 379).

7. See Convention Debates, 16 June, note 26 (above).

8. Because "the mode of administering justice" had "become exceedingly inconvenient and burthensome to suitors living westwardly of the Allegany mountains," the state legislature (in 1782) passed a law establishing "a district court on the western waters." The law also provided that "the judgments and decrees" rendered by the District Court of Kentucky "shall be final in all cases, except those in which the court of appeals hath a controuling power over the high court of chancery and general court, in which cases the court of appeals shall have the like controuling power over the court of the district" (Hening, XI, 85-90).

9. The act establishing the General Court, passed in January 1778, provided for the appeal of the "judgment or sentence of any county court or court of Hustings" in cases concerning mills, roads, land titles, probate, debts or damages over £10, and "certificates for administration" (Hening, IX, 412).

10. See Convention Debates, 19 June, note 18 (above).

11. See note 6 (above).

The Virginia Convention Saturday 21 June 1788

Before the Convention resolved itself into a Committee of the Whole, it considered the report of the Committee of Privileges and Elections on the disputed election for Convention delegates in Louisa County. The Convention proceedings on the disputed election appear immediately below; while related documents are printed following the debates for this day.

Debates

Mr. *Harrison* reported from the Committee of Privileges and Elections, that the Committee, according to order, had under their farther consideration, the petition of Mr. Richard Morris, complaining of an undue election and return of Mr. William White, as a Delegate to serve in this Convention for the county of Louisa, and had agreed upon a report and come to several resolutions thereupon, which he read in his place, and afterwards delivered in at the clerk's table, where the same were again read, and are as followeth:

It appears to your Committee, from the deposition of Garret Minor, that about the 14th of May last, he applied to Heckley Young, who voted for the sitting Member, to be informed from him what entitled him to vote for Delegates to Convention, who informed the deponent, that he voted on one hundred acres of land, but that he never had a deed or conveyance for the same; and is on the land roll for the year 1787.

It also appears to your Committee, from the deposition of Thomas Pulliam, who voted for the sitting Member, that his father hath given him land, but had never made him a deed for any, and that he has had possession of the land nine or ten years, and has paid the taxes for the year 1786, and that it has been laid off several years.

It also appears to your Committee, from the deposition of Thomas Johnson, jun. sheriff, that he heard William Price, say, who voted for the sitting Member, that he had in possession a tract of land verbally given him by his father William Price, but never had a deed from him for the same, though he has had it in possession several years; and has paid the taxes for the years 1786 and 1787.

It also appears to your Committee, from the deposition of Waddy Thomson, that he has promised to give his son Waddy Thomson, jun. who voted for the sitting Member, a tract of land in the said county of Louisa, but never made him a deed for it, and that he is not a freeholder that he knows of.

It also appears to your Committee, from the deposition of Benjamin Clark, who voted for the sitting Member, that he is possessed of a tract of land devised to him by his father at his mother's death; and it appears from the testimony of John Poindexter, that the mother is now living; that he is on the land roll, and has paid the taxes out of his own and his mother's property.

It also appears to your Committee, from the deposition of Thomas Meriwether, that he heard Bartlott Anderson say, who voted for the sitting Member, that he had no deed made him for any land in Louisa,

and that at the time of his voting he was sensible he had not a right to vote.

It also appears to your Committee, from the deposition of Asa Hall, who voted for the sitting Member, that he purchased land about three years ago, but never had a deed for it; and that he has not any other land; and has his bond for a right.

It also appears to your Committee, from the deposition of William Hughes, that he gave to his son Joshua Hughes, who voted for the sitting Member, a tract of land supposed to contain ninety acres, which he has lived on about twelve years, but never made him a deed for the same; that he is well acquainted with John Bibb, who voted for the sitting Member, and never knew him to have a lawful right to any land in Louisa, although he has been sheriff, commissioner and assessor in the said county; and that from the testimony of Thomas Barnett, it appears that after the election of Members to the Convention in Louisa, John Bibb informed him he had no title to any land in the county, and that the land on which he lived he rented from year to year; that Joshua Hughes is on the land roll.

It also appears to your Committee, from the deposition of John Vest, who voted for the sitting Member, that he purchased a tract of land of Richard Powlett, which he took possession of in December, 1787; and that at December Louisa court last the said Powlett acknowledged a deed for the said land which was ordered to be recorded; and that Powlett was not allowed to vote on the said land.

It also appears to your Committee, from the deposition of Isaac Thacker, who voted for the sitting Member, that about sixteen years past he sold and conveyed by deed all the land he possessed in Louisa to John Richmond, but the deed has never been recorded.

It also appears to your Committee, from the depositions of Nelson Anderson and Thomas Meriwether, that they heard Charles Jackson say, who voted for the sitting Member, that his father had given him a tract of land, which he has had possession of several years, but he never had made him a deed for the same; and that his father is still living; and that he is on the land roll, and has paid the tax for the year 1787.

It also appears to your Committee, from the deposition of John Stringer, who voted for the sitting Member, that his father Edmund Stringer has given him 80 acres of land, which he has been in possession of about three years, but never had a deed for the same; and that he lives on the land.

It also appears to your Committee, from the deposition of Martin Sharp, who voted for the sitting Member, that his father had promised

to give him the tract of land on which he then lived, but never had made a deed for the same; and that he pays the taxes of the land to his father.

It appears to your Committee, that Charles Jackson, Bartlott Anderson, Waddy Thomson, jun. Heckley Young, and John Bibb, were summoned but failed to appear before the commissioners.

The sitting Member having failed to furnish the petitioner with a list of the voters to which he objected, or to attend in the county the examination of those objected to by the petitioner, the Committee proceeded to examine the report from the commissioners, and some doubts arising as to the evidence furnished respecting the qualification of some of the voters, witnesses were called on to give testimony, and also the land roll introduced respecting the same, by consent of the parties.

The sitting Member afterwards required permission to have *viva voce* testimony, and the said land roll also introduced to prove the disqualification of several of the voters for the petitioner, which was rejected, because the sitting Member had not furnished the petitioner with a list of objectionable votes, agreeable to the resolution of the Convention,¹ and it would therefore be out of his power to produce evidence in support of such votes, and because the petitioner would not consent to it.

It also appears to your Committee, that the number of votes at the close of the poll stood as follows:

For Mr. William White,	199.
For Mr. Richard Morris,	195.

Resolved, That it is the opinion of this Committee, That such of the voters on the poll of the sitting Member as appeared only to have an equitable title to their lands, were not qualified to vote for Delegates to the General Assembly.

Resolved, That it is the opinion of this Committee, That Heckley Young, Thomas Pulliam, William Price, Waddy Thomson, jun. Benjamin Clark, Asa Hall, Joshua Hughes, John Vest, Charles Jackson, John Stringer, and Martin Sharp, had only an equitable and not a legal title to the lands on which they severally voted.

Resolved, That it is the opinion of this Committee, That Barlott Anderson, John Bibb, and Isaac Thacker, had neither an equitable or legal title to the lands on which they respectively voted.

Resolved, That it is the opinion of this Committee, That after taking from Mr. White's number the votes of the aforesaid persons, the poll will stand as followeth:

For Mr. Richard Morris, 195.

For Mr. William White, 185.

Resolved, That it is the opinion of this Committee, That Mr. Richard Morris has a majority of electors qualified by law to choose Delegates to the General Assembly.

Resolved, That it is the opinion of this Committee, That the said Richard Morris was duly elected a Delegate to represent the said county of Louisa in this Convention.

The said report and resolutions were severally again read, and on a motion made, ordered to be re-committed to the same Committee.

On motion made, *Ordered, That the Committee of Privileges and Elections, be instructed to receive such viva voce testimony, or such other satisfactory evidence as the sitting Member and the petitioner shall be able to produce to support their objections to such votes as they shall respectively furnish a list of, each to the other, before Monday next.—And that the said petition be finally heard before the said Committee on Thursday next.*

Ordered, That Mr. Richard Cary and Mr. Samuel Hopkins be added to the Committee of Privileges and Elections.

On motion, *Ordered, That the Committee of Privileges and Elections be discharged from further proceeding on the petition of Richard Morris, and that the petitioner have leave to withdraw the same.*

The Convention then, according to the order of the day, again resolved itself into a Committee of the whole Convention to take into farther consideration, the proposed plan of Government.—Mr. Wythe in the Chair.

(The 1st & 2d sections, of the 3d article, still under consideration.)

Mr. Grayson,—Mr. Chairman.—It seems to have been a rule with the Gentlemen on the other side, to argue from the excellency of human nature, in order to induce us to grant away (if I may be allowed the expression) the rights and liberties of our country. I make no doubt the same arguments were used on a variety of occasions. I suppose, Sir, that this argument was used when *Cromwell* was invested with power. The same argument was used to gain our assent to the stamp act. I have no doubt it has been invariably the argument in all countries, when the concession of power has been in agitation. But power ought to have such checks and limitations, as to prevent bad men from abusing it. It ought to be granted on a supposition that men will be bad; for it may be eventually so. With respect to the Judiciary, my grand objection is, that it will interfere with the State Judiciaries, in the same manner as the exercise of the power of direct taxation, will interfere with the same power in the State Governments: There being

no superintending central power to keep in order these two contending jurisdictions. This is an objection which is unanswerable in its nature.—In England they have great Courts, which have great and interfering powers. But the controuling power of Parliament, which is a *central focus*, corrects them. But here each party is to shift for itself. There is no arbiter, or power to correct their interference. Recurrence can be only had to the sword. I shall endeavour to demonstrate the pernicious consequences of this interference.—It was mentioned as one reason, why these great powers might harmonize, that the Judges of the State Courts might be Federal Judges. The idea was (~~reprobated~~) (approbated), in my opinion, with a great deal of justice.—They are the best check we have.—They secure us from encroachments on our privileges.—They are the principal defence of the States. How improper would it be to deprive the State of its only defensive armour? I hope the States will never part with it. There is something extremely disgraceful in the idea. How will it apply in practice? The independent Judges of Virginia are to be subordinate to the Federal Judiciary. Our Judges in chancery are to be Judges in the inferior Federal tribunals.—Something has been said of the independency of the Federal Judges. I will only observe, that it is on as corrupt a basis as the art of man could place it. The salaries of the Judges may be augmented. Augmentation of salary is the only method that can be taken to corrupt a Judge. It has been a thing desired by the people of England for many years, that the Judges should be independent. This independency never was obtained till the 2d or 3d year of the reign of George the III^d.² It was omit[t]ed at the revolution by inattention. Their compensation is now fixed, and they hold their offices during good behavior. But I say, that our Federal Judges are placed in a situation as liable to corruption as they could possibly be. How are Judges to be operated upon? By the hopes of reward, and not the fear of a diminution of compensation. *Common decency* would prevent lessening the salary of a Judge. Throughout the whole page of history, you will find the corruption of Judges to have always arisen from that principle—the hope of reward.—This is left open here. The flimsy argument brought by my friend [James Madison], not as his own, but as supported by others, will not hold. It would be rather hoped, that the Judges should get too much, than too little, and that they should be perfectly independent. What if you give 600 l. or 1000 l. annually, to a Judge? It is but a trifling object, when by that little money you purchase the most invaluable blessings that any country can enjoy.

There is to be one Supreme Court—for chancery, admiralty, common pleas, and exchequer, (which great cases are left in England to

four great Courts) to which are added, criminal jurisdiction, and all cases depending on the law of nations—a most extensive jurisdiction! This Court has more power than any Court under Heaven. One set of Judges ought not to have this power—and Judges particularly who have temptation always before their eyes. The Court thus organized, are to execute laws made by thirteen nations, dissimilar in their customs, manners, laws and interests. If we advert to the customs of these different sovereignties, we shall find them repugnant and dissimilar. Yet they are all forced to unite and concur in making these laws. They are to form them on one principle, and on one idea; whether the civil law, common law, or law of nations. The Gentleman was driven the other day to the expedient of acknowledging the necessity of having thirteen different tax laws.³ This destroys the principle, that he who lays a tax, should feel it and bear his proportion of it. This has not been answered. It will involve consequences so absurd that, I presume, they will not attempt to make thirteen different codes. They will be obliged to make one code. How will they make one code without being contradictory to some of the laws of the different States? It is said there is to be a Court of Equity. There is no such thing in Pennsylvania, or in some other States in the Union. A nation in making a law, ought not to make it repugnant to the spirit of the Constitution, or the genius of the people. This rule cannot be observed in forming a general code. I wish to know how the people of Connecticut would agree with the lordly pride of your Virginian nobility. Its operation will be as repugnant and contradictory, in this case, as in the establishment of a Court of Equity. They may inflict punishments where the State Governments will give rewards.—This is not probable. But *still it is* possible. It would be a droll sight, to see a man on one side of the street punished for a breach of the Federal law, and on the other side another man rewarded by the State Legislature, for the same act.—Or suppose it were the same person, that should be thus rewarded and punished at one time, for the same act; it would be a droll sight to see a man laughing on one side of his face, and crying on the other. I wish only to put this matter in a clear point of view; and I think that if thirteen States, different in every thing, shall have to make laws for the government of the whole, they cannot harmonize, or suit the genius of the people, there being no such thing as a spirit of laws, or a pervading principle, applying to every State individually. The only promise, in this respect, is, that there shall be a Republican Government in each State. But it does not say whether it is to be Aristocratical or Democratical.

My next objection to the Federal Judiciary, is, that it is not expressed in a definite manner. The jurisdiction of all cases arising under the

Constitution, and the laws of the Union, is of stupendous magnitude. It is impossible for human nature to trace its extent. It is so vaguely and indefinitely expressed, that its latitude cannot be ascertained.—Citizens or subjects of foreign States may sue citizens of the different States in the Federal Courts. It is extremely impolitic to place foreigners in a better situation than our own citizens. This was never the policy of other nations. It was the policy in England, to put foreigners on a secure footing.—The statute, merchant and statute staple, were favourable to them.⁴ But in no country are the laws more favourable to foreigners, than the citizens. If they be equally so, it is surely sufficient. Our own State merchants would be ruined by it, because they cannot recover debts so soon in the State Courts, as foreign merchants can recover of them in the Federal Courts. The consequence would be, inevitable ruin to commerce. It will induce foreigners to decline becoming citizens. There is no reciprocity in it. How will this apply to British creditors? I have ever been an advocate for paying the British creditors, both in Congress and elsewhere. But here we do injury to our own citizens. It is a maxim in law, that debts should be on the same original foundation they were on when contracted. I presume, when the contracts were made, the creditors had in idea the State Judiciaries only. The procrastination and delays of our Courts were probably in contemplation by both parties. They could have no idea of the establishment of new tribunals to affect them. Trial by jury must have been in the contemplation of both parties, and the *venue* was in favour of the defendant. From these premises it is clearly discernable, that it would be wrong to change the nature of the contracts. Whether they will make a law other than the State laws, I cannot determine. But we are told, that it is wise, politic, and preventive of controversies with foreign nations. The treaty of peace with Great-Britain does not require that the creditors should be put in a better situation than they were, but that there should be no hindrance to the collection of debts.⁵ It is therefore unwise and impolitic, to give those creditors such an advantage over the debtors. But, Sir, the citizens of different States are to sue each other in these Courts. No reliance is to be put on the State Judiciaries. The fear of unjust regulations and decisions in the States, is urged as the reason of this jurisdiction. Paper money in Rhode-Island has been instanced by Gentlemen. There is one clause in the Constitution which prevents the issuing of paper money. If this clause should pass, (and it is unanimously wished by every one, that it should not be objected to) I apprehend an execution in Rhode Island would be as good and effective as in any State in the Union.

A State may sue a foreign State, or a foreign State may sue one of

our States. This may form a new American law of nations. Whence the idea could have originated, I cannot determine, unless from the idea that predominated in the time of Henry the IVth, and Queen Elizabeth. They took it into their heads to consolidate all the States in the world into one great political body. Many ridiculous projects were imagined to reduce that absurd idea into practice. But they were all given up at last. My honorable friend [James Madison], whom I much respect, said that the consent of the parties must be previously obtained. I agree that the consent of foreign States must be had before they become parties: But it is not so with our States. It is fixed in the Constitution that they shall become parties. This is not reciprocal. If the Congress cannot make a law against the Constitution, I apprehend they cannot make a law to abridge it. The Judges are to defend it. They can neither abridge nor extend it. There is no reciprocity in this, that a foreign State should have a right to sue one of our States, whereas a foreign State cannot be sued without its own consent. The idea to me is monstrous and extravagant. It cannot be reduced to practice. Suppose one of our States objects to the decision, arms must be recurred to. How can a foreign State be compelled to submit to a decision? Pennsylvania and Connecticut had like once to have fallen together concerning their contested boundaries.⁶ I was convinced, that the mode provided in the Confederation, for the decision of such disputes, would not answer. The success which attended it with respect to settling bounds, have proved to me in some degree, that it would not answer in any other case whatsoever. The same difficulty must attend *this* mode in the execution. This high Court has not a very extensive original jurisdiction. It is not material. But its appellate jurisdiction is of immense magnitude—and what has it in view, unless to subvert the State Governments?—The Honorable Gentleman who presides [Edmund Pendleton], has introduced the High Court of Appeals. I wish the Federal appellate Court was on the same foundation. If we investigate the subject, we shall find this jurisdiction perfectly unnecessary. It is said, that its object is to prevent subordinate tribunals from making unjust decisions to defraud creditors. I grant the suspicion is in some degree just. But would not an appeal to the State Courts of Appeal, or supreme tribunals, correct the decisions of inferior Courts? Would not this put every thing right? Then there would be no interference of jurisdiction.

But a Gentleman (Mr. *Marshall*) says, we ought certainly to give this power to Congress, because our State Courts have more business than they can possibly do. A Gentleman was once asked to give up his estate, because he had too much, but he did not comply. Have we not es-

tablished District Courts, which have for their object the full administration of Justice? Our Court of Chancery might by our Legislature be put in a good situation; so that there is nothing in this observation.

But the same Honorable Gentleman says, that trial by jury is preserved by implication. I think this was the idea. I beg leave to consider that, as well as other observations of the Honorable Gentleman. After enumerating the subjects of its jurisdiction, and confining its original cognizance to cases affecting Ambassadors and other public Ministers, and those in which a State shall be a party, it expressly says, that "in all the other cases before-mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and *fact*." I would beg the Honorable Gentleman to turn his attention to the word *appeal*, which I think comprehends chancery, admiralty, common law, and every thing. But this is with such exceptions, and under such regulations, as Congress shall make. This we are told will be an ample security. Congress may please to make these exceptions and regulations, but they may not also. I lay it down as a principle, that trial by jury is given up to the discretion of Congress. If they take it away, will it be a breach of this Constitution? I apprehend not; for as they have an absolute appellate jurisdiction of facts, they may alter them as they may think proper. It is possible that Congress may regulate it properly: But still it is at their discretion to do it, or not. There has been so much said of the excellency of the trial by jury, that I need not enlarge upon it. The want of trial by jury in the Roman Republic obliged them to establish the regulation of *patron* and *client*. I think this must be the case in every country where this trial does not exist. The poor people were obliged to be defended by their *patrons*.

It may be laid down as a rule, that where the governing power possesses an unlimited controul over the *venue*, no man's life is in safety. How is it in this system? "The trial of all crimes shall be by jury, except in cases of impeachment, and such trial shall be held in the State where the said crimes shall have been committed." He [John Marshall] has said, that when the power of a Court is given, all its appendages and concomitants are given. Allowing this to be the case by implication, how is it? Does it apply by counties?—No, Sir. The idea is, that the States are to the General Government, as counties are to our State Legislatures.—What sort of a vicinage is given by Congress? The idea which I call the true vicinage is, that a man shall be tried by his neighbours. But the idea here is, that he may be tried in any part of the State. Were the *venue* to be established according to the Federal districts, it would not come up to the true idea of a vicinage. Delaware sends but one Member: It would then extend to that whole State. This

State sends ten Members, and has ten districts: But this is far from the true idea of vicinage. The allusion another Gentleman [Edmund Pendleton] has made to this trial as practised in England, is improper. It does not justify this regulation. The jury may come from any part of the State. They possess an absolute uncontrollable power over the *venue*. The conclusion then is, that they can hang any one they please by having a jury to suit their purpose. They might on particular extraordinary occasions suspend the privilege. The Romans did it on creating a Dictator. The British Government does it, when the *habeas corpus* is to be suspended—when the *salus populi* is affected. I never will consent to it unless it be properly defined.

Another Gentleman [John Marshall] has said, that trial by jury has not been so sacred a thing among our ancestors, and that in England it may be destroyed by an act of Parliament. I believe the Gentleman is mistaken. I believe it is secured by Magna Charta, and the Bill of Rights. I believe no act of Parliament can affect it, if this principle be true, that a law is not paramount to the Constitution. I believe whatever may be said of the mutability of the laws, and the defect of a written fixed Constitution, that it is generally thought by Englishmen that it is so sacred, that no act of Parliament can affect it.

The interference of the Federal Judiciary and the State Courts will involve the most serious and even ludicrous consequences. Both Courts are to act on the same persons and things, and cannot possibly avoid interference. As to connection or coalition, it would be incestuous. How could they avoid it, on an execution from each Court either against the body or effects? How will it be with respect to mortgaged property? Suppose the same lands or slaves mortgaged to two different persons, and the mortgages foreclosed, one in the Federal and another in the State Court. Will there be no interference in this case? It will be impossible to avoid interference in a million of cases. I would wish to know how it can be avoided; for it is an insuperable objection in my mind. I shall no longer fatigue the Committee, but shall beg leave to make some observations another time.⁷

Governor *Randolph*,—Mr. Chairman.—I shall state to the Committee in what cases the Federal Judiciary appears to me to deserve applause, and where it merits dispraise. It has not yet been denied, that a Federal Judiciary is necessary to a certain extent. Every Government necessarily involves a Judiciary as a constituent part. If then a Federal Judiciary be necessary, what are the characters of its powers? That it shall be an auxiliary to the Federal Government, support and maintain harmony between the United States and foreign powers, and between different States, and prevent a failure of justice in cases to which

particular State Courts are incompetent. If this Judiciary be reviewed as relative to these purposes, I think it will be found, that nothing is granted which does not belong to a Federal Judiciary. Self defence is its first object. Has not the Constitution said, that the States shall not use such and such powers, and given particular exclusive powers to Congress? If the State Judiciaries could make decisions conformable to the laws of their States, in derogation to the General Government, I humbly apprehend that the Federal Government would soon be encroached upon. If a particular State should be at liberty through its Judiciary, to prevent or impede the operation of the General Government, the latter must soon be undermined. It is then necessary, that its jurisdiction should "extend to cases in law and equity arising under this Constitution, and the laws of the United States."

Its next object is to perpetuate harmony between us and foreign powers. The General Government having the superintendency of the general safety, ought to be the judges, how the United States can be most effectually secured and guarded against controversies with foreign nations. I presume therefore, that treaties and cases affecting Ambassadors, other public Ministers and Consuls, and all those concerning foreigners, will not be considered as improper subjects for a Federal Judiciary. Harmony between the States is no less necessary than harmony between foreign States, and the United States. Disputes between them ought therefore to be decided by the Federal Judiciary. Give me leave to state some instances which have actually happened, which prove to me, the necessity of the power of deciding controversies between two or more States. The disputes between Connecticut and Pennsylvania,⁸ and Rhode-Island and Connecticut have been mentioned.⁹ I need not particularize these. Instances have happened in Virginia. These have been disputes respecting boundaries. Under the old Government, as well as this, reprisals have been made by Pennsylvania and Virginia on one another.¹⁰ Reprisals have been made by the very Judiciary of Pennsylvania on the citizens of Virginia. Their differences concerning their boundaries are not yet perhaps ultimately determined. The Legislature of Virginia, in one instance, thought this power right. In the case of Mr. Nathan, they thought the determination of the dispute ought to be out of the State for fear of partiality.¹¹

It is with respect to the rights of territory, that the State Judiciaries are not competent. If the claimants have a right to the territories claimed, it is the duty of a good Government to provide means to put them in possession of them. If there be no remedy, it is the duty of the General Government to furnish one.

Cases of admiralty and maritime jurisdiction cannot with propriety

be vested in particular State Courts. As our national tranquillity, and reputation, and intercourse with foreign nations, may be affected by admiralty decisions; as they ought therefore to be uniform, and as there can be no uniformity if there be thirteen distinct independent jurisdictions, this jurisdiction ought to be in the Federal Judiciary. On these principles, I conceive the subjects themselves are proper for the Federal Judiciary. Although I do not concur with the Honorable Gentleman, that the Judiciary is so formidable, yet I candidly admit, that there are defects in its construction, among which may be objected too great an extension of jurisdiction. I cannot say by any means, that its jurisdiction is free from fault, though I conceive the subjects to be proper. It is ambiguous in some parts, and unnecessarily extensive in others. It extends to all cases in law and equity arising under the Constitution. What are these cases in law and equity? Do they not involve all rights, from an inchoate right to a complete right arising from this Constitution? Notwithstanding the contempt Gentlemen express for technical terms, I wish such were mentioned here. I would have thought it more safe, if it had been more clearly expressed. What do we mean by the words *arising under the Constitution*? What do they relate to? I conceive this to be very ambiguous. If my interpretation be right, the word *arising* will be carried so far, that it will be made use of to aid and extend the Federal jurisdiction.

As to controversies between the citizens of different States, I am sure the General Government will make provision to prevent men being harrassed to the Federal Court. But I do not see any absolute necessity for vesting it with jurisdiction in these cases.

With respect to that part which gives appellate jurisdiction both as to law and fact, I concur with the Honorable Gentleman who presides [Edmund Pendleton], that it is unfortunate; and my lamentation over it would be incessant, were there no remedy. I can see no reason for giving it jurisdiction with respect to fact as well as law; because we find from our own experience, that appeals as to fact are not necessary.—My objection would be unanswerable, were I not satisfied that it contains its own cure, in the following words, "*with such exceptions and under such regulations as Congress shall make.*" It was insisted on by Gentlemen, that these words could not extend to law and fact, and that they could not separate the fact from the law.—This construction is irrational; for if they cannot separate the law from the fact, and if the exceptions are prevented from applying to law and fact, these words would have no force at all. It would be proper to refer here to any thing that could be understood in the Federal Court. They may except generally both as to law and fact, or they may except as to law

only, or fact only. Under these impressions, I have no difficulty in saying, that I consider it as an unfortunate clause. But when I thus impeach it, the same candour which I have hitherto followed, calls upon me to declare, that it is not so dangerous as it is represented. Congress can regulate it properly, and I have no doubt they will. An Honorable Gentleman [George Mason] has asked, will you put the body of the State in prison? How is it between independent States? If a Government refuses to do justice to individuals, war is the *consequence*. Is this the bloody alternative to which we are referred? Suppose justice was refused to be done by a particular State to another, I am not of the same opinion with the Honorable Gentleman. I think, whatever the law of nations may say, that any doubt respecting the construction that a State may be plaintiff, and not defendant, is taken away by the words, where a *State shall be a party*. But it is objected, that it is retrospective in its nature. If thoroughly considered, this objection will vanish. It is only to render valid and effective existing claims, and secure that justice ultimately, which is to be found in every regular Government. It is said, to be disgraceful. What would be the disgrace? Would it not be, that Virginia, after eight States had adopted the Government, none of which opposed the Federal jurisdiction in this case, rejected it on this account? I was surprised, after hearing him [Patrick Henry] speak so strenuously in praise of the trial by jury, that he would rather give it up, than have it regulated as it is in the Constitution. Why? Because it is not established in civil cases, and in criminal cases the jury will not come from the vicinage. It is not excluded in civil cases, nor is a jury from the vicinage in criminal cases excluded. This House has resounded repeatedly with this observation,—that where a term is used, all its concomitants follow from the same phrase. Thus, as the trial by jury is established in criminal cases, the incidental right of challenging and excepting is also established; which secures in the utmost latitude, the benefit of impartiality in the jurors. I beg those Gentlemen who deny this doctrine, to inform me, what part of the Bill of English Rights, or great charter, provides this right? The great charter only provides, that “no man shall be deprived of the free enjoyment of his life, liberty, or property, unless declared to be forfeited by the judgment of his peers, or the law of the land.”¹² The Bill of Rights gives no additional security on the subject of trial by jury.—Where is the provision made in England, that a jury shall be had in civil cases? This is secured by no constitutional provision:—It is left to the temper and genius of the people to preserve and protect it. I beg leave to differ from my honorable friends in answering this objection. They said, that in case of a general rebellion, the jury is to

be drawn from some other part of the country. I know that this practice is sanctified by the usages in England. But I always thought that this was one of those instances to which that nation, though alive to liberty, had unguardedly submitted. I hope it will never be so here. If the whole country be in arms, the prosecutor for the Commonwealth can get a good jury, by challenging improper jurors. The right of challenging also, is a sufficient security for the person accused. I can see no instance where this can be abused.—It will answer every purpose of the Government, and individual security. In this whole business, we have had *argumenta ad hominem* in abundance. A variety of individuals, and classes of men have been solicited to opposition. I will pass by the *glance* which was darted at some Gentlemen in this House, and take no notice of it; because the *lance shivered as against adamantine*. Gentlemen then intimidate us on the subject of the lands settled to the Westward, and claimed by different claimants, who, they urge, will recover them in the Federal Court. I will observe, that as to Mr. Henderson's claim, if they look at the laws, they will see a compensation made for him: He has acquiesced, and has some of the lands.¹³—The Indiana company has been dissolved.—The claim is dormant, and will probably never be revived. I was once well acquainted with these matters: Perhaps I may have forgotten. I was once thoroughly persuaded of the justice of their claims. I advocated it, not only as a lawyer in their behalf, but supported it as my own opinion. I will not say how far the acts of Assembly past, when they had full power, may have operated respecting it. One thing is certain, that though they may have the right, yet the remedy will not be sought against the settlers, but the State of Virginia. The Court of Equity will direct a compensation to be made by the State, the claimants being precluded at law from obtaining their right, and the settlers having now an indefeasible title under the State.

The next is Lord Fairfax's quitrents. He died during the war.—In the year 1782, an act passed sequestering all quitrents then due, in the hands of the persons holding the lands, until the right of descent should be known, and the General Assembly should make final provision therein. This act directed all quitrents thereafter becoming due, to be paid into the public treasury. So that with respect to his des[c]endants, this act confiscated the quitrents. In the year 1783, an act passed, restoring to the legal representative of the proprietor, the quitrents due to him at the time of his death. But in the year 1785, another act passed, by which the inhabitants of the Northern Neck are exonerated and discharged from paying composition and quitrents to the Commonwealth. This last act has completely confiscated this

property. It is repugnant to no part of the treaty, with respect to the quitrents confiscated by the act of 1782.¹⁴

I ask the Convention of the free people of Virginia, if there can be honesty in rejecting a Government, because justice is to be done by it? I beg the Honorable Gentleman [George Mason] to lay the objection to his heart—let him consider it seriously and attentively. Are we to say, that we shall discard this Government, because it would make us all honest? Is this to be the language of the select Representatives of the free people of Virginia?

An Honorable Gentleman [William Grayson] observed to-day, that there is no instance where foreigners have this advantage over the citizens. What is the reason of this? Because a Virginian creditor may go about for a lamentable number of years before he can get justice, while foreigners will get justice immediately. What is the remedy?—Honesty. Remove the procrastination of justice—make debts speedily payable, and the evil goes away. But you complain of the evil because you will not remove it. If a foreigner can recover his debts in six months, why not make a citizen do so? There will then be reciprocity. This term is not understood. Let America be compared to any nation with which she has connection, and see the difference with respect to justice. I am sorry to make the comparison; but the truth is, that in those nations justice is obtained with much more facility, than in America.

Gentlemen will perhaps ask me, why, if you know the Constitution to be ambiguous, will you vote for it? I answer, that I see a power, which will be probably exercised, to remedy this defect.—The stile of the ratification will remove this mischief. I do not ask for this concession—that human nature is just and absolutely honest. But I am fair when I say, that the nature of man is capable of virtue, where there is even a temptation, and that the defects in this system will be removed. The appellate jurisdiction might be corrected as to matters of fact, by the exceptions and regulations of Congress; but certainly will be removed by the amendatory provision in the instrument itself. So that we do not depend on the virtue of our Representatives only, but the sympathy and feelings between the inhabitants of the States. On the same grounds the sum on which appeals will be allowed, may be limited to a considerable amount in order to prevent vexatious and oppressive appeals. The appellate jurisdiction as to fact, and in trivial sums, are the two most material defects. If it be not considered too early, as ratification has not yet been spoken of, I beg leave to speak of it. If I did believe, with the Honorable Gentleman, that all power not expressly retained was given up by the people,¹⁵ I would detest

this Government. But I never thought so, nor do I now. If in the ratification we put words to this purpose,—that all authority not given, is retained by the people, and may be resumed when perverted to their oppression; and that no right can be cancelled, abridged, or restrained, by the Congress, or any officer of the United States; I say, if we do this, I conceive that, as this stile of ratification would manifest the principles on which Virginia adopted it, we should be at liberty to consider as a violation of the Constitution, every exercise of a power not expressly delegated therein.—I see no objection to this. It is demonstrably clear to me, that rights not given are retained, and that liberty of religion, and other rights are secure. I hope this Committee will not reject it, for faults which can be corrected, when they see the consequent confusion which will follow.

The Committee then rose—And on motion, *Resolved*, That this Convention will, on Monday next, again resolve itself into a Committee of the whole Convention, to take into farther consideration, the proposed Constitution of Government.

And then the Convention adjourned until Monday next, nine o'clock.

1. For this resolution, recommended by the Committee on Privileges and Elections, see Convention Debates, 7 June (RCS:Va., 1007).

2. In 1760 Parliament passed an act (1 George III, c. 23), the preamble of which cited the provision of the Act of Settlement (1701) declaring that judges should serve during good behavior and that their salaries should be established. The act of 1760 also provided that the commissions of judges were to be “in full Force, during their good Behaviour, notwithstanding the Demise of his Majesty . . . or of any of his Heirs and Successors.” Salaries set by Parliament or granted by the King were to be paid so long as the commissions remained in force.

3. See the speech of James Madison on 11 June (RCS:Va., 1148–49).

4. Grayson refers to the Statute of Merchants (1283), also called the Statute of Acton Burnell, and the Ordinance and Statute of the Staple (1353–54). The Statute of Merchants helped foreign merchants to collect debts due them; while the Statute of the Staple protected them, gave them safe-conduct, and permitted them to sell their goods freely at the staple and elsewhere.

5. Article 4 of the Treaty of Peace (1783) provided “that Creditors on either Side shall meet with no lawful Impediment to the Recovery of the full Value in Sterling Money of all bona fide Debts heretofore contracted.”

6. Before the Revolution, many Connecticut residents bought land in Pennsylvania's Wyoming Valley from a Connecticut land company and moved there. These settlers acknowledged Connecticut's jurisdiction and engaged in hostilities with settlers who accepted Pennsylvania's jurisdiction. In 1782 a federal court, appointed by the two states under Article IX of the Articles of Confederation (CDR, 89–90), awarded jurisdiction to Pennsylvania. The Connecticut settlers resisted and were supported by the State of Connecticut.

In 1786 the two states struck a bargain. Connecticut ceded all of its western lands to Congress, except for a large tract just beyond the western boundary of Pennsylvania that came to be known as the Western Reserve. Pennsylvania agreed not to question Connecticut's right to this tract, while Connecticut agreed to give up its claims or those

of its land companies to lands in Pennsylvania. Grayson, then a delegate to Congress, said that Connecticut's cession was "nothing but a state juggle contrived by old Roger Sherman [of Connecticut] to get a side wind confirmation to a thing they had no right to" (to James Madison, 28 May 1786, Rutland, *Madison*, IX, 61).

In 1786, Pennsylvania established Luzerne County in the Wyoming Valley. Whereupon, the Connecticut settlers resisted Pennsylvania's laws and boycotted state and local elections. In August 1787 Connecticut settlers met at Tioga Point to establish "a *new state*," and in November, Pennsylvania sent its militia into the valley to be ready to quell any insurrections. (See CC: Vol. 2, p. 135n; and CC:Vol. 3, pp. 63n-64n.)

7. At some point Grayson drafted (but did not formally present to the Convention) amendments to several parts of the Constitution, including Article III (judiciary). To Article III, section 2, clause 2, he proposed to add the following:

"The Defendant in all Cases, except appeals or writs of Error, shall be impleaded in a court to be established in that State in which he resides, if he hath any fixed place of residence therein; unless the Cause of action shall have accrued since his departure from the same, and in the State where he shall be impleaded.

"No person shall be impleaded in any of the courts of the united States but by the person or party to whom the right of action originally accrued, his heirs, Executors or Administrators.

"A Court of appellate Jurisdiction shall be held in every State; and in all Cases arising between Citizens of the same, or of different States, or between Citizens of the U.S. and foreign Citizens or Subjects, the Appeal shall be heard and determined within that State where the Defendant may be lawfully impleaded in the original suit or Action, and shall in all such Cases be final.

"Vivâ voce testimony shall not be admitted in any Case of appeal.

"Matters of fact put in issue between individuals shall in Courts of Law be tried by a Jury" (Bryan Family Papers, Vi. For a photographic reproduction of the two-page document containing all of Grayson's amendments, see Mfm:Va.).

8. See note 6 (above).

9. Rhode Island and Connecticut, basing their claims upon their colonial charters, had disputed the territory west of Narragansett Bay since the 1660s. After several unsuccessful attempts to settle the dispute, the two colonies agreed on a compromise boundary in 1703, with Connecticut making a significant concession. In 1714, Connecticut appointed a committee to run the line, but soon suspended further action. Rhode Island appointed a committee in 1719, but the line was still not run. In 1723 the Board of Trade recommended that both colonies agree to be annexed to the royal colony of New Hampshire. Spurred on by this subtle threat, both colonies renewed their efforts to settle their boundary. In 1726 a committee of the Privy Council approved the line agreed upon in 1703 and the King and Council endorsed the committee's report. The colonies accepted the line, and in 1728 the running of the line was completed (Robert J. Taylor, *Colonial Connecticut: A History* [Millwood, N.Y., 1979], 56-59).

10. Virginia and Pennsylvania both claimed the territory in present-day southwestern Pennsylvania. In 1773 Pennsylvania created Westmoreland County in the contested area; soon thereafter, Virginia included the disputed territory in the District of West Augusta. In January 1774 Arthur St. Clair, the clerk of the Westmoreland County court, arrested John Connolly, a West Augusta justice and Virginia militia captain. Connolly appeared for trial with over 150 armed men and declared that the court established by Pennsylvania had no jurisdiction over him. He soon arrested three of the Westmoreland County court justices and sent them to Staunton for trial (Thomas Perkins Abernethy, *Western Lands and the American Revolution* [1937; reprint ed., New York, 1959], 91-97). Virginia and Pennsylvania settled their boundary dispute in 1780. (See RCS:Va., 697, note 27, for the agreement between Virginia and Pennsylvania.)

11. Randolph refers to a petition of Simon Nathan requesting that Virginia redeem bills of exchange, issued by George Rogers Clark and others in 1779, that had been

purchased by Nathan. In June 1783, the legislature resolved to refer "to any two gentlemen in the State of Maryland, one of whom shall be appointed by the Governor, with advice of Council, and the other by the said Nathan, who shall have power to arbitrate and finally determine all disputes and controversies arising upon the said claim, according to the principles of Law and equity, and if they differ, to call in a third person, who shall act as umpire therein." Nathan's claim was still outstanding in 1791 (*House Journal* [5 May–28 June 1783, Richmond, 1783], 22, 134–39, 152–53, 158; and Boyd, VI, 319–24n).

12. Paraphrased from chapter 39 of the Magna Carta (1215) which reads: "No free man shall be taken or imprisoned or dispossessed, or outlawed, or banished, or in any way destroyed, nor will we go upon him, nor send upon him, except by the legal judgment of his peers or by the law of the land."

13. In 1775 a group of North Carolina land speculators (Transylvania Company) led by Richard Henderson purchased land in Kentucky from the Cherokees and began settling the area. Virginia settlers and land speculators disputed Henderson's title to the land and petitioned the Virginia legislature, requesting that it assume jurisdiction over Kentucky. In response, the Virginia legislature created Kentucky County. In 1778, the legislature voided Henderson's purchase, but compensated him and his associates with land grants in Kentucky as a means of increasing the population of the area (Hening, IX, 571–72; and Boyd, II, 64n–66n).

14. See Convention Debates, 19 June, note 18 (above).

15. See the 16 June speeches of Patrick Henry, George Mason, and William Grayson (RCS:Va., 1328–32).

Depositions on the Disputed Louisa County Election

On 3 June the Convention received a petition from defeated Federalist candidate Richard Morris protesting the election of Antifederalist William White as a Louisa delegate. Four days later, the Convention appointed four commissioners from Louisa to take depositions on the disputed election. The commissioners met on 16 June, took depositions, and submitted a report to the Convention. William Smith, Jr., one of White's agents, objected to the actions of the commissioners and wrote White giving his version of events. On 21 June the Convention considered the report of the Committee of Privileges and Elections on the election, the report of the Louisa commissioners, and Smith's letter to White. The Committee of Privileges and Elections recommended that some of White's voters be disqualified and that Morris be seated, but the Convention requested more information and then discharged the Committee from further consideration. White kept his Convention seat and voted against ratification of the Constitution.

Because three of the commissioners (one had withdrawn from the proceedings) objected to "some aspersions which were thrown out in the late Hon. Convention" by Smith's letter to White, they asked the printer of the *Virginia Gazette* and *Weekly Advertiser* to publish documents they believed "necessary in order to satisfy the public of the rectitude of our conduct." The documents, taking up slightly more than the entire first page of the *Gazette's* 4 September issue, consist of the Convention's 7 June appointment of the Louisa commissioners, the report of the commissioners, Smith's letter to White, and two depositions and an affidavit describing the 16 June actions of the commissioners. (For a summary of

the disputed election, see RCS:Va., 594–95; and for the Convention proceedings of 3 and 7 June on the election, see RCS:Va., 913, and 1006–7.)

*Report of Commissioners Waddy Thomson, Charles Yancey,
and Thomas Johnson, 16 June¹*

In obedience of a resolution of the Honourable Convention dated June 7th, in a matter of controversy between Colonel Richard Morris and Colonel William White.

It appearing to us, that a blank subpoena having been delivered to the sheriff, in consequence of which no witnesses appeared in behalf of said William White, as none could be summoned, and the said White failing to furnish said Morris with a list agreeable to a said resolve, we then proceeded to examine the witnesses in behalf of said Morris, which appeared agreeable to the enclosed affidavits, signed by us

Capt William Smith appeared as agent for Colonel William White, and objected to the legality of our proceedings without giving any satisfactory reasons to us for so doing.

Given under our hands this 16th day of June 1788

*William Smith, Jr., to William White
Louisa, 16 June²*

I attended at Capt. Charles Yancey's this day, having heard that the Commissioners were to attend there to determine the right of election between you and Colonel Morris in the cause of the present Convention, Mr. Poindexter (your other agent)³ not being in the county, has a good deal embarrassed me, as I was at a loss how to conduct the matter; however I attended in order to do you that justice that might be in my power, we waited until late in the afternoon, when Colonel Morris wrote to Colonel Minor to proceed to take the depositions in his absence, without appointing any agent on his side, I objected that as Col. Morris did not appear by himself or agent that the business should not go on; in consequence of which a good deal of altercation ensued, but at length it was agreed to refer it to a majority of the Commissioners whether they should proceed or not, on which they were divided, Colonel Nelson Anderson withdrew himself, who was of opinion that they ought not to proceed on the business, after which it was agreed that Colonel Garret Minor should act for Colonel Morris, and the other three Commissioners should proceed to do the business. I then moved that my objections should be entered and transmitted to the Convention, which was refused, and I think I can say with propriety, that every step I undertook on your behalf, was rejected

unjustly; as I have no weight with the gentlemen, all I can do is to be an idle spectator to what I think the most partial piece of business I ever saw conducted; Colonel Anderson is also an idle spectator to the business. Was I to go on to endeavour to give you a right idea of the days business, I fear I should tire your patience, and perhaps fall a good deal short in my account. I think you are treated very unjustly, ungenerously and ungentlely. All I have to add, is, that I should be happy had it been in my power to give you justice. I refer you to those persons present for the confirmation of what I assert, as also for further information, and remain Your most obedient Humble servant,⁴

[P.S.] After writing the within, I have again applied to the Commissioners to enter my objection, which they say they will do after going through the business which effectually stops my taking any further steps, as I do not know in what manner they will enter my objections.

WM. SMITH, Junior

P.S. Since writing the above, I have waited on the Commissioners as a witness in your behalf, being qualified to swear that several persons who voted for Col. Morris, had no legal vote, which I have been informed of by the persons themselves, also to establish Richard Paulet's vote as good, who voted for you, and was refused, and not set down at the election. They refused depositions on your side until they had heard every matter in favour of Col: Morris, saying that I had better wait than others; accordingly about or little before sun-set, they did agree to hear witness on your side. When I proceeded to write depositions in your favour, after proceeding a considerable length, Col. Minor, in favour of Col. Morris, objected to the depositions on your side, saying that Col. Morris nor his agent were not present (mark this) upon which, I was, I may say, amazed. The objection made by Col Minor was allowed, and entered accordingly, upon which I went from their presence in confusion. Mr. Thomas Johnson, sheriff, followed me, when I was about to get on my horse, and mentioned something about coming back. But believe me sir, I never wish to transact business with gentlemen of their turn. I will say no more only I wish you to understand that all the gentlemen did not appear to act on the same principle.⁵

*Deposition of Charles Barrett and Aaron Fontaine
Louisa County, 13 August*

The deposition of Col. Charles Barrett, and Captain Aaron Fontaine, in a certain dispute or controversy between Waddy Thomson, Charles Yancey, and Thomas Johnson, gentlemen Commissioners (appointed

by the late Hon. Convention) and William Smith B. Nelson Anderson and Richard Paulett. These deponents after being solemnly sworn do depose and say, that in consequence of our having seen a letter of Capt. William Smith's, to Col. William White, and attested or certified by Nelson Anderson and Richard Paulett, accusing Capt. Waddy Thomson, Charles Yancey and Thomas Johnson, sheriff, late Commissioners, in a matter of controversy between Col. Richard Morris and Col. William White, respecting the election of members to Convention, of partiality in the execution of their office, We do therefore certify that we were present on the 16th of June last, at the house of Capt. Charles Yancey, where the said Commissioners met agreeable to a resolve of the Hon. Convention, and that we did not observe any thing in the conduct of either of the gentlemen Commissioners, which savoured the least of partiality to either of the parties, and it appeared to us from the behaviour of Mr. Smith, who was agent for Col. White, that he meant to procrastinate the business as much as possible.⁶

*Affidavit of Thomas Merriwether
Louisa County, 21 July⁷*

The affidavit of Thomas Meriwether of lawful age, in a matter of controversy between Waddy Thomson, Charles Yancey and Thomas Johnson jun gentlemen, Commissioners appointed by the late Convention, to take the depositions of sundry persons touching the legality of their votes in a disputed election between Col. Richard Morris and Col. William White and William Smith Ballard, Nelson Anderson, and Richard Paulett. This deponent after being duly sworn, deposeth and saith, that he was at the house of Charles Yancey on the 16th of June, the day appointed for the meeting of the said Commissioners, the said William Smith appeared as agent for Col. White, (who was absent) the Commissioners proceeded to take the depositions of the witnesses that appeared, and while they were engaged in doing the business, Mr. Smith desired them to enter his objections to their proceedings; they told him that they were then very much engaged in taking the depositions of sundry persons that were anxious to return to their several homes (it being late in the evening) but when they were ready to make up their report, would enter any objections he would offer; he appeared to be very much offended, and proceeded to write a letter, I suppose, to Col. White, after some considerable time was taken up in writing he and Col. Nelson Anderson walked aside, and after being in private a while Mr. Anderson came to the Commissioners and asked them if they refused to enter Mr. Smith's objections, they replied in

the negative; and after they had nearly taken all the depositions, Mr. Smith told them, that he wished to give his deposition respecting several persons right to vote; they desired him to write his deposition, he accordingly began to write it, and Col. Garritt Minor (who appeared in behalf of Col. Morris) objected to his giving his deposition, but the objection was over ruled by the Commissioners. Immediately Mr. Smith taking offence tore up the paper he was writing on, and went to his horse. One of the Commissioners followed him, and desired him to come back and give his deposition, but he refused to do it. Since the letter from Mr. Smith was read in Convention I happened to be in company with Col. Nelson Anderson (who attested the letter,) and a conversation arising respecting the letter, he said that he did not sign the letter as containing facts, but to prove that Mr. Smith wrote the said letter, this deponent further saith that the Commissioners appeared to act fairly and impartially on the occasion.⁸

Deposition of Garret Minor

Louisa County, 20 August⁹

Deposeth that being at the house of Charles Yancey gentleman, on the 16th of June past, this deponent received a letter from Col. Richard Morris, requesting that he would apply to certain gentlemen Commissioners to take depositions in a dispute between the said Morris and Col William White, respecting the legality of certain votes at a late election for the county of Louisa, to represent the county in Convention; with this letter this deponent received also a list of voters objected to by the said Morris, and a copy of the resolves of a committee of the Hon Convention, which this deponent laid before the gentlemen Commissioners therein appointed, and requested on behalf of the said Morris that they would proceed to take the depositions of such persons as were then present. This was objected to by Capt. William Smith, who appeared as agent to Col. White. But on this deponent shewing that Col. Morris had done every thing that lay in him to do, agreeable to the resolution of the Hon. Committee. Three of the gentlemen appointed in the resolve, to wit: Waddy Thomson, Charles Yancey, and Thomas Johnson, proceeded to take the depositions that were offered, on the occasion which this deponent thinks and believes they did fairly and impartially.

The other gentleman Commissioner, to wit: Col. Nelson Anderson refused to assist in the business, on the suggestion of Capt. Smith, that Col. Morris was absent and would not give him notice of the votes that he meant to object to on behalf of Col. White. Although this

deponent shewed him plainly that Col Morris had done every thing requisite on his part agreeable to the resolve of the Honourable Committee.

This deponent thinks and believes, that Capt. Smith only wished to procrastinate the day's business, as this would have answered every purpose for which he was appointed. When Capt. Smith proposed giving in his own deposition, this deponent objected to the legality of it, observing that it could not go to the Hon. Committee as legal evidence until Col. Morris had been first served, by Col White or his agent, with a copy of the objectionable voters. The gentlemen Commissioners over ruled this objection, and said they would take his deposition but the said Smith went off seemingly much offended, reflecting in a very indecent and improper manner, on the gentlemen commissioners.¹⁰

1. The manuscript of this report is in the Convention records at the Virginia State Library. (See Mfm:Va. for a photographic reproduction of it.) Waddy Thomson, a Revolutionary War militia officer, was county sheriff, 1784–86. Charles Yancey, a merchant, miller, and distiller, was variously sheriff, a justice of the peace, and a member of the House of Delegates after 1788. Thomas Johnson was county sheriff in 1787 and 1788. Nelson Anderson, the Antifederalist who withdrew as a commissioner, was a Revolutionary War militia officer and a Hanover delegate to the House of Delegates, 1782–83. He moved to Louisa in 1784. Anderson was defeated for one of Louisa's Convention seats. (See Ransom B. True, "Louisa County and the Virginia Convention of 1788," *Louisa County Historical Magazine*, III [1971], 12–13, 19–22.) Colonel White, a planter whose election to the Convention was challenged by defeated Federalist candidate Richard Morris, was Louisa's county lieutenant during the Revolution. From May 1781 to January 1788, he served almost continuously in the House of Delegates, where he usually supported views held by Patrick Henry (*ibid.*, 14–17). White voted against ratification of the Constitution. For Richard Morris, see Louisa County Election (RCS:Va., 595n).

2. Smith (c. 1754–1833) was a Revolutionary War militia officer. His middle name was Ballard, which accounts for the fact that one of the documents printed below refers to him as "William Smith Ballard," while another document describes him as "William Smith B."

3. For John Poindexter, see note 9 (below).

4. Following Smith's signature, Nelson Anderson and Richard Paulett certified: "We whose names are signed, look on it that the facts abovementioned are justly stated." See the deposition of Thomas Merriwether (below) in which he states that Anderson told him "that he did not sign the letter as containing facts, but to prove that Mr. Smith wrote the said letter."

5. At this point, Richard Paulett attested: "I do hereby certify that the above postscript contains facts." Paulett's attestation was followed by this certification by Convention Secretary John Beckley: "City of Richmond, to wit: I do hereby certify that the foregoing is a true copy of a letter and postscripts, read in Convention this day. Given under my hand this 21st June, 1788."

6. At this point, Henry Garrett attested: "LOUISA, to wit: Sworn to before me Henry Garrett, a Justice of the Peace for said county in due form, this 13th day of August."

7. Merriwether was a sub-sheriff of Louisa County in 1787 and 1788.

8. At this point, Garret Minor attested: "Sworn to before me this 21st day of July 1788."

9. The following statement appeared above the document: "The deposition of Garritt Minor, of lawful age, taken and sworn to before me John Poindexter, a magistrate for the county of Louisa, this 20th day of August 1788." Poindexter was clerk of Louisa from 1772 to 1792.

10. At this point, Poindexter wrote: "Sworn to before me."

The Virginia Convention Monday 23 June 1788

Debates¹

The Convention, according to the order of the day, again resolved itself into a Committee of the whole Convention to take into farther consideration, the proposed plan of Government.—Mr. *Harrison* in the Chair.

(The 1st & 2d sections, of the 3d article, still under consideration.)

Mr. *Nicholas* informed the Committee, that he had attempted on a former occasion, to deliver his sentiments on the subject of the Constitution, he therefore did not mean to trouble the Committee now,—but he hoped that Gentle[men] were satisfied with the arguments that had been urged by those who were last up, and that the Clerk would proceed to read the next clause.

Mr. *Henry* replied, that he did not consider the objections answered in such a manner as gave satisfaction. He hoped Gentlemen would consider and remember, that if they were not heard now, they may never be heard again on the subject—It was an important part of the proposed plan of Government, which ought, if possible, to be fairly understood—he hoped therefore that Gentlemen would not be impatient. He proceeded to state the cases which might arise under the proposed plan of Government, and the probable interference of the Federal Judiciary with that of the State Judiciaries—The dangers and difficulties which would arise to the citizens from the operation of a Federal revenue law—which would extend to the lands, tenements, and other property coming under the denomination of direct taxes; and when intrusted to a Federal collector, might be attended with abuses of a dangerous and alarming tendency—The property of the citizens seized and sold for one-tenth part of its value—They ousted from their house and home, and would have no other recourse for redress but to the Federal Government, which might perhaps be 500 miles from the place of sale. He observed, this may be done, Mr. Chairman, for we have instances to prove my assertion, even in some parts of our

State, where persons have been turned out of house and home by our collectors, and their property sold for a mere trifle,—and if it had not been for an act of the last Assembly, this practice would still have continued.²

Mr. Chairman, I feel myself particularly interested in this part of the Constitution,—I perceive dangers must and will arise, and when the laws of that Government come to be enforced here, I have my fears for the consequences. It is not on that paper before you we have to rely, should it be received; it is on those that may be appointed under it. It will be an empire of men and not of laws—Your rights and liberties rest upon men—Their wisdom and integrity may preserve you—but on the contrary, should they prove ambitious, and designing, may they not flourish and triumph upon the ruins of their country?

He then proceeded to state the appellate jurisdiction of the Judicial power, *both as to law and fact, with such exceptions and under such regulations as Congress shall make*. He observed, that as Congress had a right to organize the Federal Judiciary, they might or might not have recourse to a jury as they pleased. He left it to the candour of the Honorable Gentleman to say, whether those persons who were at the expense of taking witnesses to Philadelphia, or wherever the Federal Judiciary may sit, could be certain whether they were to be heard before a jury or not. An Honorable Gentleman, (Mr. *Marshall*) the other day observed, that he conceived the trial by jury better secured under the plan on the table, than in the British Government, or even in our Bill of Rights. I have the highest veneration and respect for the Honorable Gentleman, and I have experienced his candour on all occasions; but, Mr. Chairman, in this instance, he is so materially mistaken, that I cannot but observe, he is much in an error. I beg the Clerk to read that part of the Constitution which relates to trial by jury.—(The Clerk then read the eighth article of the Bill of Rights.)³

Mr. *Marshall* rose to explain what he had before said on this subject: He informed the Committee, that the Honorable Gentleman (Mr. *Henry*) must have misunderstood him. He said, that he conceived the trial by jury was as well secured, and not better secured, in the proposed new Constitution, as in our Bill of Rights.—(The Clerk then read the eleventh article of the Bill of Rights.)⁴

Mr. *Henry*,—Mr. Chairman.—The Gentleman's candour, Sir, as I informed you before, I have the highest opinion of—and am happy to find he has so far explained what he meant—but, Sir, has he mended the matter? Is not the antient trial by jury preserved in the Virginia Bill of Rights,—and is that the case in the new plan? No, Sir,—they can do it if they please. Will Gentlemen tell me the trial by a jury of

the vicinage where the party resides, is preserved? True, Sir, there is to be a trial by a jury in the State where the fact was committed—but, Sir, this State, for instance, is so large that your juries may be collected 500 miles from where the party resides—no neighbours who are acquainted with their characters, their good or bad conduct in life, to judge of the unfortunate man who may be thus exposed to the rigour of that Government. Compare this security then, Sir, in our Bill of Rights to that in the new plan of Government, and in the first you have it—and in the other, in my opinion, not at all. But, Sir, in what situation will our citizens be, who have made large contracts under our present Government? They will be called to a Federal Court, and tried under retrospective laws;—for it is evident, to me at least, that the Federal Court must look back, and give new remedies, to compel individuals to fulfil them. The whole history of human nature cannot produce a Government like that before you:—The manner in which the Judiciary and other branches of the Government are formed, seem to me, calculated to lay prostrate the States, and the liberties of the people:—But, Sir, another circumstance ought totally to reject that plan, in my opinion—which is, that it cannot be understood—in many parts even by the supporters of it. A Constitution, Sir, ought to be like a beacon, held up to the public eye so as to be understood by every man. Some Gentlemen have observed, that the word jury, implies a jury of the vicinage.—There are so many inconsistencies in this, that, for my part, I cannot understand it. By the Bill of Rights of England, a subject has a right to a trial by his peers—what is meant by his peers?—Those who reside near him—his neighbours—and who are well acquainted with his character and situation in life. Is this secured in the proposed plan before you? No, Sir, I think not. But, Sir, as I have observed before, what is to become of the purchases of the Indians?—Those unhappy nations who have given up their lands to private purchasers—who by being made drunk, have given a thousand—nay, I might say 10,000 acres, for the trifling sum of six pence?—It is with true concern, with grief I tell you, that I have waited with pain to come to this part of the plan—because, I observed Gentlemen admitted its being defective—and I had my hopes—would have proposed amendments;—but this part they have defended—and this convinces me of the necessity of obtaining amendments before it is adopted: They have defended it with ingenuity and perseverance,—but by no means satisfactory. If previous amendments are not obtained, the trial by jury is gone: British debtors will be ruined by being dragged to the Federal Court—and the liberty and happiness of our citizens gone—never again to be recovered.

Mr. *Stephen*,—Mr. Chairman.—The Gentleman, Sir, means to frighten us by his bugbears and hobgoblins—his sale of lands to pay taxes—Indian purchases, and other horrors, that I think I know as much about as he does. I have travelled through the greater part of the Indian countries; I know them well, Sir.—I can mention a variety of resources by which the people may be enabled to pay their taxes.—(He then went into a description of the Mississippi and its waters, Cooke's river,⁵ the Indian tribes residing in that country, and the variety of articles which might be obtained to advantage by trading with these people.)—I know, Mr. Chairman, of several rich mines of gold and silver in the Western country—and will the Gentleman tell me that these precious metals will not pay taxes? If the Gentleman does not like this Government, let him go and live among the Indians; I know of several nations that live very happy—and I can furnish him with a vocabulary of their language.

Mr. *George Nicholas* observed, that he should only make a few observations on the objections that had been stated to the clauses now under consideration—and not renew the answer already given. The Gentleman says, he would admit some parts of the Constitution—but that he would never agree to that now before us. I beg Gentlemen, when they retire from these walls, that they would take the Constitution, and strike out such parts as the Honorable Gentleman (Mr. *Henry*) has given his approbation to, and they will find what a curious kind of Government he would make of it. It appears to me, Sir, that he has objected to the whole—and that no part, if he had his way, would be agreed to. It has been observed, Sir, that the Judges appointed under the British Constitution, are more independent than those to be appointed under the plan on the table. This, Sir, like other assertions of Honorable Gentlemen, is equally groundless.—May there not be a variety of pensions granted to the Judges in England, so as to influence them?—and cannot they be removed by a vote of both Houses of Parliament? This is not the case with our Federal Judges—they are to be appointed during good behavior, and cannot be removed—and at stated times are to receive a compensation for their services. We are told, Sir, of fraudulent assignments of bonds—Do Gentlemen suppose, that the Federal Judges will not see into such a conduct, and prevent it? Western claims are to be revived too—new suits commenced in the Federal Courts for disputes already determined in this State.—This, Sir, cannot be, for they are already determined under the laws of this State, and therefore are conclusive. But, Sir, we are told, that two executions are to issue—one from the Federal Court, and one from the State Court: Do not Gentlemen know, Sir,

that the first execution is good and must be satisfied, and that the debtor cannot be arrested under the second execution? Quitrents too, Sir, are to be sued for. To satisfy Gentlemen, Sir, I beg leave to refer them to an act of Assembly passed in the year 1782, before the peace, which absolutely abolishes the quitrents, and discharges the holders of lands in the Northern Neck from any claim of that kind.⁶—(He then read the act alluded to.)—As to the claims of certain companies who purchased lands of the Indians, they were determined prior to the opening of the Land-Office by the Virginia Assembly—and it is not to be supposed they will again renew their claim. But, Sir, there are Gentlemen who have come by large possessions, that it is not easily to account for.—(Here Mr. *Henry* interfered, and hoped the Honorable Gentleman meant nothing personal.)⁷—Mr. *Nicholas* observed, I mean what I say, Sir. But we are told of the Blue Laws of Massachusetts—are these to be brought in debate here? Sir, when the Gentleman mentioned them the day before yesterday I did not well understand what he meant, but from enquiry find, Sir, they were laws made for the purpose of preserving the morals of the people, and took the name of Blue Laws from their being written on blue paper: But how does this apply to the subject before you? Is this to be compared to the plan now on the table? Sir, this puts me in mind of an observation I have heard out of doors—which was, that because the New-Englandmen wore black stockings and plush breeches, there can be no union with them. We have heard a great deal of the trial by jury—a design to destroy the State Judiciaries, and the destruction of the State Governments. This, Sir, has already been travelled over, and I think sufficiently explained, to render it unnecessary for me to trouble the Committee again on the subject.

Mr. *Henry*.—Mr. Chairman.—If the Gentleman means personal insinuations—or to wound my private reputation—I think this an improper place to do so. If on the other hand, he means to go on in the discussion of the subject, he ought not to apply arguments which might tend to obstruct the discussion. As to land matters, I can tell how I came by what I have—but I think that Gentleman (Mr. *Nicholas*) has no right to make that enquiry of me. I mean not to offend any one—I have not the most distant idea of injuring any Gentleman—my object was to obtain information.—If I have offended in private life, or wounded the feelings of any man, I did not intend it:—I hold what I hold in right and in a just manner. I beg pardon, Sir, for having intruded thus far.

Mr. *Nicholas*.—Mr. Chairman.—I meant no personality in what I said, nor did I mean any resentment. If such conduct meets the contempt

of that Gentleman, I can only assure him, it meets with an equal degree of contempt from me.

Mr. President observed, that he hoped Gentlemen would not be personal, that they would proceed to investigate the subject calmly, and in a peaceable manner.

Mr. *Nicholas* replied, that he did not mean the Honorable Gentleman (Mr. *Henry*) but he meant those who had taken up large tracts of land in the Western country. The reason he would not explain himself before was, that he thought some observations dropped from the Honorable Gentleman, as ought not to have come from one Gentleman to another.

Mr. *Monroe*,—Mr. Chairman.—I am satisfied of the propriety of closing this subject, Sir, but I must beg leave to trouble the Committee a little farther. We find, Sir, that two different Governments are to have concurrent jurisdiction in the same object. May not this bring on a conflict in the Judiciary? and if it does, will it not end in the ruin of one or the other? There will be two distinct Judiciaries—one acting under the Federal authority, the other the State authority. May it not also tend to oppress the people by having suits going on against them in both Courts for the same debt?

Mr. *Madison* answered Mr. *Monroe*, by observing, that the County Courts were perfectly independent of each other, where the same inconvenience might arise: The States are also independent of each other. We well know, Sir, that foreigners cannot get justice done them in these Courts, and this has prevented many wealthy Gentlemen from trading or residing among us. There are also many public debtors who have escaped from justice, for want of such a method as is pointed out in the plan on the table. To prevent any interference of the Federal and State Judiciaries, the Judges of the States may be deprived of holding any office in the General Government.

Mr. *Grayson* observed, that the Federal and State Judiciaries, could not on the present plan be kept in perfect harmony. As to the trial by jury being safer here than in England, that I deny. Jury trials are secured there, Sir, by Magna Charta, in a clear and decided manner; and that here it is not in express and positive terms, is admitted by most Gentlemen who now hear me. He concluded with saying, that he did not believe there existed a social compact upon the face of the earth, so vague, and so indefinite, as the one now on the table.

Mr. *Henry* went into an explanation of the trial by jury, and the difference between the new plan and our Bill of Rights, and observed, that the latter had been violated by several acts of Assembly, which could only be justified by necessity: He begged Gentlemen to consider

how necessary it was to have that invaluable blessing secured: Those feeble implications, relative to juries in the new plan, might create the unhappy tendency of factions in a Republican Government; which nothing but a Monarchy could suppress. As to people escaping with public money, the Gentleman must know that bond and security is always taken on occasions where men are entrusted with the collection of it, and these can follow them, and be sued for and recovered in another State, or wherever they may escape to.

Mr. *Madison* observed, that the declaration on that paper could not diminish the security of the people, unless a majority of their Representatives should concur in a violation of their rights.

Mr. *George Mason*.—Mr. Chairman.—I should not have troubled the Committee again on this subject, were there not some arguments in support of that plan, Sir, that appear to me totally unsatisfactory. With respect to concurrent jurisdiction, Sir, the Honorable Gentleman [James Madison] has observed, that County Courts had exercised this right without complaint. Have Hanover and Henrico the same objects? Can an officer in either of those counties, serve a process in the other?—The Federal Judiciary has concurrent jurisdiction throughout the States, and therefore must interfere with the State Judiciaries. Congress can pass a law constituting the powers of the Federal Judiciary throughout the States: They may also pass a law vesting the Federal power in the State Judiciaries: These laws are permanent and cannot be controverted by any law of the State. If we were forming a General Government and not States, I think we would perfectly comply with the genius of the paper before you; but if we mean to form one great national Government for thirteen States, the arguments which I have heard hitherto in support of this part of the plan do not apply at all. We are willing to give up all powers which are necessary to preserve the peace of the Union, so far as respects foreign nations, or our own preservation; but we will not agree to a Federal Judiciary, which is not necessary for this purpose, because the powers there granted will tend to oppress the middling and lower class of people.—A poor man seized by the Federal officers and carried to a Federal Court, has he any chance under such a system as this? Justice itself may be bought too dear; yet this may be the case. It may cost a man 500 l. to recover 100 l. These circumstances are too sacred to leave undefined, and I wish to see things certain, positive and clear. But, however, Sir, these matters have been so fully investigated, that I beg pardon for having intruded so far, and I hope we shall go on in the business.

(*The 1st section, of the 4th article, read.*)

Mr. *George Mason*,—Mr. Chairman.—The latter part of this clause, Sir, I confess I do not understand: *Full faith and credit shall be given to all acts*; and how far it may be proper that Congress shall declare the effect, I cannot clearly see into.

Mr. *Madison*,—Mr. Chairman.—It appears to me, that this is a clause which is absolutely necessary. I never heard any objection to this clause before, and have not employed a thought on the subject.

(*The 2d section read.*)

Mr. *George Mason*,—Mr. Chairman.—On some former part of the investigation of this subject, Gentlemen were pleased to make some observations on the security of property coming within this section. It was then said, and I now say, that there is no security, nor have Gentlemen convinced me of this.

(*The 3d section read.*)

Mr. *Grayson*,—Mr. Chairman.—It appears to me, Sir, under this section, there never can be a Southern State admitted into the Union. There are seven States, who are a majority, and whose interest it is to prevent it: The balance being actually in their possession, they will have the regulation of commerce, and the Federal ten miles square wherever they please. It is not to be supposed then, that they will admit any Southern State into the Union, so as to lose that majority.

Mr. *Madison* replied, that he thought this part of the plan more favourable to the Southern States than the present Confederation, as there was a greater chance of new States being admitted.

Mr. *George Mason* took a retrospective view of several parts which had been before objected to. He endeavoured to demonstrate the dangers that must inevitably arise from the insecurity of our rights and privileges; as they depended on vague, indefinite, and ambiguous implications. The adoption of a system so replete with defects, he apprehended, could not but be productive of the most alarming consequences. He dreaded popular resistance to its operation. He expressed in emphatic terms, the dreadful effects which must ensue, should the people resist; and concluded by observing, that he trusted Gentlemen would pause before they would decide a question which involved such awful consequences.

Mr. *Lee, of Westmoreland*,—Mr. Chairman.—My feelings are so oppressed with the declarations of my honorable friend, that I can no longer suppress my utterance. I respect the Honorable Gentleman, and never believed I should live, to have heard fall from his lips, opinions so injurious to our country, and so opposite to the dignity

of this Assembly. If the dreadful picture which he has drawn, be so abhorrent to his mind as he has declared, let me ask the Honorable Gentleman, if he has not pursued the very means to bring into action, the horrors which he deprecates? Such speeches within these walls, from a character so venerable and estimable, easily progress into overt acts, among the less thinking and the vicious. Then, Sir, I pray you to remember, and the Gentlemen in opposition not to forget, that should these impious scenes commence, which my honorable friend might abhor, and which I execrate, whence and how they began. God of Heaven avert from my country the dreadful curse; but if the madness of some, and the vice of others, should risk the awful appeal, I trust that the friends to the paper on your table, conscious of the justice of their cause, conscious of the integrity of their views, and recollecting their uniform moderation, will meet the afflicting call with that firmness and fortitude, which become men summoned to defend what they conceive to be the true interest of their country, and will prove to the world, that although they boast not in words of love of country, and affection for liberty, still they are not less attached to these invaluable objects, than their vaunting opponents, and can with alacrity and resignation encounter every difficulty and danger in defence of them.

The remainder of the Constitution was then read, and the several objectionable parts noticed by the opposition; particularly that which related to the mode pointed out by which amendments were to be obtained; and after discussing it fully,

The Committee rose—And on motion, *Resolved*, That this Convention will, to-morrow, again resolve itself into a Committee of the whole Convention, to take into farther consideration, the proposed Constitution of Government.

And then the Convention adjourned until to-morrow morning, nine o'clock.⁸

1. The debates for the day are preceded by this statement: "The incomplete and inaccurate state in which the speeches of this day appear, must be ascribed to the absence of the person who took the rest of the speeches in short hand. As he could not possibly attend on this day, the Printer hereof [William Prentis], earnestly desirous of conveying as much information as possible to the public on so important a subject, has endeavoured, by the assistance of his notes, to give as full and impartial an account of this day's proceedings, as was practicable, without the aid of stenography."

2. For this act, see Hening, XII, 564-66.

3. The eighth article of the Declaration of Rights reads: "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 favour, and to a speedy trial by an impartial jury 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" (RCS:Va., 531).

4. The eleventh article of the Declaration of Rights reads: "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" (*ibid.*).

5. A reference to Cook's River (now Cook Inlet) near Anchorage, Alaska. In 1778 Captain James Cook discovered "this great river, which promises to vie with the most considerable ones already known to be capable of extensive inland navigation." Cook believed that "There is not the least doubt, that a very beneficial fur trade might be carried on with the inhabitants of this vast coast" (James Cook and James King, *A Voyage to the Pacific Ocean . . .*, [3 vols., plus atlas, London, 1784], II, 396, 401). John Ledyard, a crew member whose account of the voyage was published a year before Cook's, made similar observations (*A Journal of Captain Cook's Last Voyage to the Pacific Ocean . . .* [Hartford, Conn., 1783], 81–82 [Evans 17998]).

6. For the status of quitrents in the Northern Neck, see Convention Debates, 19 June, note 18 (above).

7. Since the late 1760s, Henry had been an avid land speculator (Henry Mayer, *A Son of Thunder: Patrick Henry and the American Republic* [New York and Toronto, 1986], 118–28, 467).

8. The *Journal* states that the Convention adjourned until ten o'clock.

The Virginia Convention Tuesday 24 June 1788

Debates

The Convention, according to the order of the day, again resolved itself into a Committee of the whole Convention to take into farther consideration, the proposed plan of Government.—Mr. *Mathews* in the Chair.

Mr. *Wythe* arose and addressed the Chairman, but he spoke so very low, that his speech could not be fully comprehended. He took a cursory view of the situation of the United States, previous to the late war, their resistance to the oppressions of Great-Britain, and the glorious conclusion and issue of that arduous conflict. To perpetuate the blessings of freedom, happiness, and independence, he demonstrated the necessity of a firm indissoluble Union of the States. He expatiated on the defects and inadequacy of the Confederation, and the consequent misfortunes suffered by the people. He pointed out the impossibility of securing liberty without society; the impracticability of acting personally, and the inevitable necessity of delegating power to agents. He then recurred to the system under consideration. He admitted its imperfection, and the propriety of some amendments.—But the excellency of many parts of it could not be denied by its warmest opponents. He thought that experience was the best guide, and could alone develop its consequences. Most of the improvements that had been made in the science of Government, and other sciences, were the result of experience. He referred it to the advocates for amend-

ments, whether if they were indulged with any alterations they pleased, there might not still be a necessity of alteration?—He then proceeded to the consideration of the question of previous or subsequent amendments. The critical situation of America,—the extreme danger of dissolving the Union, rendered it necessary to adopt the latter alternative. He saw no danger from this. It appeared to him most clearly, that any amendments which might be thought necessary, would be easily obtained after ratification, in the manner proposed by the Constitution, as amendments were desired by all the States, and had already been proposed by several States. He then proposed, that the Committee should ratify the Constitution, and that whatsoever amendments might be deemed necessary, should be recommended to the consideration of the Congress which should first assemble under the Constitution, to be acted upon according to the mode prescribed therein.

The resolution of ratification proposed by Mr. *Wythe* was then read by the Clerk, which see hereafter in the report of the Committee to the Convention.¹

Mr. *Henry* after observing, that the proposal of ratification was premature, and that the importance of the subject required the most mature deliberation, proceeded thus:—The Honorable Member must forgive me for declaring my dissent from it, because if I understand it rightly, it admits that the new system is defective, and most capitally: For immediately after the proposed ratification, there comes a declaration, that the paper before you is not intended to violate any of these three great rights—the liberty of religion, liberty of the press, and the trial by jury. What is the inference, when you enumerate the rights which you are to enjoy? That those not enumerated are relinquished. There are only three things to be retained. Religion, freedom of the press, and jury trial. Will not the ratification carry every thing, without excepting these three things? Will not all the world pronounce, that we intended to give up all the rest? Every thing it speaks of by way of right is comprised in these three things. Your subsequent amendments, only go to these three amendments. I feel myself distressed, because the necessity of securing our personal rights, seems not to have pervaded the minds of men: For many other valuable things are omitted. For instance:—General warrants, by which an officer may search suspected places, without evidence of the commission of a fact, or seize any person without evidence of his crime, ought to be prohibited. As these are admitted, any man may be seized; any property may be taken, in the most arbitrary manner, without any evidence or reason. Every thing the most sacred, may be searched and ransacked by the strong hand of power. We have infinitely more reason to dread

general warrants here, than they have in England; because there, if a person be confined, liberty may be quickly obtained by the writ of *habeas corpus*. But here a man living many hundred miles from the Judges, may rot in prison before he can get that writ.—Another most fatal omission is, with respect to standing armies. In your Bill of Rights of Virginia, they are said to be dangerous to liberty, and it tells you, that the proper defence of a free State consists in militia;² and so I might go on to ten or eleven things of immense consequence secured in your Bill of Rights, concerning which that proposal is silent. Is that the language of the Bill of Rights in England?—Is it the language of the American Bill of Rights, that these three rights, and these only, are valuable? Is it the language of men going into a new Government? Is it not necessary to speak of those things before you go into a compact? How do these three things stand? As one of the parties, we declare we do not mean to give them up. This is very dictatorial. Much more so, than the conduct which proposes alterations as the condition of adoption. In a compact there are two parties,—one accepting, and another proposing. As a party, we propose that we shall secure these three things; and before we have the assent of the other contracting party, we go into the compact, and leave these things at their mercy. What will be the consequence?—Suppose the other States will call this dictatorial? They will say, Virginia has gone into the Government, and carried with her certain propositions, which she says, ought to be concurred in by the other States. They will declare, that she has no right to dictate to other States, the conditions on which they shall come into the Union. According to the Honorable Member's [George Wythe] proposal, the ratification will cease to be obligatory unless they accede to these amendments. We have ratified it. You have committed a violation, they will say. They have not violated it. We say we will go out of it. You are then reduced to a sad dilemma: To give up these three rights, or leave the Government. This is worse than our present Confederation, to which we have hitherto adhered honestly and faithfully. We shall be told we have violated it, because we have left it for the infringement and violation of conditions, which they never agreed to be a part of the ratification. The ratification will be complete. The proposal is made by one party. We, as the other, accede to it, and propose the security of these three great rights; for it is only a proposal. In order to secure them, you are left in that state of fatal hostility, which I shall as much deplore as the Honorable Gentleman. I exhort Gentlemen to think seriously, before they ratify this Constitution, and persuade themselves that they will succeed in making a feeble effort to get amendments after adoption. With respect to that part of the

proposal, which says, that every power not granted remains with the people; it must be previous to adoption, or it will involve this country in inevitable destruction—To talk of it, as a thing subsequent, not as one of your unalienable rights, is leaving it to the casual opinion of the Congress who shall take up the consideration of that matter. They will not reason with you about the effect of this Constitution. They will not take the opinion of this Committee concerning its operation. They will construe it as they please. If you place it subsequently, let me ask the consequences? Among ten thousand implied powers which they may assume, they may, if we be engaged in war, liberate every one of your slaves if they please. And this must and will be done by men, a majority of whom have not a common interest with you. They will therefore have no feeling for your interests. It has been repeatedly said here, that the great object of a national Government, was national defence. That power which is said to be intended for security and safety, may be rendered detestable and oppressive. If you give power to the General Government to provide for the general defence, the means must be commensurate to the end. All the means in the possession of the people must be given to the Government which is intrusted with the public defence. In this State there are 236,000 blacks, and there are many in several other States. But there are few or none in the Northern States, and yet if the Northern States shall be of opinion, that our numbers are numberless, they may call forth every national resource. May Congress not say, that every black man must fight?—Did we not see a little of this last war?—We were not so hard pushed, as to make emancipation general. But acts of Assembly passed, that every slave who would go to the army should be free.³ Another thing will contribute to bring this event about—slavery is detested—we feel its fatal effects—we deplore it with all the pity of humanity. Let all these considerations, at some future period, press with full force on the minds of Congress. Let that urbanity, which I trust will distinguish America, and the necessity of national defence:—Let all these things operate on their minds. They will search that paper, and see if they have power of manumission.—And have they not, Sir?—Have they not power to provide for the general defence and welfare?—May they not think that these call for the abolition of slavery?—May they not pronounce all slaves free, and will they not be warranted by that power? There is no ambiguous implication, or logical deduction—The paper speaks to the point. They have the power in clear unequivocal terms; and will clearly and certainly exercise it. As much as I deplore slavery, I see that prudence forbids its abolition. I deny that the General Government ought to set them free, because a decided majority of the

States have not the ties of sympathy and fellow-feeling for those whose interest would be affected by their emancipation. The majority of Congress is to the North, and the slaves are to the South. In this situation, I see a great deal of the property of the people of Virginia in jeopardy, and their peace and tranquillity gone away. I repeat it again, that it would rejoice my very soul, that every one of my fellow beings was emancipated. As we ought with gratitude to admire that decree of Heaven, which has numbered us among the free, we ought to lament and deplore the necessity of holding our fellow-men in bondage. But is it practicable by any human means, to liberate them, without producing the most dreadful and ruinous consequences? We ought to possess them in the manner we have inherited them from our ancestors, as their manumission is incompatible with the felicity of the country. But we ought to soften, as much as possible, the rigour of their unhappy fate. I know that in a variety of particular instances, the Legislature listening to complaints, have admitted their emancipation.⁴ Let me not dwell on this subject. I will only add, that this, as well as every other property of the people of Virginia, is in jeopardy, and put in the hands of those who have no similarity of situation with us. This is a local matter, and I can see no propriety in subjecting it to Congress. With respect to subsequent amendments, proposed by the worthy Member [George Wythe], I am distressed when I hear the expression.—It is a new one altogether, and such a one as stands against every idea of fortitude, and manliness, in the States, or any one else.—Evils admitted, in order to be removed subsequently, and tyranny submitted to, in order to be excluded by a subsequent alteration, are things totally new to me. But I am sure he meant nothing but to amuse the Committee. I know his candour. His proposal is an idea dreadful to me. I ask—does experience warrant such a thing from the beginning of the world, to this day?—Do you enter into a compact of Government first, and afterwards settle the terms of the Government? It is admitted by every one, that this is a compact.—Although the Confederation be lost, it is a compact Constitution, or something of that nature. I confess I never heard of such an idea before. It is most abhorrent to my mind. You endanger the tranquillity of your country—you stab its repose, if you accept this Government unaltered. How are you to allay animosities?—For such there are, great and fatal. He flatters me, and tells me, that I could influence the people, and reconcile them to it. Sir, their sentiments are as firm and steady, as they are patriotic. Were I to ask them to apostatize from their native religion, they would despise me. They are not to be shaken in their opinions, with respect to the propriety of preserving their rights. You never can persuade them,

that it is necessary to relinquish them. Were I to attempt to persuade them to abandon their patriotic sentiments, I should look on myself as the most infamous of men. I believe it to be a fact, that the great body of yeomanry are in decided opposition to it. I may say with confidence, that for nineteen counties adjacent to each other, nine-tenths of the people are conscientiously opposed to it. I may be mistaken, but I give you it as my opinion, and my opinion is founded on personal knowledge in some measure, and other good authority.⁵ I have not hunted popularity by declaiming to injure this Government. Though public fame might say so, it was not owing to me that this flame of opposition has been kindled and spread. These men never will part with their political opinions.—If they should see their political happiness secured to the latest posterity, then indeed they might agree to it. Subsequent amendments will not do for men of this cast. Do you consult the Union in proposing them? You may amuse them as long as you please, but they will never like it. You have not solid reality, the hearts and hands of the men who are to be governed. Have Gentlemen no respect to the actual dispositions of the people in the adopting States? Look at Pennsylvania and Massachusetts. These two great States have raised as great objections to that Government as we do. There was a majority of only nineteen in Massachusetts. We are told, that only 10,000 were represented in Pennsylvania, although 70,000 had a right to be represented.⁶ Is not this a serious thing?—Is it not worth while to turn your eyes for a moment from subsequent amendments, to the situation of your country?—Can you have a lasting Union in these circumstances? It will be in vain to expect it. But if you agree to previous amendments, you shall have Union, firm and solid. I cannot conclude without saying, that I shall have nothing to do with it, if subsequent amendments be determined upon. Oppressions will be carried on as radically by the majority when adjustments and accommodations will be held up. I say, I conceive it my duty, if this Government is adopted before it is amended, to go home.—I shall act as I think my duty requires.—Every other Gentleman will do the same. Previous amendments, in my opinion, are necessary to procure peace and tranquillity. I fear, if they be not agreed to, every movement and operation of Government will cease, and how long that baneful thing *civil discord*, will stay from this country, God only knows. When men are free from restraint, how long will you suspend their fury? The interval between this and bloodshed, is but a moment. The licentious and wicked of the community, will seize with avidity every thing you hold. In this unhappy situation, what is to be done? It surpasses my stock of wisdom. If you will in the language of freemen, stipulate, that there are rights which

no man under Heaven can take from you, you shall have me going along with you:—Not otherwise.—(Here Mr. *Henry* informed the Committee, that he had a resolution prepared, to refer a declaration of rights, with certain amendments to the most exceptionable parts of the Constitution, to the other States in the Confederacy, for their consideration, previous to its ratification. The Clerk then read the resolution, the declaration of rights, and amendments, which were nearly the same as those ultimately proposed by the Convention, which see at the conclusion.)⁷ He then resumed the subject. I have thus candidly submitted to you Mr. Chairman, and this Committee, what occurred to me as proper amendments to the Constitution, and a declaration of rights containing those fundamental unalienable privileges, which I conceive to be essential to liberty and happiness. I believe, that on a review of these amendments it will still be found, that the arm of power will be sufficiently strong for national purposes, when these restrictions shall be a part of the Government. I believe no Gentleman who opposes me in sentiments, will be able to discover that any one feature of a strong Government is altered; and at the same time your unalienable rights are secured by them. The Government unaltered may be terrible to America; but can never be loved, till it be amended. You find all the resources of the Continent may be drawn to a point. In danger, the President may centre to a point every effort of the Continent. If the Government be constructed to satisfy the people, and remove their apprehensions, the wealth and strength of the Continent will go where public utility shall direct.—This Government, with these restrictions, will be a strong Government united with the privileges of the people. In my weak judgement, a Government is strong when it applies to the most important end of all Governments,—the rights and privileges of the people.—In the Honorable Member's proposal, jury trial, the press, and religion, and other essential rights, are not to be given up.—*Other essential rights*—What are they?—The world will say, that you intended to give them up. When you go into an enumeration of your rights, and stop that enumeration, the inevitable conclusion is, that what is omitted is intended to be surrendered. Anxious as I am to be as little troublesome as possible, I cannot leave this part of the subject, without adverting to one remark of the Honorable Gentleman [George Wythe]. He says, that rather than bring the Union into danger, he will adopt it with its imperfections. A great deal is said about disunion, and consequent dangers. I have no claim to a greater share of fortitude than others, but I can see no kind of danger. I form my judgment on a single fact alone,—that we are at peace with all the world, nor is there any apparent cause

of a rupture with any nation in the world. Is it among the American States that the cause of disunion is to be feared?—Are not the States using all their efforts for the promotion of Union? New-England sacrifices local prejudices for the purposes of Union. We hear the necessity of the Union, and predeliction for the Union, re-echoed from all parts of the Continent; and all at once disunion is to follow! If Gentlemen dread disunion, the very thing they advocate will inevitably produce it.—A previous ratification will raise insurmountable obstacles to Union. New-York is an insurmountable obstacle to it, and North-Carolina also. They will never accede to it, till it be amended. A great part of Virginia is opposed most decidedly to it, as it stands. This very spirit which will govern us in these three States, will find a kindred spirit in the adopting States. Give me leave to say, that it is very problematical, that the adopting States can stand on their own legs. I hear only on one side, but as far as my information goes, there are heart-burnings and animosities among them. Will these animosities be cured by subsequent amendments?

Turn away from America, and consider European politics. The nations there which can trouble us, are France, England, and Spain. But at present we know for a certainty, that those nations are engaged in very different pursuits from American conquests. We are told by our intelligent Ambassador [Thomas Jefferson], that there is no such danger as has been apprehended. Give me leave then to say, that dangers from beyond the Atlantic are imaginary. From these premises then, it may be concluded, that from the creation of the world, to this time, there never was a more fair and proper opportunity than we have at this day to establish such a Government, as will permanently establish the most transcendent political felicity. Since the revolution there has not been so much experience.—Since then, the general interests of America have not been better understood, nor the Union more ardently loved, than at this present moment. I acknowledge the weakness of the old Confederation. Every man says, that something must be done. Where is the moment more favourable than this? During the war when ten thousand dangers surrounded us, America was magnanimous. What was the language of the little State of Maryland? “I will have time to consider. I will hold out three years. Let what may come, I will have time to reflect.”⁸ Magnanimity appeared every where. What was the upshot? America triumphed. Is there any thing to forbid us to offer these amendments to the other States?—If this moment goes away unimproved, we shall never see it return. We now act under a happy system, which says, that a majority may alter the Government when necessary. But by the paper proposed, a majority will forever

endeavor in vain to alter it. Three-fourths may. Is not this the most promising time and place for securing the necessary alterations? Will you go into that Government, where it is a principle, that a contemptible minority may prevent an alteration? What will be the language of the majority?—*Change the Government.*—Nay, seven-eighths of the people of America may wish the change; but the minority may come with a *Roman Veto*,⁹ and object to the alteration. The language of a magnanimous country and of freemen is, *Till you remove the defects we will not accede.* It would be in vain for me to shew, that there is no danger to prevent our obtaining those amendments, if you are not convinced already. If the other States will not agree to them, it is not an inducement to Union. The language of this paper is not dictatorial, but merely a proposition for amendments. The proposition of Virginia met with a favourable reception before. We proposed that Convention which met at Annapolis.¹⁰ It was not called dictatorial. We proposed that at Philadelphia.¹¹ Was Virginia thought dictatorial? But Virginia is now to lose her pre-eminence. Those rights of equality to which the meanest individual in the community is entitled, is to bring us down infinitely below the Delaware people. Have we not a right to say, *hear our propositions?* Why, Sir, your slaves have a right to make their humble requests. Those who are in the meanest occupations of human life, have [a] right to complain. What do we require? Not pre-eminence, but safety: That our citizens may be able to sit down in peace and security under their own fig trees. I am confident that sentiments like these, will meet with unison in every State: For they will wish to banish discord from the American soil. I am certain that the warmest friend of the Constitution, wishes to have fewer enemies—fewer of those who pester and plague him with opposition. I could not withhold from my fellow-citizens any thing so reasonable. I fear you will have no Union, unless you remove the cause of opposition. Will you sit down contented with the name of Union, without any solid foundation?

Mr. *Henry* then concluded, by expressing his hopes, that his resolution would be adopted, and added, that if the Committee should disapprove of any of his amendments, others might be substituted.

Governor *Randolph.*—Mr. Chairman.—Once more, Sir, I address you, and perhaps it will be the last time I shall speak concerning this Constitution, unless I be urged by the observations of some Gentleman. Although this is not the first time that my mind has been brought to contemplate this awful period, yet I acknowledge it is not rendered less awful by familiarity with it. Did I persuade myself, that those fair days were present, which the Honorable Gentleman [Patrick Henry] described; could I bring my mind to believe, that there were peace

and tranquillity in this land, and that there was no storm gathering which would burst, and that previous amendments could be obtained, I would concur with the Honorable Gentleman: For nothing but the fear of inevitable destruction, would lead me to vote for the Constitution in spite of the objections I have to it. But, Sir, what have I heard to day? I sympathized most warmly with what other Gentlemen said yesterday, that let the contest be what it may, the minority should submit to the majority. With satisfaction and joy I heard what *he* then said—*That he would submit, and that there should be peace, if his power could procure it.*—What a sad reverse to-day! Are we not told, by way of counterpart to language that did him honor, that he would secede? I hope he will pardon, and correct me if I misrecite him; but if not corrected, my interpretation is, that secession by him will be the consequence of adoption without previous amendments.—(Here Mr. *Henry* explained himself, and denied having said any thing of secession; but that he had said he would have no hand in subsequent amendments; that he would remain and vote, and afterwards he would have no business here.)—I see, continued his Excellency, that I am not mistaken in my thoughts. The Honorable Gentleman says, he will remain and vote on the question, but after that he has no business here, and that he will go home. I beg to make a few remarks on the subject of secession. If there be in this House, Members who have in contemplation to secede from the majority, let me conjure them by all the ties of honor and duty, to consider what they are about to do. Some of them have more property than I have, and all of them are equal to me in personal rights. Such an idea as refusing to submit to the decision of the majority, is destructive of every Republican principle. It will kindle a civil war, and reduce every thing to anarchy, uncertainty, and confusion. To avoid a calamity so lamentable, I would submit to it if it contained greater evils than it does. What are they to say to their constituents when they go home.—“*We come to tell you that liberty is in danger, and though the majority is in favour of it, you ought not to submit.*” Can any man consider, without shuddering with horror, the awful consequences of such a desperate conduct? I entreat men to consider and ponder what good citizenship requires of them. I conjure them to contemplate the consequences as to themselves, as well as others. They themselves will be overwhelmed in the general disorder. I did not think that the proposition of the Honorable Gentleman near me, (Mr. *Wythe*) could have met with the treatment it has. The Honorable Gentleman [Patrick Henry] says, there are only three rights stipulated in it. I thought this error might have been accounted for at first; but after he read it, the continuance of the mistake has as-

tonished me. He has wandered from the point. (Here he read Mr. Wythe's proposition.)—Where in this paper do you discover that the people of Virginia are tenacious of three rights only? It declares, *that all power comes from the people, and that whatever is not granted by them, remains with them.*¹² That among other things remaining with them, are liberty of the press, right of conscience, and some other essential rights. Could you devise any express form of words, by which the rights contained in the Bill of Rights of Virginia could be better secured, or more fully comprehended? What is the paper which he offers in the form of a Bill of Rights? Will that better secure our rights, than a declaration like this? All rights are therein declared to be completely vested in the people, unless expressly given away. Can there be a more pointed or positive reservation?

That Honorable Gentleman [Patrick Henry], and some others, have insisted that the abolition of slavery will result from it, and at the same time have complained, that it encourages its continuation. The inconsistency proves in some degree, the futility of their arguments. But if it be not conclusive, to satisfy the Committee that there is no danger of enfranchisement taking place, I beg leave to refer them to the paper itself. I hope that there is none here, who considering the subject in the calm light of philosophy, will advance an objection dishonorable to Virginia; that at the moment they are securing the rights of their citizens, an objection is started that there is a spark of hope, that those unfortunate men now held in bondage, may, by the operation of the General Government, be made *free*. But if any Gentleman be terrified by this apprehension, let him read the system. I ask, and I will ask again and again, till I be answered (not by declamation) where is the part that has a tendency to the abolition of slavery? Is it the clause which says, that "the migration or importation of such persons as any of the States now existing, shall think proper to admit, shall not be prohibited by Congress prior to the year 1808?" This is an exception from the power of regulating commerce, and the restriction is only to continue till 1808. Then Congress can, by the exercise of that power, prevent future importations; but does it affect the existing state of slavery? Were it right here to mention what passed in Convention on the occasion, I might tell you that the Southern States, even South-Carolina herself, conceived this property to be secure by these words. I believe, whatever we may think here, that there was not a Member of the Virginia delegation who had the smallest suspicion of the abolition of slavery. Go to their meaning. Point out the clause where this formidable power of emancipation is inserted. But another clause of the Constitution proves the absurdity of the supposition. The words

of the clause are, "No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due." Every one knows that slaves are held to service and labor. And when authority is given to owners of slaves to vindicate their property, can it be supposed they can be deprived of it? If a citizen of this State, in consequence of this clause, can take his runaway slave in Maryland, can it be seriously thought, that after taking him and bringing him home, he could be made free?

I observe that the Honorable Gentleman's [Patrick Henry] proposition comes in a truly questionable shape, and is still more extraordinary and unaccountable for another consideration; that although we went article by article through the Constitution, and although we did not expect a general review of the subject, (as a most comprehensive view had been taken of it, before it was regularly debated) yet we are carried back to the clause giving that dreadful power, for the general welfare. Pardon me if I remind you of the true state of that business. I appeal to the candour of the Honorable Gentleman, and if he thinks it an improper appeal, I ask the Gentlemen here, whether there be a general indefinite power of providing for the general welfare? The power is, "to lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare." So that they can only raise money by these means, in order to provide for the general welfare. No man who reads it can say, it is general, as the Honorable Gentleman represents it. You must violate every rule of construction and common sense, if you sever it from the power of raising money and annex it to any thing else, in order to make it that formidable power which it is represented to be.

The Honorable Gentleman [Patrick Henry] says, there is no restraint on the power of issuing general warrants. If I be tedious in asking where is that power, you will ascribe it to him who has put me to the necessity of asking. They have no such power given them:—If they have, where is it?

Again he recurs to standing armies, and asks if Congress cannot raise such. Look at the Bill of Rights provided by the Honorable Gentleman himself, and tell me if there be not great security by admitting it when necessary? It says, that standing armies should be avoided in time of peace: It does not absolutely prohibit them.¹³—Is there any clause in it, or in the Confederation, which prevents Congress from raising an army?—No—it is left to the discretion of Congress. It ought to be in the power of Congress to raise armies, as the existence

of the society might at some future period depend upon it. But it should be recommended to them to use the power only when necessary. I humbly conceive, that you will have as great security as you could desire from that clause in the Constitution, which directs that money for supporting armies will be voted for every two years; as by this means, the Representatives who will have appropriated money unnecessarily, or imprudently, to that purpose, may be removed, and a new regulation made. Review the practice of the favourite nation of that Honorable Gentleman. In their Bill of Rights, there is no prohibition of a standing army, but only that it ought not to be maintained without the consent of the Legislature.¹⁴ Can it be done here without the consent of the Democratic branch? Their consent is necessary to every bill, and money bills can originate with them only. Can an army then be raised or supported without their approbation?

(His Excellency then went over all the articles of Mr. *Henry's* proposed Declaration of Rights, and endeavoured to prove, that the rights intended to be thereby secured, were either provided for in the Constitution itself, or could not be infringed by the General Government, as being unwarranted by any of the powers which were delegated therein; for that it was in vain to provide against the exercise of a power which did not exist.) He then proceeded to examine the nature of some of the amendments proposed by the Honorable Gentleman. As to the reservation of rights not expressly given away, he repeated what he had before observed, of the 2d article of Confederation, that it was interpreted to prohibit Congress from granting passports, although such a power was necessarily incident to that of making war.¹⁵ Did not this, says he, shew the vanity of all Federal authority? Gentlemen have displayed great wisdom in the use they make of the experience of the defects in the old Confederation. When we see the defect of that article, are we to repeat it? Are those Gentlemen zealous friends to the Union, who profess to be so here, and yet insist on a repetition of measures which have been found destructive to it? I believe their professions, but they must pardon me, when I say, their arguments are not true.

(His Excellency then read the 2d amendment proposed, respecting the number of Representatives.)—What better security have you under these words, than under the clause in the paper before you? This puts it in the power of your Representatives to continue the number as it is in that paper. They may always find a pretext to justify their regulations concerning it. They may continue the number at two hundred, when an augmentation would be necessary.

As to the amendment respecting direct taxation, the subject has been

so fully handled, and is so extensive in its nature, that it is needless to say any thing of it.

The 4th amendment goes on the wide field of indiscriminate suspicion, that every one grasps after offices, and that Congress will create them unnecessarily. Perhaps it will exclude the most proper from offices of great importance to the community.

(Here he read the 5th amendment.)—I beg the Honorable Gentleman to tell me on what subject Congress will exercise this power improperly. If there be any treachery in their view, the words in this amendment are broad enough to allow it. It is as good a security in this Constitution, as human ingenuity can devise:—For if they intend any treachery they will not let you see it.

(Here he read the 7th and 8th amendments.)—I have never hesitated to acknowledge, that I wished the regulation of commerce had been put in the hands of a greater body than it is in the sense of the Constitution. But I appeal to my colleagues in the Federal Convention, whether this was not a *sine qua non* of the Union. Of all the amendments, this is the most destructive, which requires the consent of three-fourths of both Houses to treaties ceding or restraining territorial rights. This is priding in the Virginian sovereignty in opposition to the majority. This suspected Congress—these corrupt 65, and corrupt 26, are brought so low they cannot be trusted, lest they should have it in their power to lop off part of Virginia, cede it, so as that it should become a colony to some foreign State. There is no power in the Constitution to cede any part of the territories of the United States. The whole number of Congress, being unanimous, have no power to suspend or cede territorial rights. But this amendment admits in the fullest latitude, that Congress have a right to dismember the empire.

His amendment respecting the militia is unnecessary. The same power rests in the States by the Constitution. Gentlemen were repeatedly called upon to shew where the power of the States over the militia was taken away. But they could not point it out.

(He read the 12th amendment.)—Will this be a melioration of the Constitution? I wish to know what is meant by the words *police* and *good government*? These words may lead to complete tyranny in Congress. Perhaps some Gentlemen think that these words relate to particular objects, and that they will diminish and confine their power. They are most extensive in their signification, and will stretch and dilate it, and all the imaginary horrors of the Honorable Gentleman will be included in this amendment.

(He read the 13th amendment.)—I was of this opinion myself.—But I informed you before why I changed it.

(He read the 14th amendment.)—If I were to propose an amendment on this subject, it would be to limit the word *arising*. I would not discard it altogether, but define its extent. The jurisdiction of the Judiciary in cases arising under the system, I should wish to be defined, so as to prevent its being extended unnecessarily; I would restrain the appellate cognizance as to fact, and prevent oppressive and vexatious appeals.

(He read the 15th amendment.)—The right of challengeing and excepting I hope has clearly appeared to the Committee, to be a necessary appendage of the trial by jury itself. Permit me now to make a few remarks on the proposal of these amendments, previous to our ratification. The first objection arises from the paper itself. Can you conceive, or does any man believe, that there are twelve, or even nine States in the whole Union, that would subscribe to this paper? A paper fraught with perhaps, more defects than the Constitution itself. What are we about to do? To make this the condition of our coming into this Government. I hope Gentlemen will never agree to this. If we declare that these amendments, and a Bill of Rights containing twenty articles, must be incorporated into the Constitution, before we assent to it, I ask you, whether you may not bid a long farewell to the Union? It will produce that deplorable thing,—the dissolution of the Union, which no man yet has dared openly to advocate? No, says the Gentleman, because Maryland kept off three years from the Confederacy, and no injury happened. This very argument carries its own refutation with it. The war kept us together, in spite of the discordance of the States. There is no war now. All the nations of Europe have their eyes fixed on America, and some of them perhaps cast wishful looks at you. Their gold may be tried to sow disunion among us. The same bandage which kept us before together, does not now exist. Let Gentlemen seriously ponder the calamitous consequences of dissolving the Union in our present situation. I appeal to the great searcher of hearts on this occasion, that I behold the greatest danger that ever happened, hanging over us. For previous amendments are but another name for rejection. They will throw Virginia out of the Union, and cause heart aches to many of those Gentlemen who may vote for them. But let us consider things calmly. Reflect on the facility of obtaining amendments if you adopt, and weigh the danger if you do not.—Recollect that many other States have adopted it, who wish for many amendments. I ask you, if it be not better to adopt and run the chance of amending it hereafter, than run the risk of endangering the Union? The Confederation is gone: It has no authority. If in this situation we reject the Constitution, the Union will be dissolved; the dogs of war will break

loose, and anarchy and discord will complete the ruin of this country. Previous adoption will prevent these deplorable mischiefs. The unison of sentiments with us in the adopting States, will render subsequent amendments easy. I therefore rest my happiness with perfect confidence on this subject.

Mr. *George Mason*.—Mr. Chairman,—With respect to commerce and navigation, he [Edmund Randolph] has given it as his opinion, that their regulation, as it now stands, was a *sine qua non* of the Union, and that without it, the States in Convention would never concur. I differ from him. It never was, nor in my opinion ever will be, a *sine qua non* of the Union. I will give you, to the best of my recollection, the history of that affair. This business was discussed at Philadelphia for four months, during which time the subject of commerce and navigation was often under consideration; and I assert, that eight States out of twelve, for more than three months, voted for requiring two-thirds of the members present in each House to pass commercial and navigation laws. True it is, that afterwards it was carried by a majority, as it stands. If I am right, there was a great majority for requiring two-thirds of the States in this business, till a compromise took place between the Northern and Southern States; the Northern States agreeing to the temporary importation of slaves, and the Southern States conceding, in return, that navigation and commercial laws should be on the footing on which they now stand.¹⁶ If I am mistaken, let me be put right. These are my reasons for saying that this was not a *sine qua non* of their concurrence. The Newfoundland fisheries will require that kind of security which we are now in want of: The Eastern States therefore agreed at length, that treaties should require the consent of two-thirds of the members present in the Senate.

Mr. *Dawson*.—Mr. Chairman,—When a nation is about to make a change in its pol[it]ical character, it behoves it to summon the experience of ages which have passed, to collect the wisdom of the present day, to ascertain clearly those great principles of equal liberty, which secure the rights, the liberties, and properties of the people. Such is the situation of the United States at this moment. We are about to make such a change.

The Constitution proposed for the government of the United States, has been a subject of general discussion; and while many able and honorable gentlemen within these walls, have, in the development of the various parts, delivered their sentiments with that freedom which will ever mark the citizens of an independent State, and with that ability which will prove to the world their eminent talents; I, Sir, although urged by my feelings, have forbore to say any thing on my part, from

a satisfactory impression of the inferiority of my talents, and from a wish to acquire every information which might assist my judgment in forming a decision on a question of such magnitude. But, Sir, as it involves in its fate the interest of so extensive a country, every sentiment which can be offered deserves its proportion of public attention. I shall therefore avoid any apology for now rising although uncommon propriety might justify it, and rather trust to the candour of those who hear me: Indeed I am induced to come forward, not from any apprehension that my opinions will have weight, but in order to discharge that duty which I owe to myself, and to those I have the honor to represent.

The defects of the articles by which we are at present confederated, have been echoed and re-echoed, not only from every quarter of this House, but from every part of the continent. At the framing of those articles, a common interest excited us to unite for the common good: But no sooner did this principle cease to operate, than the defects of the system were sensibly felt. Since then the seeds of civil dissension have been gradually opening, and political confusion has pervaded the States. During the short time of my political life, having been fully impressed with the truth of these observations, when a proposition was made by Virginia to invite the sister States to a General Convention, at Philadelphia, *to amend these defects*,¹⁷ I readily gave my assent; and when I considered the very respectable characters who formed that body—when I reflected that they were, most of them, those sages and patriots, under whose banners and by whose councils, it had been rescued from impending danger, and placed among the nations of the earth—when I also turned my attention to that illustrious character [George Washington], *to immortalize whose memory, Fame shall blow her trump* to the latest ages—I say, when I weighed all these considerations, I was almost persuaded to declare in favour of the proposed plan, and to exert my slender abilities in its favour. But, when I came to investigate it impartially, on the immutable principles of government, and to exercise that reason, with which the God of Nature hath endowed me, and which I will ever freely use, I was convinced of this important, though melancholy truth, “that the greatest men may err,” and that their errors are sometimes of the greatest magnitude. I was persuaded that, although the proposed plan contains many things excellent, yet by the adoption of it, as it now stands, the liberties of America, in general; the property of Virginia in particular; would be endangered.

These being my sentiments; sentiments which I offer with the diffidence of a young politician, but with the firmness of a republican; which I am ready to change when I am convinced they are founded

in error; but which I will support until that conviction—I should be a traitor to my country and unworthy that freedom, for which I trust I shall ever remain an advocate, was I to declare my entire approbation to the plan, as it now stands, or assent to its ratification without previous amendments.

During the deliberations of this Convention, several gentlemen of eminent talents, have exerted themselves to prove the necessity of the Union, by presenting to our view the relative situation of Virginia to the other States: The melancholy representation made to day, and frequently before, by an Honorable Gentleman (Governor *Randolph*) of our State, reduced, in his estimation, to the lowest degree of degradation, must now haunt the recollection of any gentlemen in this Committee, how far he has drawn the picture to the life, or where it is too highly coloured, rests with them to determine. To Gentlemen, however, Sir, of their abilities, the task was easy, and perhaps I may add unnecessary. It is a truth admitted on all sides, and I presume there is not a Gentleman, who hears me, who is not a friend to a Union of the Thirteen States.

But, Sir, an opinion is gone abroad (from whence it originated, or by whom it is supported, I will not venture to say) that the opponents to the paper on your table, are enemies to the Union; it may not therefore be improper for me to declare, that *I am* a warm friend to a firm, federal, energetic Government; that I consider a confederation of the States, on republican principles, as a security to their mutual interest, and a disunion as injurious to the whole: But I shall lament exceedingly, when a confederation of independent States shall be converted into a consolidated Government; for when that event shall happen, I shall consider the history of American liberty as short as it has been brilliant, and we shall afford one more proof to the favorite maxim of tyrants, “that mankind cannot govern themselves.”

An Honorable Gentleman (Col. *H. Lee*) came forward some days since,¹⁸ with all the powers of eloquence, and all the warmth of enthusiasm—after discanting on some military operations to the South, of which he was a spectator, and pronouncing sentence of condemnation on a Mr. *Shays*, to the North—as a military character, he boldly throws the gauntlet and defies the warmest friend to the opposition to come forth, and say that the friends to the system on your table, are not also friends to republican liberty. Arguments, Sir, in this House, should ever be addressed to the reason, and should be applied to the system itself, and not to those who either support or oppose it. *I*, however, dare come forth, and tell that Honorable Gentleman, not with the military warmth of a young soldier, but with the firmness

of a republican, that in my humble opinion, had the paper now on your table, and which is so ably supported, been presented to our view ten years ago (when the *American spirit* shone forth in the meridian of glory, and rendered us the wonder of an admiring world) it would have been considered as containing principles incompatible with republican liberty, and therefore doomed to infamy.

Having, Sir, made these loose observations, and having proved, I flatter myself, to this Honorable Convention, the motives from which my opposition to the proposed system originated; may I now be permitted to turn my attention, for a very few moments, to the system itself, and to point out some of the leading parts, most exceptionable in my estimation, and to which my original objections have not been removed, by the debate, but rather confirmed.

If we grant to Congress the power of direct taxation; if we yield to them the sword, and if we also invest them with the Judicial authority; two questions of the utmost importance, immediately present themselves to our inquiries—whether these powers will not be oppressive in their operations, and aided by other parts of the system, convert the Thirteen Confederate States into one consolidated government—and, whether any country, as extensive as North-America, and where climates, dispositions, and interests, are so essentially different, can be governed under one consolidated plan, except by the introduction of despotic principles—The warmest friends, Sir, to the Government, some of those who formed, signed, and have recommended it; some of those who have enthusiastically supported it in every quarter of this Continent; have answered my first query in the affirmative: They have admitted that it possesses few federal features and will ultimately end in a consolidated Government—a truth which in my opinion they would have denied in vain, for every article, every section, every clause, and almost every line, prove that it will have this tendency: And if this position has, during the course of the long and learned debates on this head, been established to the satisfaction of the Convention; I apprehend that the authority of all eminent writers on the subject, and the experience of all ages, cannot be controverted, and that it will be admitted that no government, formed on the principles of freedom, can pervade all North America.

This, Sir, is my great objection; an objection general in its nature, because it operates on the whole system; an objection which I early formed, which I flattered myself would have been removed, but which hath obliged me to say, has been confirmed by the observations which have been made by many learned Gentlemen, and which it would be tedious for me now to recapitulate.

That the Legislative, Executive, and Judicial powers, should be separate and distinct, in all free governments, is a political fact, so well established, that I presume I shall not be thought arrogant, when I affirm, that no country ever did, or ever can, long remain free, where they are blended. All the States have been in this sentiment, when they formed their State Constitutions, and therefore have guarded against the danger; and every school-boy in politics must be convinced of the propriety of the observation—and yet by the proposed plan, the Legislative and Executive powers are closely united; the Senate, who compose one part of the Legislature, are also as council to the President, the Supreme Head, and are concerned in passing laws, which they themselves are to execute.

The wisdom, Sir, of many nations, has induced them to enlarge the powers of their rulers, but there are very few instances of the relinquishment of power or the abridgement of authority, on the part of the governors. The very first clause of the eighth section of the first article, which gives to Congress the power “to lay and collect taxes, duties, imposts, excises, &c. &c.” appears to me to be big with unnecessary danger, and to reduce human nature, to which I would willingly pay a compliment did not the experience of all ages rise up against me, to too great a test. The arguments, Sir, which have been urged by some Gentlemen, that the impost will defray all expences, in my estimation, cannot be supported; and common sense will never assent to the assertions which have been made, that the government will not be an additional expence to this country. Will not the support of an army and navy—will not the establishment of a multiplicity of offices in the Legislative, Executive, and particularly the Judiciary departments, most of which will be of a national character, and must be supported with a superior degree of dignity and credit, be prodigious additions to the national expence? And, Sir, if the States are to retain, even the shadow of sovereignty, the expence thence arising must also be defrayed, and will be very considerable.

I come now, Sir, to speak of a clause, to which our attention has been frequently called, and on which many Gentlemen have already delivered their sentiments; a clause, in the estimation of some, of little consequence, and which rather serves as a pretext for scuffling for votes, but which, in my opinion, is one of the most important contained in the system, and to which there are many and weighty objections. I refer to the clause, empowering the President, by and with the consent of two thirds of the Senators present, to make treaties.—If, Sir, the dismemberment of empire—if the privation of the most essential (~~natural~~) (national) rights, and the very existence of a people, depend on

this clause, surely, Sir, it merits the most thorough investigation; and if, on that investigation, it appears that those great rights are endangered, it highly behoves us to amend it in such manner as will prevent the evils which may arise from it as it now stands. My objections to it do not arise from a view of the particular situation of the western part of this State, although certainly we are bound, by every principle, to attend to the interest of our fellow-citizens in that quarter, but from an apprehension that the principle pervades all America, and that in its operation, it will be found highly injurious to the Southern States. It will, I presume, be readily admitted, that the dismemberment of empire is the highest act of sovereign authority, the exercise of which can be authorized only by absolute authority: Exclusive then, Sir, of any consideration which arises from the particular system of American politics, the guard established against the exercise of this power is by far too slender. The President with the concurrence of two-thirds of the Senate present, may make a treaty, by which any territory may be ceded or the navigation of any river surrendered; thereby granted to five States the exercise of a right acknowledged to be the highest act of sovereignty—to fifteen men, not the representatives of the country to be ceded, but, as has already happened, men whose interest and policy it may be to make such surrender. Admitting for a moment, that this point is as well guarded by the proposed plan, as by the old Articles of Confederation, to which however common sense can never assent, have we not already had cause to tremble, and ought we not to guard against the accomplishment of a scheme, to which nothing but an inattention to the general interest of America, and a selfish regard to the interest of particular States, could have given rise: Surely, Sir, we ought; and since we have already seen a diabolical attempt made to surrender the navigation of a river,¹⁹ the source of which is as yet unknown, and on which depends the importance of the southern part of America—since we have every reason to believe that the same principle which at first dictated this measure still exists and will forever operate—it is our duty; a duty we owe to ourselves; which we owe to the southern part of America, and which we owe to the natural rights of mankind, to guard against it in such manner as will forever prevent its accomplishment. This, Sir, is not done by the clause, nor will it rest on that sure footing which I wish and which the importance of the subject demands, until the concurrence of three-fourths of *all the Senators*, shall be requisite to ratify a treaty respecting the cession of territory; the surrender of the navigation of rivers, or the use of the American seas.

That sacred palladium of liberty, the freedom of the press, the in-

fluence of which is so great that it is the opinion of the ablest writers, that no country can remain long in slavery where it is restrained, has not been expressed, nor are the liberties of the people ascertained and protected by any declaration of rights—that inestimable privilege, the most important which freemen can enjoy, the trial by jury in all civil cases has not been guarded by the system—and while they have been inattentive to these all important considerations, they have made provision for the introduction of standing armies in time of peace—These, Sir, ever have been used as the grand machines to suppress the liberties of the people, and will ever awaken the jealousy of republicans, so long as liberty is dear and tyranny odious to mankind.

Congress, Sir, have the power “to declare war,” and also to raise and support armies, and if we suppose them to be a representation of the States, the *nexus imperu* of the British Constitution is here lost—there the King has the power of declaring war, and the Parliament that of raising money to support it. Governments ought not to depend on an army for their support, but ought to be so formed as to have the confidence, respect and affection of the citizens—Some degree of virtue, Sir, must exist, or freedom cannot live—A standing army will introduce idleness and extravagance, which will be followed by their sure concomitant vices—In a country extensive, like ours, the power of the sword is more sensibly felt, than in a small community—the advantages, Sir, of military science and discipline cannot be exerted unless a proper number of soldiers are united in one body, and actuated by one soul. The tyrant of a single town, or a small district, would soon discover that an hundred armed soldiers were a weak defence against ten thousand peasants or citizens: but ten thousand well disciplined soldiers will command, with despotic sway, millions of subjects, and will strike terror into the most numerous populace. It was this, Sir, which enabled the Prætoorean bands of Rome, whose number scarcely amounted to ten thousand, after having violated the sanctity of the throne, by the atrocious murder of a most excellent Emperor, to dishonor the majesty of it, by proclaiming that the Roman Empire—the mistress of the world—was to be disposed of to the highest bidder, at public auction;—and to their licentious frenzy may be attributed the *first* cause of the decline and fall of that mighty Empire²⁰—We ought therefore strictly to guard against the establishment of an army, whose only occupation would be idleness, whose only effort the introduction of vice and dissipation, and who would, at some future day deprive us of our liberties, as a reward for past favors, by the introduction of some military despot.

I had it in contemplation, to have made some observations on the

disposition of the Judicial powers, but as my knowledge in that line is confined, and as the subject has been so ably handled by other Gentlemen, and the defects clearly developed, and as their arguments remain unanswered, I shall say nothing on that head;—the want of responsibility to the people from their Representatives, would furnish matter of ample discussion, but I pass it over in silence, only observing that it is a grand, and indeed a *daring* fault, and one which sanctions with security the most tyrannic edicts, of a despotic ruler. The ambiguous terms in which all rights are secured to the people, and the clear and comprehensive language used, when power is granted to Congress, also affords matter for suspicions and objections, but the able manner in which, my very worthy, my very eloquent, and truly patriotic friend and co-adjutor [Patrick Henry], whose name shall ever be hallowed in the temple of liberty, has handled this subject, would render any observations from me, tedious and unnecessary.

Permit me then to conclude by reminding Gentlemen who appeal to history to prove the excellence of the proposed plan, that their mode of comparison is unjust—“Wealth and extent of territory, says the great Montesquieu, have a relation to Government, and the manners and customs of the people are closely connected with it.” The same system of policy which might have been excellent in the Governments of antiquity, would not probably suit *us* at the present day—The question therefore which should be agitated, is not whether the proposed Constitution is better or worse than those which have from time to time existed, but whether it is calculated to secure our liberties and happiness at the present stage of the world.

For my own part, after an impartial investigation of it, and after a close attention, and candid consideration of the arguments which have been used, I am impressed with an opinion, that it is not—I am persuaded, that by adopting it, and then proposing amendments, that unfortunate traveller liberty is more endangered than the Union of the States will be by first proposing these amendments. I am so far an enthusiast in favor of liberty, that I never will trust the sacred deposit to other hands, nor will I exchange it for any earthly consideration—and I have such a fixed aversion to the bitter cup of slavery, that in my estimation a draught is not sweetened, whether administered by the hand of a Turk, a Briton, or an American.

Impressed then, Sir, with these sentiments, and governed by these principles, I shall decidedly give my vote in favor of previous amendments;—but, Sir, should the question be decided contrary to my wishes, the first wish of my heart is, that that decision may promote the happiness and prosperity of the country so dear to us all.

Mr. *Grayson*.—Mr. Chairman.—Gentlemen have misrepresented what I said on the subject of treaties.²¹ On this ground let us appeal to the law of nations. How does it stand? Thus—that without the consent of the national Legislature dismemberment cannot be made. This is a subject in which Virginia is deeply interested, and ought to be well understood. It ought to be expressly provided, that no dismemberment should take place without the consent of the Legislature. On this occasion, I beg leave to introduce an instance mentioned on the floor of Congress. *Francis, King of France*, was taken by the Spaniards at the battle of *Pavia*. He stipulated to give up certain territories, to be liberated. Yet the stipulation was not complied with, because it was alledged, that it was not made by the Sovereign power.²² Let us apply this. Congress has a right to dismember the Empire. The President may do it, and the Legislature may confirm it. Let Gentlemen contradict it, if they can. This is one of the highest acts of sovereignty, and I think it of the utmost importance that it should be on a proper footing. There is an absolute necessity for the existence of the power. It may prevent the annihilation of the society, by procuring a peace. It must be lodged somewhere. The opposition wish it to be put in the hands of three-fourths of the members of both Houses of Congress. It would be then secure. It is not so now.

The dangers of disunion were painted in strong colours. How is the fact? It is this—that if Virginia thinks proper to insist on previous amendments, joined by New-York and North-Carolina, she can procure what amendments she pleases. What is the geographical position of these States? New-York commands the ocean. Virginia and North-Carolina join the Spanish dominions. What would be the situation then of the other States? They would be topographically separated, though politically connected with one another. There would be no communication between the center and the component parts. While those States were thus separated, of what advantage would commercial regulations be to them? Yet will Gentlemen pretend to say that we must adopt first, and then beg for amendments? I see no reason in it. We under-value our own importance. Consider the vast consequence and importance of Virginia and North-Carolina. What kind of connection would the rest of the States form? They would be carrying States, without having any thing to carry. They could have no communication with the other southern States. I therefore insist, that if you are not satisfied with the paper as it stands, it is as clear to me as that the sun shines, that by joining those two States, you may command such amendments as you think necessary for the happiness of the people. The late Convention were not empowered totally to alter the present

confederation. The idea was to amend. If they have laid before us a thing quite different, we are not bound to accept it: There is nothing dictatorial in refusing it: We wish to remove the spirit of party. In all parts of the world there is a reciprocity in contracts and compacts. If one man make a proposition to another, is he bound to accept it?

Six or seven States have agreed to it. As it is not their interest to stand by themselves, will they not with open arms receive us? Tobacco will always make our peace with them. I hope then that the honorable Gentleman [Edmund Randolph] will find on a reconsideration, that we are not at all in that dangerous situation he represented.—In my opinion, the idea of subsequent amendments is preposterous—They are words without meaning. The little States will not agree to an alteration. When they find themselves on an equal footing with the other States in the Senate; and all power vested in them—the Executive mixed with the Legislative, they will never assent. Why are such extensive powers given to the Senate? Because the little States gained their point. In every light I consider subsequent amendments as unwise and impolitic.

Considering the situation of the Continent, this is not a time for changing our Government. I do not think we stand so secure with respect to other nations, as to change our Government. The nations of Europe look with watchful eyes on us, and with reason—For their West-India Islands depend on our motions. When we have strength, importance and Union, they will have reason to tremble for their Islands. Almost all the Governments of the world have been formed by accident. We are now in time of peace, without any real cause, changing our Government. We ought to be cool and temperate, and not act like the people of *Denmark*, who gave up their liberties, in a transport of passion to the Crown.²³ Let us therefore be cautious and deliberate before we determine. What is the situation of Virginia? She is a rich State—rich when her resources are compared with those of others. Is it right for a rich nation to consolidate with a poor one? By no means. It was right for Scotland to unite with England, as experience has shewn. Scotland only pays £. 48,000 when England pays four shillings in the pound, which amounts to £. 2,000,000.²⁴ In all Unions where a rich State is joined with a poor one, it will be found, that the rich one will pay in that disproportion. An Union between such nations ought never to take place, except in peculiar circumstances, and on very particular conditions. How is it with Virginia? It is politic for her to unite, but not on any terms. She will pay more than her natural proportion, and the present state of the national debt renders it an

object. She will also lose her importance. She is now put in the same situation as a State forty times smaller.

Does she gain any advantage from her central situation, by acceding to that paper? Within ten miles of Alexandria, the centre of the States is said to be. It has not said, that the ten miles square will be there. In a Monarchy the seat of Government must be where the Monarch pleases. How ought it to be in a Republic like ours? Now in one part and at another time in another, or where it will best suit the convenience of the people. Then I lay it down as a political right, that the seat of Government ought to be fixed by the Constitution, so as to suit public convenience.

Has Virginia any gain from her riches and commerce? What does she get in return? I can see what she gives up, which is immense. The little States gain in proportion as we lose. Every disproportion is against us. If the effects of such a contrariety of interests be happy, it must be extraordinary and wonderful. From the very nature of the paper, one part whose interest is different from the other, is to govern it. What will be our situation? The northern States are carrying States. We are considered as productive States. They will consequently carry for us. Are manufactures favorable to us? If they reciprocate the act of *Charles* the second, and say that no produce of America will be carried in any foreign bottom, what will be the consequence?²⁵ This—that all the produce of the southern States will be carried by the northern States on their own terms; which must be very high.

Though this Government has the power of taxation and the most important subjects of Legislation, there is no responsibility any where. The Members of Delaware do not return to Virginia to give an account of their conduct. Yet they Legislate for us. In addition to this, it will be productive of great expences. Virginia has assumed an immense weight of private debt, and her imports and exports are taken away. Judge then how such an accumulation of expences will accommodate us.

I think that were it not for one great character in America, so many men would not be for this Government. We have one ray of hope—We do not fear while he lives: But we can only expect his *fame* to be immortal. We wish to know, who besides him, can concentrate the confidence and affections of all America?²⁶

He then concluded by expressing hopes that the proposition of his honorable friend [Patrick Henry] would be acceded to.²⁷

Mr. *Madison*,—Mr. Chairman.—Nothing has excited more admiration in the world, than the manner in which free Governments have been established in America. For it was the first instance from the creation

of the World to the American revolution, that free inhabitants have been seen deliberating on a form of Government, and selecting such of their citizens as possessed their confidence, to determine upon, and give effect to it. But why has this excited so much wonder and applause? Because it is of so much magnitude, and because it is liable to be frustrated by so many accidents. If it has excited so much wonder, that the United States have in the middle of war and confusion, formed free systems of Government, how much more astonishment and admiration will be excited, should they be able, peaceably, freely and satisfactorily, to establish one General Government, when there is such a diversity of opinions, and interests, when not cemented or stimulated by any common danger? How vast must be the difficulty of concentrating in one Government, the interests, and conciliating the opinions of so many different heterogeneous bodies? How have the Confederacies of ancient and modern times been formed? As far as ancient history describes the former to us, they were brought about by the wisdom of some eminent Sage. How was the imperfect Union of the Swiss Cantons formed? By danger—How was the Confederacy of the United Netherlands formed? By the same. They are surrounded by dangers. By these and one influential character, they were stimulated to unite. How was the Germanic system formed? By danger, in some degree, but principally by the over-ruling influence of individuals. When we consider this Government, we ought to make great allowances. We must calculate the impossibility that every State should be gratified in its wishes, and much less that every individual should receive this gratification. It has never been denied by the friends of the paper on the table, that it has defects. But they do not think that it contains any real danger. They conceive that they will in all probability be removed when experience will shew it to be necessary. I beg that Gentlemen in deliberating on this subject, would consider the alternative.—Either nine States shall have ratified it, or they will not. If nine States will adopt it, can it be reasonably presumed or required, that nine States having freely and fully considered the subject, and come to an affirmative decision, will, upon the demand of a single State, agree that they acted wrong, and could not see its defects—tread back the steps which they have taken, and come forward and reduce it to uncertainty, whether a general system shall be adopted or not? Virginia has always heretofore spoken the language of respect to the other States, and she has always been attended to. Will it be that language, to call on a great majority of the States to acknowledge that they have done wrong? Is it the language of confidence to say, that we do not believe that amendments for the preservation of the com-

mon liberty and general interest of the States, will be consented to by them?—This is neither the language of confidence nor respect. Virginia, when she speaks respectfully, will be as much attended to, as she has hitherto been, when speaking this language. It is a most awful thing that depends on our decision—no less than whether the thirteen States shall Unite freely, peaceably, and unanimously, for the security of their common happiness and liberty, or whether every thing is to be put in confusion and disorder! Are we to embark in this dangerous enterprise, uniting various opinions to contrary interests, with the vain hopes of coming to an amicable concurrence?

It is worthy of our consideration, that those who prepared the paper on the table, found difficulties not to be described, in its formation—Mutual deference and concession were absolutely necessary. Had they been inflexibly tenacious of their individual opinions, they would never have concurred. Under what circumstances was it formed? When no party was formed, or particular proposition made, and men's minds were calm and dispassionate. Yet under these circumstances, it was difficult, extremely difficult to agree to any general system.

Suppose eight States only should ratify it, and Virginia should propose certain alterations, as the previous condition of her accession. If they should be disposed to accede to her proposition, which is the most favorable conclusion, the difficulty attending it will be immense. Every State, which has decided it, must take up the subject again. They must not only have the mortification of acknowledging that they had done wrong, but the difficulty of having a reconsideration of it among the people, and appointing new Conventions to deliberate upon it. They must attend to *all* the amendments, which may be dictated by as great a diversity of political opinions, as there are local attachments. When brought together in one Assembly they must go through, and accede to every one of the amendments. The Gentlemen who within this House have thought proper to propose previous amendments, have brought no less than forty amendments—a bill of rights which contains twenty amendments, and twenty other alterations, some of which are improper and inadmissible. Will not every State think herself equally entitled to propose as many amendments? And suppose them to be contradictory, I leave it to this Convention, whether it be probable that they can agree, or agree to any thing but the plan on the table;—or whether greater difficulties will not be encountered, than were experienced in the progress of the formation of this Constitution.

I have said that there was a great contrariety of opinions among the Gentlemen in the opposition. It has been heard in every stage of their opposition. I can see from their amendments, that very great sacrifices

have been made by some of them.—Some Gentlemen think that it contains too much State influence; others, that it is a complete consolidation, and a variety of other things. Some of them think that the equality in the Senate, is not a defect; others, that it is the bane of all good Government. I might, if there were time, shew a variety of other cases, where their opinions are contradictory. If there be this contrariety of opinions in this House, what contrariety may not be expected, when we take into view, thirteen Conventions equally or more numerous? Besides, it is notorious from the debates which have been published, that there is no sort of uniformity in the grounds of the opposition.

The State of New-York has been adduced. Many in that State are opposed to it from local views. The two who opposed it in the General Convention from that State, are in the State Convention.²⁸ Every step of this system was opposed by those two Gentlemen. They were unwilling to part with the old Confederation. Can it be presumed then, Sir, that Gentlemen in this State, who admit the necessity of changing, should ever be able to unite in sentiments with those who are totally averse to any change.

I have revolved this question in my mind, with as much serious attention, and called to my aid as much information as I could, yet I can see no reason for the apprehensions of Gentlemen; but I think that the most happy effects for this Country would result from adoption, and if Virginia will agree to ratify this system, I shall look upon it as one of the most fortunate events that ever happened, for human nature. I cannot, therefore, without the most excruciating apprehensions, see a possibility of losing its blessings—It gives me infinite pain to reflect, that all the earnest endeavours of the warmest friends of their Country, to introduce a system promotive of our happiness, may be blasted by a rejection, for which I think with my Honorable friend [Edmund Randolph], that previous amendments are but another name. The Gentlemen in opposition seem to insist on those previous amendments, as if they were all necessary for the liberty and happiness of the people.—Were I to hazard an opinion on the subject, I would declare it infinitely more safe in its present form, than it would be after introducing into it that long train of alterations which they call amendments.

With respect to the proposition of the Honorable Gentleman to my left (Mr. *Wythe*) Gentlemen apprehend, that by enumerating three rights, it implied there were no more. The observations made by a Gentleman lately up [Edmund Randolph], on that subject, correspond precisely with my opinion. That resolution declares, that the powers

granted by the proposed Constitution, are the gift of the people, and may be resumed by them when perverted to their oppression, and every power not granted thereby, remains with the people, and at their will. It adds likewise, that *no right of any denomination*, can be cancelled, abridged, restrained or modified, by the General Government, or any of its officers, except in those instances in which power is given by the Constitution for these purposes. There cannot be a more positive and unequivocal declaration of the principles of the adoption—that every thing not granted, is reserved. This is obviously and self-evidently the case, without the declaration.—Can the General Government exercise any power not delegated? If an enumeration be made of our rights, will it not be implied, that every thing omitted, is given to the General Government? Has not the Honorable Gentleman [Patrick Henry] himself, admitted, that an imperfect enumeration is dangerous? Does the Constitution say that they shall not alter the law of descents, or do these things which would subvert the whole system of the State laws? If it did, what was not excepted, would be granted. Does it follow from the omission of such restrictions, that they can exercise powers not delegated? The reverse of the proposition holds. The delegation alone warrants the exercise of any power. With respect to the amendments, proposed by the Honorable Gentleman [Patrick Henry], it ought to be considered how far they are good. As far as they are palpably and insuperably objectionable, they ought to be opposed. One amendment he proposes, is, that any army which shall be necessary, shall be raised by the consent of two-thirds of the States. I most devoutly wish, that there may never be an occasion of having a single regiment. There can be no harm in declaring, that standing armies in time of peace, are dangerous to liberty, and ought to be avoided, as far as it may be consistent with the protection of the community. But when we come to say, that the national security shall depend, not on a majority of the people of America, but that it may be frustrated by less than one-third of the people of America; I ask if this be a safe or proper mode? What part of the United States are most likely to stand in need of this protection? The weak parts, which are the Southern States. Will it be safe to leave the United States at the mercy of *one-third* of the States, a number, which may comprise a very small proportion of the American people? They may all be in that part of America which is least exposed to danger. As far as a remote situation from danger, would render exertions for public defence less active, so far the Southern States would be endangered.

The regulation of commerce, he further proposes, should depend on two-thirds of both Houses. I wish I could recollect the history of

this matter, but I cannot call it to mind with sufficient exactness. But I well recollect the reasoning of some Gentlemen on that subject. It was said, and I believe with truth, that every part of America, does not stand in equal need of security. It was observed, that the Northern States were most competent to their own safety. Was it reasonable, asked they, that they should bind themselves to the defence of the southern States; and still be left at the mercy of the minority for commercial advantages? Should it be in the power of the minority to deprive them of this and other advantages, when they were bound to defend the whole Union, it might be a disadvantage for them to confederate. These were their arguments. This policy of guarding against political inconveniences, by enabling a small part of the community to oppose the Government, and subjecting the majority to a small minority is fallacious. In some cases it may be good; in others it may be fatal. In all cases it puts it in the power of the minority to decide a question which concerns the majority.

I was struck with surprise when I heard him [Patrick Henry] express himself alarmed with respect to the emancipation of slaves. Let me ask, if they should even attempt it, if it will not be an usurpation of power? There is no power to warrant it, in that paper. If there be, I know it not. But why should it be done? Says the Honorable Gentlemen for the general welfare—It will infuse strength into our system. Can any Member of this Committee suppose, that it will increase our strength? Can any one believe, that the American Councils will come into a measure which will strip them of their property, discourage, and alienate the affections of, five-thirteenths of the Union. Why was nothing of this sort aimed at before? I believe such an idea never entered into any American breast, nor do I believe it ever will, unless it will enter into the heads of those Gentlemen who substitute unsupported suspicions to reasons.

I am persuaded that the Gentlemen who contend for previous amendments, are not aware of the dangers which must result. Virginia after having made opposition, will be obliged to recede from it. Might not the nine States say with a great deal of propriety—"It is not proper, decent, or right in you, to demand that we should reverse what we have done.—Do as we have done—Place confidence in us, as we have done in one another—and then we shall freely, fairly and dispassionately consider and investigate your propositions, and endeavour to gratify your wishes:—But if you do not do this, it is more reasonable that you should yield to us, than we to you.—You cannot exist without us—You must be a member of the Union."

The case of Maryland, instanced by the Gentleman [Patrick Henry],

does not hold. She would not agree to Confederate, because the other States would not assent to her claims of the western lands. Was she gratified? No—She put herself like the rest. Nor has she since been gratified. The lands are in the common stock of the Union.

As far as his amendments are not objectionable, or unsafe, so far they may be subsequently recommended. Not because they are necessary, but because they can produce no possible danger, and may gratify some Gentlemen's wishes. But I never can consent to his previous amendments, because they are pregnant with dreadful dangers.

Mr. *Henry*,—Mr. Chairman.—The Honorable Gentleman who was up some time ago, exhorts us not to fall into a repetition of the defects of the Confederation. He said we ought not to declare that each State retains every power, jurisdiction and right, which is not expressly delegated, because experience has proved the insertion of such a restriction to be destructive, and mentioned an instance to prove it.²⁹ That case, Mr. Chairman, appears to me to militate against himself.—Passports would not be given by Congress—and why? Because there was a clause in the Confederation which denied them implied powers. And says he, shall we repeat the error? He asked me where was the power of emancipating slaves. I say it will be implied, unless implication be prohibited. He admits that the power of granting passports will be in the new Congress without the insertion of this restriction—Yet he can shew me nothing like such a power granted in that Constitution. Notwithstanding he admits their right to this power by implication, he says that I am unfair and uncandid in my deduction, that they can emancipate our slaves, though the word emancipation be not mentioned in it. They can exercise power by implication in one instance, as well as in another. Thus by the Gentleman's own argument, they can exercise the power though it be not delegated.

We were then told that the power of treaties and commerce, was the *sine qua non* of the Union.—That the little States would not Confederate otherwise—There is a thing not present to human view.—We have seen great concessions from the large States to the little States. But little concessions from the little States to the great States, will be refused. He concedes that great concessions were made in the great Convention. Now when we speak of rights, and not of emoluments, these little States would not have been affected. What boon did we ask? We demanded only rights, which ought to be unalienable and sacred. We have nothing local to ask. We ask rights which concern the general happiness. Must not justice bring them into the concession of these? The Honorable Gentleman [Edmund Randolph] was pleased to

say, that the new Government in this police, will be equal to what the present is. If so, that amendment will not injure that part.

He then mentioned the danger that would arise from foreign gold.—We may be bribed by foreign powers if we ask for amendments, to secure our own happiness. Are we to be bribed to forget our own interests? I will ask if foreign gold be likely to operate, where will it be? In the seat of Government, or in those little channels in which the State authority will flow? It will be at the fountain of power, where bribery will not be detected. He speaks of war and bloodshed. Whence do this war and bloodshed come? I fear it, but not from the source he speaks of. I fear it, Sir, from the operation and friends of the Federal Government. He speaks with contempt of this amendment. But whoever will advert to the use made repeatedly in England, of the prerogative of the King, and the frequent attacks on the privileges of the people, notwithstanding many Legislative acts to secure them, will see the necessity of excluding implication. Nations who have trusted to logical deduction have lost their liberty. The Honorable Gentleman last up [James Madison], agrees that there are defects, and by and by he says there is no defect. Does not this amount to a declaration that subsequent amendments are not necessary? His arguments, great as the Gentleman's abilities are, tend to prove that amendments cannot be obtained after adoption. Speaking of forty amendments, he calculated that it was something like impracticability to obtain them. I appeal therefore to the candour of the Honorable Gentleman, and this Committee, whether amendments be not absolutely unattainable if we adopt. For he has told us, that if the other States will do like this they cannot be previously obtained. Will the Gentleman bring this home to himself? This is a piece of information which I expected. The worthy Member who proposed to ratify [George Wythe], has also proposed that what amendments may be deemed necessary, should be recommended to Congress, and that a Committee should be appointed to consider what amendments were necessary. But what does it all come to at last?—That it is a vain project, and that it is indecent and improper. I will not argue unfairly, but I will ask if amendments are not unattainable? Will Gentlemen then lay their hands on their hearts, and say that they can adopt it in this shape? When we demand this security of our privileges, the language of Virginia is not that of respect.—Give me leave to deny it. She only asks amendments previous to her adoption of the Constitution.

Was the Honorable Gentleman [James Madison] accurate, when he said that they could exist better without us, than we could without them? I will make no comparison. But I will say that the States which

have adopted will not make a respectable appearance without us. Would he advise them to refuse us admission when we profess ourselves friends to the Union, and only solicit them to secure our rights? We do not reject a connection with them—We only declare that we will adopt it, if they will but consent to the security of rights essential to the general happiness.

He told you to confine yourselves to amendments which were indisputably true, as applying to several parts of the system proposed. Did you hear any thing like the admission of the want of such amendments from any one else? I will not insist on any that does not stand on the broad basis of human rights. He says there are forty. I say there is but one half the number, for the bill of rights is but one amendment.

He tells you of important blessings which he imagines will result to us and mankind in general, from the adoption of this system—I see the awful immensity of the dangers with which it is pregnant.—I see it—I feel it.—I see *beings* of a higher order, anxious concerning our decision. When I see beyond the horison that binds human eyes, and look at the final consummation of all human things, and see those intelligent beings which inhabit the ætherial mansions, reviewing the political decisions and revolutions which in the progress of time will happen in America, and the consequent happiness or misery of mankind—I am led to believe that much of the account on one side or the other, will depend on what we now decide. Our own happiness alone is not affected by the event—All nations are interested in the determination. We have it in our power to secure the happiness of one half of the human race. Its adoption may involve the misery of the other hemispheres.—Here a violent storm arose, which put the House in such disorder, that Mr. *Henry* was obliged to conclude.

Mr. *Nicholas* proposed that the question should be put at XI o'clock next day.

He was opposed by Mr. *Clay*.³⁰

Mr. *Ronald*³¹ also opposed the motion, and wished amendments to be prepared by a Committee, before the question should be put.

Mr. *Nicholas* contended that the language of the proposed ratification, would secure every thing which Gentlemen desired, as it declared that all the powers vested in the Constitution were derived from the people, and might be resumed by them whensoever they should be perverted to their injury and oppression; and that every power not granted thereby, remained at their will, no danger whatever could arise. For says he, these expressions will become a part of the contract. The Constitution cannot be binding on Virginia, but with these conditions.

If thirteen individuals are about to make a contract, and one agrees to it, but at the same time declares that he understands its meaning, signification and intent, to be, what the words of the contract plainly and obviously denote; that it is not to be construed so as to impose any supplementary condition upon him, and that he is to be exonerated from it, whensoever any such imposition shall be attempted—I ask whether in this case, these conditions on which he assented to it, would not be binding on the other twelve? In like manner these conditions will be binding on Congress. They can exercise no power that is not expressly granted them.

Mr. *Ronald*,—Mr. Chairman.—I came hither with a determination to give my vote so as to secure the liberty and privileges of my constituents. I thought that a great majority argued that amendments were necessary. Such is my opinion, but whether they ought to be previous or subsequent to our adoption, I leave to the wisdom of this Committee to determine. I feel an earnest desire to know what amendments shall be proposed, before the question be put. One Honorable Gentleman [Patrick Henry] has proposed several amendments. They are objected to by other Gentlemen. I do not declare myself for or against those amendments; but unless I see such amendments, one way or other, introduced, as will secure the happiness of the people and prevent their privileges from being endangered, I must, though much against my inclination, vote against this Constitution.

Mr. *Madison* conceived that what defects might be in the Constitution might be removed by the amendatory mode in itself. As to a solemn declaration of our essential rights, he thought it unnecessary and dangerous—Unnecessary, because it was evident that the General Government had no power but what was given it, and the delegation alone warranted the exercise of power—Dangerous, because an enumeration which is not complete, is not safe. Such an enumeration could not be made within any compass of time, as would be equal to a general negation, such as his Honorable friend (*Mr. Wythe*) had proposed. He declared that such amendments as seemed in his judgment, to be without danger, he would readily admit, and that he would be the last to oppose any such amendment as would give satisfaction to any Gentleman, unless it were dangerous.

The Committee then rose—And on motion, *Resolved*, That this Convention will, to-morrow, again resolve itself into a Committee of the whole Convention, to take into farther consideration, the proposed Constitution of Government.

And then the Convention adjourned until to-morrow morning, ten o'clock.

1. For the report of the Committee of the Whole to the Convention, see Convention Debates, 25 June (RCS:Va., 1537–38).

2. Article 13 of the Declaration of Rights reads: “That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free state; that standing armies, in time of peace, 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” (RCS:Va., 531).

3. In 1775 the legislature passed an act stipulating that, with certain exceptions, “all free male persons, hired servants, and apprentices” between the ages of sixteen and fifty were liable to serve in the militia. Some runaway slaves enlisted as soldiers. In 1777 the legislature, seeking to end this practice, required that any black or mulatto wishing to enlist should produce a certificate from a justice of the peace of his home county certifying that he was a freeman. During the course of the Revolution, many slaveowners “caused their slaves to enlist . . . as substitutes for free persons” by informing the recruiting officers that these slaves were freemen. After the term of enlistment, some slaveowners tried to force these enlistees back into slavery, “contrary to the principles of justice, and to their own solemn promise.” Consequently, in 1783 the legislature freed these enlistees if they had served faithfully (Hening, IX, 27, 280; XI, 308–9).

4. In 1779 and 1780 the legislature, acting upon “applications,” passed acts freeing individual slaves (Hening, X, 211, 372). In 1782 the legislature adopted an act which allowed owners to emancipate their slaves under certain restrictions without having to petition the legislature for a special act (*ibid.*, XI, 39–40). Despite this act, some slaves still had to petition the legislature to make certain that wills were properly executed. (For example, see an act passed in 1784, *ibid.*, 362–63.) The 1782 act contributed to an increase in the number of free blacks in Virginia. In 1782 there were fewer than 3,000; while in 1790 there were 12,866 (John H. Russell, *The Free Negro in Virginia, 1619–1865* [1913; reprint ed., New York, 1969], 61).

5. Henry probably meant the counties south of the James River of which his home county of Prince Edward was approximately the geographical center. The delegates from these counties voted overwhelmingly against ratification. (See the end-paper maps.)

6. The minority of the Pennsylvania Convention claimed (in its “Dissent”) “that of upwards of *seventy thousand* freemen who are intitled to vote in Pennsylvania, the whole convention has been elected by about *thirteen thousand* voters . . .” (*Pennsylvania Packet*, 18 December, CC:Vol. 3, page 17. For the “Dissent” in Virginia, see RCS:Va., 401–2.).

7. The resolution presented by Patrick Henry was probably the resolution that, on 25 June, was defeated by a vote of 88 to 80 (Convention Debates, 25 June, RCS:Va., 1538). The George Mason Papers at the Library of Congress include a one-page manuscript in Mason’s handwriting that contains versions of a resolution that are similar to the one defeated on 25 June. For a photographic reproduction of this manuscript, see Mfm:Va. The declaration of rights and structural amendments presented by Henry have not been located. For the declaration of rights and amendments “ultimately proposed by the Convention” on 27 June, see RCS:Va., 1551–56.

8. In November 1777 Congress sent the Articles of Confederation to the states for ratification. The Maryland legislature ratified them on 2 February 1781 and the state’s congressional delegates signed them on 1 March (CDR, 55–57, 99–100, 135–37).

9. Roman veto is probably a reference to the power of any one of ten tribunes to disallow a law.

10. For Virginia’s call of and appointment of delegates to the Annapolis Convention in January and February 1786, see RCS:Va., xxxiii–xxxiv, 538–39.

11. For Virginia’s authorization and appointment of delegates to the Constitutional Convention in November and December 1786, see RCS:Va., xxxv–xxxvi, 540–42.

12. Randolph refers to the report of the Committee of the Whole Convention on 25 June (RCS:Va., 1537–38).

13. The declaration of rights and structural amendments presented by Patrick Henry have not been located, but, according to stenographer David Robertson, they "were nearly the same as those ultimately proposed by the Convention." Consequently, Robertson did not include them in the debates for 24 June. Nor do they appear in the manuscript or printed Convention Journal.

For the amendment on standing armies (number 17) that the Convention adopted as part of its declaration of rights, see Convention Debates, 27 June (RCS:Va., 1553). The Convention also adopted a structural amendment (number 9) concerning standing armies in time of peace (RCS:Va., 1554). Both amendments are nearly identical to those adopted by the committee of Antifederalist Convention delegates chaired by George Mason and sent by him to New York Antifederalists on 9 June (RCS:Va., 821, 823).

14. The English Bill of Rights (1689) provided "That the raising or keeping a standing army within the kingdom in time of peace unless it be with consent of parliament is against law."

15. For Randolph's earlier references to passports, see Convention Debates, 4 and 6 June (RCS:Va., 936, 985).

16. On 6 August 1787, the five-man Committee of Detail, of which Edmund Randolph was a member, reported the first draft of the Constitution. The report forbade Congress from prohibiting the importation of slaves and it required that navigation acts be passed by two-thirds of the members of each house. Northern delegates generally opposed these two provisions. Consequently, on 24 August a committee of eleven (one from each state), of which James Madison was a member, reported a compromise. Congress was not permitted to prohibit the foreign slave trade before 1800, and the section requiring a two-thirds majority for enacting navigation acts was deleted. The next day, the Convention changed the date concerning the slave trade to 1808, and four days later the two-thirds requirement for navigation acts was deleted (Farrand, II, 183, 400, 414-17, 449-53).

17. See note 11 (above).

18. For Henry Lee's speech on 9 June, see RCS:Va., 1072-81.

19. A reference to the Jay-Gardoqui treaty negotiations. See RCS:Va., xxix, 1182-83.

20. Dawson refers to the murder of Emperor Helvius Pertinax in 193 A.D., by the Praetorian Guards. When two candidates presented themselves for the open throne, the Guards auctioned the emperorship to the higher bidder, Didius Julianus, a very wealthy but incompetent senator.

21. See Grayson's speech and the responses by Francis Corbin and James Madison, Convention Debates, 19 June (RCS:Va., 1387-88, 1391, 1396).

22. In the early 1520s Francis I, the King of France, and Charles V, the Holy Roman Emperor, competed for Italian territory. In February 1525 Charles' army defeated Francis' army at the Battle of Pavia. Captured and imprisoned (first in Italy and then in Madrid), Francis agreed to the Treaty of Madrid (January 1526), in which he gave up his Italian claims and promised to cede the French duchy of Burgundy. He was released from prison in March 1526, and it quickly became apparent that Francis, supported by his council, had no intention of ratifying the treaty immediately. In May the council decided that Burgundy would not be given up. In June the estates of Burgundy denounced the treaty as "contrary to all reason and equity" and indicated that they wished to remain under the rule of the King of France. In July a royal apologia was issued emphasizing the "fundamental law" that the king could not alienate any portion of his realm and that a province or town could not alter its ownership without its inhabitants' permission (R. J. Knecht, *Francis I* [Cambridge, Eng., 1982], 165-76, 189-91, 206-8).

23. Danish king Christian IV, an elective monarch, died in 1648. Before electing Christian's son Frederick as successor, the noble Council forced Frederick to agree to a humiliating *handfæstning* or charter severely restricting his power. In 1660, after many years of war, Denmark signed a peace treaty with Sweden. To raise money to support

the government and army and to pay the national debt, a meeting of the three Estates—the nobility, the clergy, and the burghers—was called to meet in Copenhagen. The two commoner estates favored more uniform tax levies and the elimination of other privileges for noblemen. The nobles, long exempt from many taxes, objected. The clergy and burghers met with Frederick's representative, who led them to believe that Frederick supported their position. They presented a resolution to the Council calling for the establishment of an hereditary monarchy, an idea to which Frederick was sympathetic. Since an hereditary monarch would not be required to agree to a *handfæstning*, the Council rejected the resolution. Whereupon, the two estates went to Frederick who accepted. The nobles and the Council, intimidated by the summoning of Copenhagen's citizen militia and the blocking of the city's gates, reluctantly agreed to reforms, and Frederick was freed from his oath to abide by the *handfæstning* of 1648. Leaders of the two commoner estates were given high positions in the new government, and those members of the Council whom Frederick wished to retain swore an oath of allegiance to him.

In 1661 the leaders of Danish society signed the "Instrument or Pragmatic Sanction Regarding the King's Hereditary Rights to the Kingdoms of Norway and Denmark," a document that gave the hereditary monarchy absolute power. Although both the clergy and the burghers benefitted considerably from reforms and the power and privileges of the nobles were reduced, a national legislative body did not meet again for about two hundred years. In 1665 the Royal Law (*Kongelov*) confirmed the king's absolute power (Stewart Oakley, *The Story of Denmark* [London, 1972], 120–29).

24. See also Convention Debates, 12 June, note 2 (above).

25. Grayson refers to the English Navigation Act of 1660 which prohibited foreign vessels from trading with the American colonies and stipulated that vessels bringing goods into England or its colonies have an English captain and that the crew be three-quarters English. Moreover, certain enumerated articles of colonial produce could be exported only to England or other English colonies.

26. Grayson refers to George Washington.

27. Before or during the Convention, Grayson drafted amendments to the Constitution, but perhaps because of his endorsement of Henry's amendments, he never formally presented them. (For these amendments, see Convention Debates, 16 June, note 11; 18 June, note 5; and 21 June, note 8, all above.) In addition to the proposed amendments, the two-page document includes a draft of a form of ratification which reads: "We the people of the Commonwealth of Virginia do adopt and receive the foregoing Constitution and every part and article thereof subject nevertheless to the following provisions, which we do for ourselves and our posterity declare to be indispensably necessary to be observed in order to the preservation of the Liberties of the good people of the united States of America, and that the same shall, and of right ought forever to constitute a part thereof.

"1. The Bill of rights, Constitutions and Municipal Laws of the several States in this union, in all Cases not expressly comprehended by the Constitution shall be sacred and inviolate" (Bryan Family Papers, Vi).

For a photographic reproduction of the complete document, see Mfm:Va.

28. Madison refers to Robert Yates and John Lansing, Jr., who opposed creation of a powerful national government in the Constitutional Convention and who left that body on 10 July 1787, more than two months before it adjourned. (For their official report on the Convention which was first printed in mid-January 1788, see CC:447.) Both men voted against the ratification of the Constitution in the New York Convention in July 1788.

29. See Edmund Randolph's speech earlier in the day (RCS:Va., 1485).

30. Probably Green Clay. See Convention Debates, 14 June, note 10 (above).

31. William Ronald, a native of Scotland, a wealthy planter, and a former merchant, represented Powhatan County almost continuously in the House of Delegates from 1781

to 1793. Although Ronald was appointed a delegate to the Annapolis Convention in 1786, he did not attend. Ronald voted to ratify the Constitution.

Reminiscences of Patrick Henry's Thunderstorm Speech, 24 June

*William Wirt, 1817*¹

Towards the close of the session, an incident occurred of a character so extraordinary as to deserve particular notice. The question of adoption or rejection was now approaching. The decision was still uncertain, and every mind and every heart was filled with anxiety. Mr. Henry partook most deeply of this feeling; and while engaged, as it were, in his last effort, availed himself of the strong sensation which he knew to pervade the house, and made an appeal to it which, in point of sublimity, has never been surpassed in any age or country of the world. After describing, in accents which spoke to the soul, and to which every other bosom deeply responded, the awful immensity of the question to the present and future generations, and the throbbing apprehensions with which he looked to the issue, he passed from the house and from the earth, and looking, as he said, "beyond that horizon which binds mortal eyes," he pointed—with a countenance and action that made the blood run back upon the aching heart—to those celestial beings, who were hovering over the scene, and waiting with anxiety, for a decision which involved the happiness or misery of more than half the human race. To those beings—with the same thrilling look and action—he had just addressed an invocation, that made every nerve shudder with supernatural horror—when lo! a storm, at that instant arose, which shook the whole building, and the spirits whom he had called, seemed to have come at his bidding. Nor did his eloquence, or the storm, immediately cease—but, availing himself of the incident, with a master's art, he seemed to mix in the fight of his ætherial auxiliaries, and "rising on the wings of the tempest, to seize upon the artillery of Heaven, and direct its fiercest thunders against the heads of his adversaries." The scene became insupportable; and the house rose, without the formality of adjournment, the members rushing from their seats with precipitation and confusion.^(a)

(a) The words above quoted are those of judge Archibald Stuart; a gentleman who was present, a member of the convention, and one of those who voted against the side of the question, supported by Mr. Henry. The incident as given in the text, is wholly founded on the statements of those who were witnesses of the scene; and by comparing it with the corresponding passage in the printed debates, the

reader may decide how far these are to be relied on, as specimens of Mr. Henry's eloquence.

*Spencer Roane, post-1817*²

It is to be also observed that although his language was plain, and free from unusual or high-flown words, his ideas were remarkably bold, strong, and striking. By the joint effect of these two faculties, I mean of the power of his tone or voice and the grandness of his conceptions, he had a wonderful effect upon the feelings of his audience. Both of these concurred in the famous speech in the Convention which was interrupted by a storm, and of which I see Mr. Wirt has a note. The question of adoption was approaching, and from that cause every one had an awful and anxious feeling. This was, as it were, the parting speech of Mr. Henry, and he was depicting the awful immensity of the question and its consequences as it respected the present and future generations. He stated that the ethereal beings were awaiting with anxiety the decision of a question which involved the happiness or misery of more than half the human race. He had presented such an awful picture, and in such feeling colors, as to interest the feelings of the audience to the highest pitch—when lo! a storm at that moment arose, which shook the building in which the Convention were sitting, and broke it up in confusion. So remarkable a coincidence was never before witnessed, and it seemed as if he had indeed the faculty of calling up spirits from the vasty deep.

1. Printed: William Wirt, *Sketches of the Life and Character of Patrick Henry* (Philadelphia, 1817), 295–97.

2. Printed: Appendix B, "Judge Spencer Roane's Memorandum," n.d., George Morgan, *The True Patrick Henry* (Philadelphia, 1907), 447.

Editors' Note
The Ratification of the Constitution
and the Recommendation of Amendments
25–27 June 1788

On 23 June the Convention completed its clause-by-clause consideration of the Constitution, and on the 24th George Wythe proposed that the Committee of the Whole should ratify the Constitution and recommend amendments to be considered by the new Congress, according to the manner prescribed by the Constitution. To this effect, Wythe presented two resolutions prefaced by a preamble expressing the belief that all powers not granted to the government by the Constitution were retained by the people and that the government could

neither cancel, abridge, restrain, nor modify any of the people's rights, except where the Constitution gave it such power. Such "essential rights" as "liberty of conscience and of the press" could not be cancelled, abridged, restrained, or modified.

Patrick Henry thought that ratification was premature, and, after some lengthy remarks, he proposed a resolution "to refer a declaration of rights, with certain amendments to the most exceptionable parts of the Constitution, to the other states in the Confederacy, for their consideration, previous to ratification." Along with the resolution, Henry presented a declaration of rights and structural amendments, which stenographer David Robertson described as being "nearly the same as those ultimately proposed by the Convention." The clerk then read the resolution, the declaration of rights, and the structural amendments.

On 25 June the Convention sitting as a Committee of the Whole continued its consideration of the Constitution. George Nicholas asked that George Wythe's 24 June proposal to ratify the Constitution be read so that "the question might be put upon it." After Wythe's proposal was read, John Tyler moved that the structural amendments and declaration of rights, offered by Patrick Henry on the 24th, be read "for the same purpose." After a lengthy debate, President Edmund Pendleton resumed the chair and Thomas Mathews, chairman of the Committee of the Whole, reported that the Committee had completed its consideration of the Constitution and had resolved that the Constitution be ratified. The Committee had also resolved that amendments be recommended to the new Congress under the Constitution to be acted upon in the manner stipulated in the fifth article of the Constitution.

As a substitute to the Committee of the Whole's resolution on ratification, Antifederalists proposed that a declaration of rights and amendments be submitted to other states for their consideration, "previous to the ratification of the new Constitution." The delegates defeated this proposal by a vote of 88 to 80. Sometime between 2:00 and 3:00 P.M. (Convention Debates, 25 June, note 19, below), the delegates voted 89 to 79 to ratify the Constitution. Notley Conn of Bourbon and Thomas Pierce of Isle of Wight were absent when the voting took place. The difference in the two votes was caused by David Patteson of Chesterfield, who voted with Antifederalists on amendments but who sided with Federalists on ratification.

The Convention then appointed a committee of five Federalists—Edmund Randolph, George Nicholas, James Madison, John Marshall, and Francis Corbin—to prepare a form of ratification. The committee

soon reported a form which the Convention read, accepted, and ordered to be engrossed. A committee of eleven Federalists and nine Antifederalists, chaired by George Wythe, was appointed to prepare recommendatory amendments.

On 26 June, the engrossed Form of Ratification was read. It was signed by President Edmund Pendleton, who was ordered to transmit the document to the Confederation Congress. After providing for the payment of its officers, the Convention adjourned to 10:00 the following morning.

On 27 June, a second engrossed copy of the Form of Ratification was read, signed by President Pendleton, and ordered deposited by the secretary of the Convention in the "archives of the General Assembly." George Wythe, the chairman of the committee on amendments appointed on the 25th, reported twenty structural amendments, preceded by a declaration of rights of twenty amendments (RCS:Va., 1551-56).

The Wythe committee's declaration of rights is based upon the declaration drafted on or before 9 June by an Antifederalist committee chaired by George Mason and sent by Mason to New York Antifederalists on 9 June. Numbers 2, 4, 5, 7, 9, 10, 12-17, and 19 were taken, virtually unchanged, from the Mason committee's draft. Significant deletions were made in numbers 3, 6, 8, 11, 18, and 20. The wording, but not the meaning, of number 1 was altered. (For the text of the Mason committee's draft declaration, see RCS:Va., 819-21.)

As with the declaration of rights, the Wythe committee's structural amendments owe much to the work of the Mason committee. Numbers 4, 8, 9, and 10 were virtually unchanged. Numbers 1, 2, 3, 7, and 16 were reworded or significantly modified. The Wythe committee's report omitted the proposals for a council, the limitation on the presidential command of the armed forces, the two-year duration for a mutiny act, the suspension of an impeached president facing trial, and the prohibition of outside compensation for federal judges. The committee reported eleven amendments that were not included in the draft sent to New York. Four of the amendments, numbers 11, 12, 14, and 20, involved subjects which Mason said were still being considered by Virginia Antifederalists when he forwarded his committee's amendments to New York on 9 June. The other seven amendments, numbers 5-6, 13, 15, and 17-19, addressed concerns raised by Virginia Antifederalists during the Convention debates. (For the text of the Mason committee's draft of structural amendments, see RCS:Va., 821-23. For a comparison of the Wythe committee's structural amendments to another set of structural amendments, most likely drafted between 9 and

27 June, see the headnote to "Draft Structural Amendments to the Constitution," ante-27 June, below.)

Appended to the amendments reported by the Wythe committee was a statement in which the Convention, speaking for the people of Virginia, enjoined their representatives and senators in the new Congress under the Constitution to seek the ratification of the report's forty amendments according to the method prescribed in the fifth article of the Constitution. Until the amendments were adopted, the statement continued, congressmen were "to conform to the spirit of these amendments as far as the said Constitution will admit." The Convention adopted the Wythe committee's declaration of rights, structural amendments, and the concluding statement.

The Convention ordered the amendments engrossed, signed by the president, and forwarded to the Confederation Congress, along with the Form of Ratification. It further ordered that each state executive or legislature be sent an engrossed copy of the Form and amendments signed by the president and attested by the secretary. The secretary was instructed to have the journal "fairly entered in a well bound book" and deposited in the "archives of the Privy Council or Council of State." The printer to the Convention was told to print fifty copies of the Form and proposed amendments for each county. After thanking Edmund Pendleton for the "able, upright, and impartial discharge" of his duties as president and receiving "his acknowledgment," the Convention adjourned *sine die*.

On 28 June President Pendleton, pursuant to the Convention's instructions, sent the President of Congress and each state executive the engrossed ratification documents. Convention printer Augustine Davis printed 4,300 copies of a four-page broadside containing the Form of Ratification, the proposed amendments, and most of the minutes of 27 June (Evans 21553). (For photographic copies of the broadside and the engrossed document sent to the governor of Massachusetts, see Mfm:Va.)

The Virginia Convention Wednesday 25 June 1788

Debates¹

The Convention according to the order of the day, resolved itself into a Committee of the whole Convention, to take into further consideration, the proposed Constitution of Government.—Mr. *Mathews* in the Chair.

Mr. *Nicholas*,—Mr. Chairman.—I do not mean to enter into any further debate.—The friends of the Constitution wish to take up no more time, the matter being now fully discussed.—They are convinced that further time will answer no end but to serve the cause of those who wish to destroy the Constitution. We wish it to be ratified, and such amendments as may be thought necessary, to be subsequently considered by a Committee, in order to be recommended to Congress, to be acted upon according to the amendatory mode presented in itself. Gentlemen in the opposition have said that the friends of the Constitution would depart after the adoption, without entering into any consideration of subsequent amendments. I wish to know their authority. I wish for subsequent amendments as a friend to the Constitution—I trust its other friends wish so too—and I believe no Gentleman has any intention of departing. The amendments contained in this paper, are those we wish. But we shall agree to any others which will not destroy the spirit of the Constitution, or that will better secure liberty.

He then moved that the Clerk should read the resolution proposed by Mr. *Wythe*, in order that the question might be put upon it. Which being done,—Mr. *Tyler* moved to read the amendments and bill of rights proposed by Mr. *Henry*, for the same purpose.

Mr. *Harrison*,—Mr. Chairman.—The little States refused to come into the Union without extravagant concessions. It will be the same case on every other occasion. Can it be supposed that the little States whose interest and importance are greatly advanced by the Constitution as it stands, will ever agree to any alteration, which must infallibly diminish their political influence? On this occasion let us behave with that fortitude which animated us in our resistance to Great-Britain.

The situation and disposition of the States render subsequent amendments dangerous and impolitic, and previous amendments eligible.

New-Hampshire does not approve of the Constitution as it stands. They have refused it so.—In Massachusetts we are told that there was a decided majority in their Convention who opposed the Constitution as it stood, and were in favor of previous amendments, but were afterwards, by the address and artifice of the Federalists, prevailed upon to ratify it.²

Rhode-Island is not worthy of the attention of this House—She is of no weight or importance to influence any general subject of consequence.

Connecticut adopted it without proposing amendments.

New-York we have every reason to believe, will reject the Consti-

tution, unless amendments be obtained. Hence it clearly appears that there are three States which wish for amendments.

Jersey, Pennsylvania and Delaware, have adopted it unconditionally.

In Maryland there is a considerable number who wish amendments to be had.

Virginia is divided, let this question be determined which way it will. One half of the people at least, wish amendments to be obtained.

North-Carolina is decidedly against it. South-Carolina has proposed amendments.

Under this representation, it appears that there are seven States who wish to get amendments.—Can it be doubted, if these seven States insert amendments as the condition of their accession, that they would not be agreed to? Let us not then be persuaded into an opinion, that the Union will be dissolved if we should reject it. I have no such idea.

As far as I am acquainted with history, there never existed a Constitution where the liberty of the people was established this way; States have risen by gradual steps—Let us follow their example. The line which we ought to pursue, is equally bounded. How comes that paper on your table, to be now here discussed? The State of Virginia finding the power of the Confederation insufficient for the happiness of the people, invited the other States to call a Convention, in order that the powers of Congress might be enlarged. I was not in the Assembly then, and if I had, I have no vanity to suppose I could have decided more cautiously. They were bound to do, what we ought to do now. I have no idea of danger to the Union. A vast majority from every calculation are invincibly attached to it. I see an earnest desire in Gentlemen to bring this country to be great and powerful. Considering the very late period when this country was first settled, and the present state of population and wealth, this is impossible now. The attempt will bring ruin and destruction upon us. These things must not be forced. They must come of course like the course of rivers gently going on. As to the inconveniences to me from adoption, they are none at all. I am not prejudiced against New-England or any part. They are held up to us as a people from whom protection will come. Will any protection come from thence for many years? When we were invaded, did any Gentlemen from the Northern States come to relieve us? No Sir, we were left to be buffeted. General *Washington* in the greatness of his soul, came with the French Auxiliaries and relieved us opportunely. Were it not for this, we should have been ruined. I call Heaven to witness that I am a friend to the Union. But I conceive the measure of adoption to be unwarrantably precipitate, and dangerously impolitic. Should we rush into certain perdition, I should resist with the fortitude

of a man. As to the amendments proposed by Gentlemen, I do not object to them—They are inherently good. But they are put in the wrong place—subsequent instead of previous. Mr. *Harrison* added other observations which could not be heard.

Mr. *Madison*,—Mr. Chairman.—I should not have risen at all, were it not for what the Honorable Member said. If there be any suspicions, that if the ratification be made, the friends of the system will withdraw their concurrence and much more their persons, it shall never be with my approbation. Permit me to remark, that if he has given us a true state of the disposition and of the several Members of the Union, there is no doubt they will agree to the same amendments after adoption. If we propose the conditional amendments, I entreat Gentlemen to consider the distance to which they throw the ultimate settlement, and the extreme risk of perpetual disunion.—They cannot but see how easy it will be to obtain subsequent amendments. They can be proposed when the Legislatures of two-thirds of the States shall make application for that purpose, and the Legislatures of three fourths of the States, or Conventions in the same, can fix the amendments so proposed. If there be an equal zeal in every State, can there be a doubt that they will concur in reasonable amendments? If on the other hand, we call on the States to rescind what they have done, and confess that they have done wrong, and to consider the subject again, it will produce such unnecessary delays and is pregnant with such infinite dangers, that I cannot contemplate it without horror. There are uncertainty and confusion on the one hand, and order, tranquility and certainty on the other. Let us not hesitate to elect the latter alternative. Let us join with cordiality in those alterations we think proper. There is no friend to the Constitution, but who will concur in that mode.

Mr. *Monro*, after an exordium which could not be heard, remarking that the question now before the Committee was, whether previous or subsequent amendments were the most prudent.—Strongly supported the former. He could not conceive that a conditional ratification would in the most remote degree endanger the Union, for that it was as clearly the interest of the adopting States to be United with Virginia, as it could be her interest to be in Union with them.—He demanded if they would arm the States against one another, and make themselves enemies of those who were respectable and powerful from their situation and numbers? He had no doubt that they would in preference to such a desperate and violent measure, come forward and make a proposition to the other States, so far as it would be consistent with the general interest. Adopt it now unconditionally, says he, and it will never be amended, not even when experience shall have proved its

defects. An alteration will be a diminution of their power, and there will be great exertions made to prevent it. I have no dread that they will immediately infringe the dearest rights of the people, but that the operation of the Government will be oppressive in process of time. Shall we not pursue the dictates of common sense and the example of all free and wise nations, and insist on amendments with manly fortitude.

It is urged that there is an impossibility of getting previous amendments, and that a variety of circumstances concur to render it impracticable. This argument appears to me fallacious, and as a specious evasion. The same cause which has hitherto produced a spirit of unanimity, and a predilection for the Union, will hereafter produce the same effects.

How did the Federal Constitution meet? From the beginning of time in any age or country, did ever men meet under so loose, uncurbed a commission? There was nothing to restrain them, but their characters and reputation. They could not organise a system without defects. This cannot then be perfect. Is it not presumeable that by subsequent attempts we shall make it more complete and perfect? What are the great objections now made? Are they local? What are the amendments brought forth by my friends? Do they not contemplate the great interests of the people, and of the Union at large? I am satisfied from what we have seen of the disposition of the other States, that instead of disunion and national confusion, there will be harmony and perfect concord. Disunion is more to be apprehended from the adoption of a system reprobated by some, and allowed by all to be defective. The arguments of Gentlemen have no weight on my mind. It is unnecessary to enter into a refutation of them. My Honorable friends have done it highly to my satisfaction. Permit me only to observe with respect to these amendments, that they are harmless. Do they change a feature of the Constitution? They secure our rights without altering a single feature, I trust therefore that Gentlemen will concur with them.

Mr. *Innes*,³—Mr. Chairman.—I have hitherto been silent on this great and interesting question. But my silence has not proceeded from a neutrality of sentiments, or a supineness of disposition. The session of the Court of *Oyer and Terminer*, at this time, has indispensably called my attention to the prosecutions for the Commonwealth. Had I taken an earlier part in the discussion, my observations would have been desultory and perhaps not satisfactory, being not apprised of all the arguments which had been used by Gentlemen. We are now brought to that great part of the system where it is necessary for me to take a decided part. This is one of the most important questions, that ever

agitated the councils of America. When I see in this House divided in opinion, several of those brave officers whom I have seen so gallantly fighting and bleeding for their country, the question is doubly interesting to me. I thought it would be the last of human events, that I should be on a different side from them, on so awful an occasion. However painful and distressing to me, the recollection of this diversity of sentiments may be, I am consoled by this reflection—that difference in opinion has a happy consequence. It aids discussion, and is a friend to truth. We ought (and I hope we have the temper) to be regulated by candour and moderation, without which in a deliberative body, every thing with respect to the public good, evaporates into nothing. I came hither under a persuasion that the felicity of our country required that we should accede to this system; but I am free to declare, that I came in with a mind open to conviction, and a predetermination to recede from my opinion, if I should find it to be erroneous.—I have heard nothing hitherto that would warrant a change of one idea. The objections urged by the advocates of the opposition have been ably and in my conception, satisfactorily answered by the friends of the Constitution. I wish instead of reasoning from possible abuses, that the Government had been considered as an abstract position, drawn from the history of all nations, and such theoretic opinions as experience has demonstrated to be right. I have waited to hear this mode of reasoning, but in vain. Instead of this, Sir, horrors have been called up, chimeras suggested, and every terrific and melancholy idea adduced, to prevent, what I think indispensably necessary for our national honor, happiness and safety—I mean the adoption of the system under consideration.

How are we to decide this question? Shall we take the system by way of subsequent amendments, or propose amendments as the previous condition of our adoption? Let us consider this question coolly. In my humble opinion, it transcends the power of this Convention to take it with previous amendments.—If you take it so, I say, that you transcend and violate the commission of the people. For if it be taken with amendments, the opinions of the people at large ought to be consulted on them. Have they an opportunity of considering previous amendments? They have seen the Constitution, and sent us hither to adopt or reject it. Have we more latitude on this subject? If you propose previous amendments as the condition of your adoption, they may radically change the paper on the table, and the people will be bound by what they know not. Subsequent amendments would not have that effect. They would not operate till the people had an opportunity of considering and altering them, if they thought proper.

They could have it in their power to give contrary directions to their Members of Congress. But I observe with regret, that there is a general spirit of jealousy with respect to our Northern brethren. Had we this political jealousy in 1775? If we had, it would have damped our ardor and intrepidity; and prevented that unanimous resistance which enabled us to triumph over our enemies. It was not a *Virginian*, *Carolinian* or *Pennsylvanian*, but the glorious name of an *American* that extended from one end of the continent to the other, that was then beloved and confided in. Did we then expect, that in case of success, we should be armed against one another? I would have submitted to British tyranny rather than to Northern tyranny, had what we have been told, been true, that they had no part of that philanthropic spirit, which cherishes fraternal affection, unites friends, enables them to achieve the most gallant exploits, and renders them formidable to other nations. Gentlemen say that the States have not similar interests, that what will accommodate their interests will be incompatible with ours; and that the Northern oppression will fetter, and manacle the hands of the Southern people. Wherein does this dissimilarity consist? Does not our existence as a nation depend on our Union? Is it to be supposed that their principles will be so constuprated, and that they will be so blind to their own true interests, as to alienate the affections of the Southern States, and adopt measures which will produce discontents and terminate in a dissolution of an Union as necessary to their happiness as to ours? Will not brotherly affection rather be cultivated? Will not the great principles of reciprocal friendship, and mutual amity be constantly inculcated, so as to conciliate all parts of the Union? This will be inevitably necessary from the unity of their interests with ours. To suppose that they would act contrary to these principles, would be to suppose them to be not only destitute of honor and probity, but void of reason—not only bad, but mad men.

The Honorable Gentleman has warned us to guard against European politics. Shall we not be more able to set their machinations at defiance, by uniting our councils and strength, than by splitting into factions and divisions? Our divisions and consequent debility are the objects most ardently wished for by the nations of Europe. What cause induced Great-Britain and other European nations which had settlements in America, to keep their colonies in an infantine condition? What cause leads them to exclude our vessels from the West-Indies? The fear of our becoming important and powerful. Will they not be perpetually stimulated by this fear? Will they not incessantly endeavour to depress us by force or stratagems? Is there no danger to be apprehended from Spain, whose extensive and invaluable possessions are

in our vicinity? Will that nation rejoice at an augmentation of our strength or wealth?

But we are told that we need not be afraid of Great Britain.⁴—Will that great, that warlike, that vindictive nation, lose the desire of revenging her losses and disgraces? Will she passively overlook flagrant violations of the treaty? Will she lose the desire of retrieving those laurels which are buried in America? Should I transfuse into the breast of a Briton, that *amor patriæ* which so strongly predominates in my own, he would say, *While I have a guinea, I shall give it to recover lost America.*

But says another Gentleman, the maritime powers of Europe look with anxious and jealous eyes on you⁵—While you are helpless, they will let you alone, but if you attempt to become respectable, they will crush you!—Is this the language or consolation of an American? Must we acquiesce to continue in this situation? We should by this way of reasoning sacrifice our own honor, and interests, to please those supercilious nations, and promote their interests; and with every means of acquiring a powerful fleet, would never have a ship of the line.—To promote their glory we should become wretched and contemptible. Our national glory, our honor, our interests forbid this disgraceful conduct. It may be said that the ancients who deserved and acquired glory, have lost their liberty. Call to mind the many nations of Indians and Cannibals that have lost it likewise. And who would not rather be a Roman, than one of those who hardly deserve to be enumerated among the human species?

This question is as important as the revolution which severed us from the British empire. It rests now to be determined whether America has in reality gained by that change which has been thought so glorious—and whether those hecatombs of American heroes, whose blood so freely shed at the shrine of liberty, fell in vain; or whether we shall establish such a Government as shall render America respectable and happy. I wish her not only to be internally possessed of political and civil liberty, but to be formidable, terrible, and dignified in war, and not depend on the ambitious Princes of Europe for tranquillity, security or safety. I ask if the most petty of those Princes, even the Dey of Algiers, were to make war upon us, if the other States of Europe should keep a neutrality, whether we should not be reduced to the greatest distress? Is it not in the power of any maritime power to seize our vessels, and destroy our commerce with impunity?

But we are told that the New-Englanders mean to take our trade from us, and make us hewers of wood and carriers of water;⁶ and the next moment that they will emancipate our slaves! But how inconsistent

is this? They tell you that the admission of the importation of slaves for twenty years, shews that their policy is to keep us weak, and yet the next moment they tell you, that they intend to set them free! If it be their object to corrupt and enervate us, will they emancipate our slaves? Thus they complain and argue against it on contradictory principles.—The Constitution is to turn the world *topsy turvy* to make it answer their various purposes.

Can it be said that liberty of conscience is in danger? I observed on the side of the Constitution, those who have been champions for religious liberty, an attack on which I would as soon resist as one on civil liberty. Do they employ consistent arguments to shew that it is in danger? They inform you that Turks, Jews, Infidels, Christians, and all other sects may be President, and command the fleet and army, there being no test to be required. And yet the tyrannical and inquisitorial Congress, will ask me as a private citizen what is my opinion on religion, and punish me if it does not conform to theirs! I cannot think the Gentleman could be serious when he made these repugnant and incompatible objections.⁷

With respect to previous amendments what will be the consequence? Virginia first discovered the defects of the existing confederacy. When the Legislature was sitting, a few years ago, they sent an invitation to the other States to make amendments to it. After some preparatory steps, the late Federal Convention was called. To this were sent select Deputies from all the States except Rhode-Island. After five months spent in tedious and painful investigation, they with great difficulty devised the paper on the table, and it has been adopted by every State which has considered and discussed it.—Virginia is about dictating again to the other States. Eight States have exercised their sovereignty in ratifying it. Yet with a great deal of humility we ask them to rescind, and make such alterations as the *ancient dominion* shall think proper. States are but an aggregate of individuals. Would not an individual spurn at such a requisition? They will say, *It has been laid before you, and if you do not like it, consider the consequences. We are as free, sister Virginia, and as independent, as you are; we do not like to be dictated to by you.* But say Gentlemen, we can afterwards come into the Union—We may come in at another time,—that is, if they do not accede to our dictatorial mandate. They are not of such a yielding, pliant stuff, as to revoke a decision founded on their most solemn deliberations, to gratify our capricious wishes.

After hearing the arguments on this subject, and finding such a variety of contradictory objections, I am the more averse to solicit another Convention, from which I should expect great discord, and

no good effect at all. Not doubting the sincerity of Gentlemen's protestations, I say the mode pointed out in the Constitution is much better. For, according to their mode, the Union would never be complete, till the thirteen States had acceded to it, and eight States must rescind and revoke what they have done. By the paper before you, if two-thirds of the States think amendments necessary, Congress are obliged to call a Convention to propose amendments, which are to be submitted to the Legislatures, or Conventions in three-fourths of the States, the acquiescence of which, will render them binding. Now is there not a greater probability of obtaining the one than the other? Will not nine States more probably agree to any amendments than thirteen? The doctrine of chances is in favor of it.

Unless we in vain look for a perfect Constitution, we ought to take it. In vain you will seek from India to the Pole, for a perfect Constitution. Though it may have certain defects, yet I doubt whether any system more perfect, can be obtained at this time. Let us no longer pursue chimerical and ridiculous systems. Let us try it—Experience is the best test. It will bear equally on all the States from New-Hampshire to Georgia; and as it will operate equally on all, they will all call for amendments; and whatever the spirit of America calls for, must doubtless take place immediately.

I consider Congress as ourselves, as our fellow-citizens, and no more different from us than our Delegates in the State Legislature. I consider them as having all a fellow-feeling for us, and that they will never forget that this Government is that of the people. Under this impression, I conclude that they will never dare to go beyond the bounds prescribed in the Constitution; and that as they are eligible and removeable by ourselves, there is sufficient responsibility—For where the power of election frequently reverts to the people, and that reversion is unimpeded, there can be no danger.—Upon the whole this is the question—Shall it be adopted or rejected? With respect to previous amendments they are equal to rejection. They are abhorrent to my mind.—I consider them as the greatest of evils—I think myself bound to vote against every measure which I conceive to be a total rejection, than which nothing in my conception, can be more imprudent, destructive and calamitous.

Mr. *Tyler*,—Mr. Chairman.—I should have been satisfied with giving my vote on the question to-day, but as I wish to hand down to posterity my opposition to this system, I conceive it to be my duty to declare the principles on which I disapprove of it, and the cause of my opposition. I have seriously considered the subject in my mind, and when I consider the effects which may happen to this country from its adop-

tion, I tremble at it. My opposition to it arose first from general principles, independent of any local consideration. But when I find that the Constitution is expressed in indefinite terms,—in terms, which the Gentlemen who composed it, do not all concur in the meaning of;—I say that when it is thus liable to objections and different constructions, I find no rest in my mind. Those clauses which answer different constructions, will be used to serve particular purposes. If the able Members who composed it, cannot agree on the construction of it, shall I be thought rash or wrong to pass censure on its ambiguity?

The worthy Member last up [James Innes] has brought us to a degrading situation,—that we have no right to propose amendments. I should have expected such language had we already adopted a Constitution, which will preclude us from this advantage. If we propose to them to reconsider what they have done, and not rescind it, will it be dictating to them? I do not undertake to say that our amendments will bind other States; I hope no Gentleman will be so weak as to say so. But no Gentleman on the other side will deny our right of proposing amendments. Wherefore is it called dictatorial? It is not my wish that they should rescind, but so much as will secure our peace and liberty. We wish to propose such amendments to the sister States, as will reconcile all the States. Will Gentlemen think this will dissolve the Union?

Among all the chimeras adduced on this occasion, we are intimidated with the fear of being attacked by the petty Princes of Europe. The little predatory nations of Europe, are to cross the Atlantic and fall upon us, and to avoid this, we must adopt this Government with all its defects. Are we to be frightened into its adoption?

The Gentleman has objected to previous amendments because the people did not know them. Have they seen their subsequent amendments?—(Here Mr. *Innes* rose and explained the difference—That previous amendments would be binding on the people, though they had never seen them, and should have no opportunity of considering them before they should operate: But that subsequent amendments being only recommendatory in their nature, could be reviewed by the people before they would become a part of the system; and if they disapproved of them, they might direct their Delegates in Congress to alter and modify them.)—Mr. *Tyler* then proceeded—I have seen their subsequent amendments, and although they hold out something like the thing we wish for, yet they have not entered pointedly and substantially into it. What have they said about direct taxation? They have said nothing on this subject. Is there any limitation of, or restriction on the Federal Judicial power? I think not. So that Gentlemen hold out

the idea of amendments which will not alter one dangerous part of it. It contains many dangerous articles. No Gentleman here can give such a construction of it, as will give general satisfaction. Shall we be told that we shall be attacked by the Algerines, and that disunion will take place unless we adopt it? Such language as this I did not expect here. Little did I think that matters would come to this, when we separated from the mother country—There, Sir, every man is amenable to punishment. There is far less responsibility in this Government. British tyranny would have been more tolerable. By our present Government every man is secure in his person, and the enjoyment of his property. There is no man who is not liable to be punished for misdeeds. I ask what is it that disturbs men when liberty is in the highest zenith? Human nature will ever be the same. Men never were, nor ever will be satisfied with their happiness.

They tell you, that one letter's alteration will destroy it. I say that it is very far from being perfect. I ask if it were put in immediate operation, whether the people could bear it;—whether two bodies can tax the same species of property? The idea of two omnipotent powers is inconsistent. The natural tendency must be, either a revolt, or the destruction of the State Governments, and a consolidation of them all into one general system. If we are to be consolidated, let it be on better grounds. So long as climate will have effect on men, so long will the different climates of the United States, render us different. Therefore a consolidation is contrary to our nature, and can only be supported by an arbitrary Government.

Previous and subsequent amendments are now the only dispute, and when Gentlemen say, that there is a greater probability of obtaining the one, than the other, they accompany their assertions with no kind of argument. What is the reason that amendments cannot be got after ratification? Because we have granted power.—Because the amendments you propose will diminish their power, and undo some clauses in that paper. This argument proves to me, that they cannot be serious. It has been plainly proved to you, that it is impracticable. Local advantages are given up as well as the regulation of trade. When this is the case, will the little States agree to an alteration? When Gentlemen insist on this without producing any argument, they will find no credulity in me. Another Convention ought to be had, whether the amendments be previous or subsequent. They say another Convention is dangerous. How is this proved? It is only their assertion. Gentlemen tell us we shall be ruined without adoption. Is this reasonable? It does not appear so to me.

Much has been said on the subject of war by foreigners, and the

Indians. But a great deal has been said in refutation of it. Give me leave to say, that from the situation of the powers of Europe at this time, no danger is to be apprehended from thence. Will the French go to war with you, if you do not pay them what you owe them? Will they thereby destroy that balance, to preserve which, they have taken such immense trouble? But Great-Britain will go to war with you, unless you comply with the treaty. Great-Britain, which to my sorrow, has monopolized our trade, is to go to war with us unless the law of treaties be binding. Is this reasonable? It is not the interest of Britain to quarrel with us. She will not hazard any measure which may tend to take our trade out of her hands. It is not the interest of Holland to see us destroyed, or oppressed. It is the interest of every nation in Europe to keep up the balance of power, and therefore they will not suffer any nation to attack us, without immediately interfering.

But much is said of the propriety of our becoming a great, and powerful nation. There is a great difference between offensive and defensive war. If we can defend ourselves, it is sufficient. Shall we sacrifice the peace and happiness of this country, to enable us to make wanton war?

My conduct through the revolution will justify me.—I have invariably wished to oppose oppressions. It is true, that I have now a paltry office.⁸ I am willing to give it up—away with it.—It has no influence on my present conduct. I wished Congress to have the regulation of trade. I was of opinion that a partial regulation alone would not suffice. I was among those Members who a few years ago proposed that regulation.⁹ I have lamented that I have put my hand to it, since this measure may have grown out of it. It was the hopes of our people to have their trade on a respectable footing. But it never entered into my head that we should quit liberty, and throw ourselves into the hands of an energetic Government. Do you want men to be freer, or less free than they are? Gentlemen have been called upon to shew the causes of this measure.—None have been shewn. Gentlemen say we shall be ruined unless we adopt it. We must give up our opinions. We cannot judge for ourselves.—I hope Gentlemen before this, have been satisfied that such language is improper. All States which have heretofore been lavish in the concession of power, and relinquishment of privileges, have lost their liberty. It has been often observed (and it cannot be too often observed) that liberty ought not to be given up without knowing the terms. The Gentlemen themselves cannot agree in the construction of various clauses of it. And so long as this is the case, so long shall liberty be in danger.

Gentlemen say we are jealous.—I am not jealous of this House. I

could trust my life with them. If this Constitution were safer I should not be afraid. But its defects warrant my suspicions and fears.—We are not passing laws now, but laying the foundation on which laws are to be made. We ought therefore to be cautious how we decide. When I consider the Constitution in all its parts, I cannot but dread its operation. It contains a variety of powers too dangerous to be vested in any set of men whatsoever. Its power of direct taxation, the supremacy of the laws of the Union, and of treaties, are exceedingly dangerous.—I have never heard any manner of calling the President to account for his conduct, nor even the Members of the democratic branch of the Government. We may turn out our ten Members, but what can we do with the other fifty-five. The wisdom of Great-Britain gave each State its own Legislative Assembly, and Judiciary, and a right to tax themselves. When they attempted to infringe that right, we declared war. This system violates that right. In the year 1781 the Assembly were obliged to pass a law that forty Members could pass laws.¹⁰ I have heard many Members say that it was a great departure from the Constitution, and that it would lead to aristocracy. If we could not trust forty, can we trust ten? Those who lay a tax ought to be amenable to the payment of a proportionate share of it. I see nothing in their subsequent amendments going to this point—that we shall have a right to tax ourselves. But Gentlemen say, that this would destroy the Constitution. Of what avail then will their subsequent amendments be? Will Gentlemen satisfy themselves that when they adopt this Constitution, their country will be happy? Is not the country divided? Is it a happy Government which divides the people, and sets brother in opposition to brother? This measure has produced anarchy and confusion. We ought to have been unanimous, and gone side by side, as we went through the revolution. Instead of unanimity, it has produced a general diversity of opinions, which may terminate in the most unhappy consequences.—We only wish to do away ambiguities, and establish our rights on clear and explicit terms. If this be done, we shall be all like one man—we shall unite and be happy. But if we adopt it in its present form, unanimity or concord can never take place.—After adoption, we can never expect to see it amended; because they will consider requests and solicitations for amendments as in a high degree dictatorial.—They will say, *You have signed and sealed, and you cannot now retract.*—When I review all these considerations, my heart is full, and can never be at peace, till I see these defects removed. Our only consolation is the virtue of the present age. It is possible that when they see the country divided, these politicians will reconcile the minds of their countrymen, by introducing such alterations as shall

be deemed necessary. Were it not for this hope, I should be in despair. I shall say no more, but that I wish my name to be seen in the yeas and nays, that it may be known that my opposition arose from a full persuasion and conviction, of its being dangerous to the liberties of my country.

Mr. *Stephen* addressed the Chairman, but in so low a voice that he could not be distinctly heard.—He described in a feeling manner the unhappy situation of the country, and the absolute necessity of preventing a dismemberment of the confederacy. I was, says he, sent hither to adopt the Constitution as it is, but such is my regard for my fellow-citizens, that I would concur in amendments. The Gentlemen on the other side have adduced no reasons or proofs to convince us, that the amendments should become a part of the system, before ratification. What reason have we to suspect, that persons who are chosen from among ourselves, will not agree to the introduction of such amendments as will be desired by the people at large?—In all safe and free Governments, there ought to be a judicious mixture of the three different kinds of Government. This Government is a compound of those different kinds. But the democratic kind preponderates as it ought to do. The Members of one branch are immediately chosen by the people; and the people also elect in a secondary degree the Members of the other two.—At present we have no Confederate Government. It exists but in name.—The Honorable Gentleman asked where is the genius of America? What else but that genius has stimulated the people to reform that Government, which woeful experience has proved to be totally inefficient. What has produced the unison of sentiments in the States on this subject? I expected that filial duty and affection would have impelled him to enquire for the genius of Virginia—that genius which formerly resisted British tyranny, and in the language of manly intrepidity and fortitude said to that nation—*thus far and no farther shall you proceed*.¹¹ What has become of that genius which spoke that magnanimous language—that genius which produced the Federal Convention? Yonder she is in a mournful attire, her hair disheveled—distressed with grief and sorrow—supplicating our assistance, against gorgons, fiends and hydras, which are ready to devour her, and carry desolation throughout her country. She bewails the decay of trade and neglect of agriculture—her farmers discouraged—her ship-carpenters, blacksmiths and all other tradesmen unemployed. She casts her eyes on these, and deplors her inability to relieve them. She sees and laments that the profit of her commerce goes to foreign States. She further bewails that all she can raise by taxation is inadequate to her necessities.—She sees religion die by her side—public faith prostituted,

and private confidence lost between man and man. Are the hearts of her citizens so deaf to compassion that they will not go to her relief? If they are so infatuated, the dire consequences may be easily foreseen.—Expostulations must be made for the defection of Virginia, when Congress meets. They will enquire where she has lately discovered so much political wisdom—she that gave an immense tract of country to relieve the general distresses;¹²—Wherein consists her superiority to her friends of South-Carolina, and the respectable State of Massachusetts, who to prevent a dissolution of the Union, adopted the Constitution, and proposed such amendments as they thought necessary, placing confidence in the other States, that they would accede to them?—After making several other remarks, he concluded by declaring that in his opinion, they were about to determine whether we should be one of the United States or not.

Mr. *Zachariah Johnson*,¹³—Mr. Chairman.—I am now called upon to decide the greatest of all questions,—a question which may involve the felicity or misery of myself and posterity. I have hitherto listened attentively to the arguments adduced by both sides, and attended to hear the discussion of the most complicated parts of the system by Gentlemen of great abilities. Having now come to the ultimate stage of the investigation, I think it my duty to declare my sentiments on the subject. When I view the necessity of Government among mankind, and its happy operation when judiciously constructed, and when I view the principles of this Constitution, and the satisfactory and liberal manner in which they have been developed by the Gentleman [Edmund Pendleton] in the Chair, and several other Gentlemen; and when I view on the other hand, the strained construction which has been put, by the Gentlemen on the other side, on every word and syllable, in endeavouring to prove oppressions which can never possibly happen, my judgment is convinced of the safety and propriety of this system. This conviction has not arisen from a blind acquiescence or dependence on the assertions and opinions of others, but from a full persuasion of its rectitude, after an attentive and mature consideration of the subject; the arguments of other Gentlemen having only confirmed the opinion which I had previously formed, and which I was determined to abandon, should I find it to be ill founded.

As to the principle of representation, I find it attended to in this Government in the fullest manner.—It is founded on absolute equality. When I see the power of electing the Representatives—the principal branch—in the people at large—in those very persons who are the constituents of the State Legislatures; when I find that the other branch is chosen by the State Legislatures; that the Executive is eligible

in a secondary degree by the people likewise, and that the terms of elections are short, and proportionate to the difficulty, and magnitude of the objects which they are to act upon; and when in addition to this, I find that no person holding *any office* under the United States shall be a Member of either branch—I say, when I review all these things, that I plainly see a security of the liberties of this country, to which we may safely trust. Were this Government defective in this fundamental principle of representation, it would be so radical, that it would admit of no remedy.

I shall consider several other parts which are much objected to. As to the regulation of the militia, I feel myself doubly interested. Having a numerous offspring,¹⁴ I am careful to prevent the establishment of any regulation, that might entail oppression on them. When Gentlemen of high abilities in this House, and whom I respect, tell us that the militia may be subjected to martial law in time of peace, and whenever Congress may please, I am much astonished. My judgment is astray and exceedingly undiscerning, if it can bear such a construction. Congress has only the power of arming, and disciplining them. The States have the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress. When called into the actual service of the United States, they shall be subject to the marching orders of the United States.—Then, and then only it ought to be so.—When we advert to the plain and obvious meaning of the words, without twisting and torturing their natural signification, we must be satisfied that this objection is groundless. Had we adverted to the true meaning, and not gone further, we should not be here to-day, but would have come to a decision long ago. We are also told, that religion is not secured—that religious tests are not required.—You will find that the exclusion of tests, will strongly tend to establish religious freedom. If tests were required—and if the church of England or any other were established, I might be excluded from any office under the Government, because my conscience might not permit me to take the test required.¹⁵ The diversity of opinions and variety of sects in the United States, have justly been reckoned a great security with respect to religious liberty. The difficulty of establishing an uniformity of religion in this country is immense.—The extent of the country is very great. The multiplicity of sects is very great likewise.—The people are not to be disarmed of their weapons—They are left in full possession of them. The Government is administered by the Representatives of the people voluntarily and freely chosen. Under these circumstances, should any one attempt to establish their own system, in prejudice of the rest, they would be universally detested and

opposed, and easily frustrated. This is a principle which secures religious liberty most firmly.—The Government will depend on the assistance of the people in the day of distress. This is the case in all Governments. It never was otherwise. They object to this Government, because it is strong and energetic; and with respect to the rich and poor, that it will be favorable to the one and oppressive to the other. It is right it should be energetic. This does not shew that the poor shall be more oppressed than the rich. Let us examine it. If it admits that private and public justice should be done, it admits what is just. As to the indolent and fraudulent, nothing will reclaim these, but the hand of force and compulsion. Is there any thing in this Government which will shew that it will bear hardly and unequally on the honest and industrious part of the community? I think not. As to the mode of taxation, the proportion of each State being known, cannot be exceeded. And such proportion will be raised in the most equitable manner of the people, according to their ability. There is nothing to warrant a supposition that the poor will be equally taxed with the wealthy and opulent.

I shall make a comparison, to illustrate my observations, between the State and the General Governments. In our State Government so much admired by the worthy Gentleman over the way, though there are 1700 militia in some counties, and but 150 in others, yet every county sends two Members to assist in Legislating for the whole community.—There is this disproportion between the respectable county of *Augusta*, which I have the honor to represent, and the circumscribed narrow county of *Warwick*; yet *Augusta* has no more Legislative influence than *Warwick*! Will any Gentleman tell us, that this is a more equal representation than is fixed in the Constitution, whereby 30,000 are to send one Representative in whatever place they may reside?—By the same State system the poor in many instances pay as much as the rich. Many laws occur to my mind, where I could shew you, that the representation and taxation bears hard on those who live in large remote back counties. The mode of taxation is more oppressive to us than to the rest of the community. Last fall when the principle of taxation was debated, it was determined that tobacco should be received in discharge of taxes;¹⁶ but this did not relieve us, for it would not fetch what it cost us, as the distance is so great, and the carriage so difficult.—Other specific articles were not received in payment of taxes, so that we had no other alternative than to pay specie, which was a peculiar hardship.—I could point out many other disadvantages which we labour under, but I shall not now fatigue the House.

It is my lot to be among the poor people. The most that I can claim,

or flatter myself with, is to be of the middle rank—I wish no more, for I am contented. But I shall give my opinion unbiassed, and uninfluenced—without erudition or eloquence, but with firmness and candour. And in so doing, I will satisfy my conscience.—If this Constitution be bad, it will bear equally as hard on me, as on any Member of the society—It will bear hard on my children, who are as dear to me, as any man's children can be to him. Having their felicity and happiness at heart, the vote I shall give in its favor, can only be imputed to a conviction of its utility and propriety.

When I look for responsibility, I fully find it in that paper. When the Members of the Government depend on ourselves for their appointment, and will bear an equal share of the burthens imposed on the people—when their duty is inseparably connected with their interest, I conceive there can be no danger. Will they forfeit the friendship and confidence of their countrymen, and counteract their own interests? As they will probably have families, they cannot forget them—When one of them sees that providence has given him a numerous family, he will be averse to lay taxes on his own posterity. They cannot escape them. They will be as liable to be taxed as any other persons in the community.—Neither is he sure, that he shall enjoy the place again, if he breaks his faith. When I take these things into consideration, I think there is sufficient responsibility.

As to the amendments now on your table, besides the impropriety of proposing them to be obtained previous to ratification, they appear to me, to be evidently and clearly objectionable.—Look at the bill of rights; it is totally mutilated and destroyed, in that paper.—The 15th article of the bill of rights of Virginia is omitted entirely in his proposed bill of rights. That article says, “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.”—This article is the best of the whole—Take away this, and all is gone. Look at the first article of our bill of rights. It says that all men are by nature equally free and independent. Does that paper acknowledge this? No,—It denies it.

They tell us that they see a progressive danger of bringing about emancipation. The principle has begun since the revolution. Let us do what we will, it will come round. Slavery has been the foundation of that impiety and dissipation which have been so much disseminated among our countrymen. If it were totally abolished, it would do much good.

Gentlemen say that we destroy our own principles by subsequent

amendments. They say that it is acting inconsistent with our reasons—Let us examine this position. Here is a principle of united wisdom founded on mutual benefits; and as experience may shew defects, we stipulate, that when they will happen, they shall be amended—That when a majority finds defects, we will search a remedy and apply it. There are two ways of amending it, pointed out in the system itself—When introduced either way, they are to be binding.

I am happy to see that happy day approaching, when we lose sight of dissensions and discord, which are one of the greatest sources of political misfortunes. Division is a dreadful thing. This Constitution may have defects. There can be no human institution without defects. We must go out of this world to find it otherwise. The annals of mankind do not shew us one example of a perfect Constitution.

When I see such a diversity of opinions among Gentlemen on this occasion, it brings to my recollection, a portion of history which strongly warns us to be moderate and cautious. The historical facts to which I allude, happened in a situation similar to our own. When the Parliament of England beheaded King *Charles* the first, conquered their enemies, obtained liberty and established a kind of a republic, one would think that they would have had sufficient wisdom and policy to preserve that freedom and independence, which they had with such difficulty acquired. What was the consequence?—That they would not bend to the sanction of laws, or legal authority.—For the want of an efficient and judicious system of republican Government, confusion and anarchy took place. Men became so lawless, so destitute of principles, and so utterly ungovernable, that to avoid greater calamities, they were driven to the expedient of sending for the son of that Monarch whom they had beheaded, that he might become their master. This is like our situation in some degree. It will completely resemble it, should we lose our liberty as they did. It warns and cautions us to shun their fate, by avoiding the causes which produced it: Shall we lose our blood and treasure which we lost in the revolution and permit anarchy and misery to complete the ruin of this country? Under these impressions, and for these reasons, I am for adopting the Constitution without previous amendments. I will go any length afterwards to reconcile it to Gentlemen by proposing subsequent amendments. The great and wise State of Massachusetts has taken this step. The great and wise State of Virginia might safely do the same. I am contented to rest my happiness on that footing.

Mr. *Henry*,—Mr. Chairman.—When we were told of the difficulty of obtaining previous amendments, I contended that they might be as easily obtained as subsequent amendments. We are told that nine States

have adopted it. If so, when the Government gets in motion, have they not a right to consider our amendments as well as if we adopted first? If we remonstrate, may they not consider and admit our amendments? But now, Sir, when we have been favored with a view of their subsequent amendments, I am confirmed in what I apprehended; and that is, that subsequent amendments will make our condition worse. For they are placed in such a point of view, as will make this Convention ridiculous. I speak in plain direct language—It is extorted from me.—If this Convention will say, that the very right by which amendments are desired, is not secured, then I say our rights are not secured. As we have the right of desiring amendments, why not exercise it? But Gentlemen deny this right. It follows of course, that if this right be not secured, our other rights are not. The proposition of subsequent amendments is only to lull our apprehensions. We speak the language of contradiction and inconsistency, to say that rights are secured, and then say that they are not. Is not this placing this Convention in a contemptible light? Will not this produce contempt of us in Congress and every other part of the world? Will Gentlemen tell me that they are in earnest about these amendments?

I am convinced they mean nothing serious. What are the rights which they do not propose to secure,—which they reject? For I contend there are many essential and vital rights which are omitted. One is the power of direct taxation. Gentlemen will not even give this invaluable right a place among their subsequent amendments. And do Gentlemen mean seriously, that they will oppose us on this ground on the floor of Congress? If Virginia thinks it one of her dearest rights, she need not expect to have it amended.—No Sir, it will be opposed. Taxes and excises are to be laid on us.—The people are to be op[p]ressed, and the State Legislature prostrated. Very material amendments are omitted.—With respect to your militia, we only request, that, if Congress should refuse to find arms for them, this country may lay out their own money to purchase them. But what do the Gentlemen on the other side say? As much as that they will oppose you in this point also; for if my recollection has not failed me, they have discarded this also. And shall we be deprived of this privilege? We propose to have it, in case there should be (a) necessity to claim it.—And is this claim incompatible with the safety of this country,—with the grandeur and strength of the United States? If Gentlemen find peace and rest on their minds, when the relinquishment of our rights is declared to be necessary for the aggrandisement of the Government, they are more contented than I am.

Another thing which they have not mentioned, is the power of trea-

ties. Two-thirds of the Senators present can make treaties, and they are when made, to be the supreme law of the land, and are to be paramount to the State Constitutions. We wish to guard against the temporary suspension of our great national rights. We wish some qualification of this dangerous power. We wish to modify it. One amendment which has been wished for in this respect, is, that no treaty should be made without the consent of a considerable majority of both Houses. I might go on and enumerate many other great rights entirely neglected by their subsequent amendments, but I shall pass over them in silence. I am astonished at what my worthy friend (Mr. *Innes*) said—that we had no right of proposing previous amendments. That Honorable Gentleman is endowed with great eloquence,—eloquence splendid, magnificent and sufficient to shake the human mind! He has brought the whole force of America against this State. He has also strongly represented our comparative weakness with respect to the powers of Europe. But when I review the actual state of things, I see that dangers from thence are merely ideal. His reasoning has no effect on me. He cannot shake my political faith. He admits our power over subsequent amendments, though not over previous amendments. Where is the distinction between them? If we have a right to depart from the letter of our commission in one instance, we have in the other. For subsequent amendments have no higher authority than previous. We will be absolutely certain of escaping danger in the one case, but not in the other. I think the apprehension expressed by another Honorable Gentleman has no good foundation.—He apprehended civil discord, if we did not adopt.—I am willing to concede that he loves his country. I will for the sake of argument allow that I am one of the meanest of those who love their country. But what does this amount to? The great and direct end of Government is liberty.—Secure our liberty and privileges, and the end of Government is answered. If this be not effectually done, Government is an evil.—What amendments does he propose which secure our liberty? I ask pardon if I make a mistake, but it seems to me that his proposed subsequent amendments do not secure one single right.—They say that your rights are secured in the paper on the table, so that these subsequent amendments are a mere supererogation. They are not necessary, because the objects intended to be secured by them, are secured already. What is to become of the trial by jury? Had its security been made a part of the Constitution it would have been sufficiently guarded. But as it is, in that proposition, it is by no means explicitly secured. Is it not trifling to admit the necessity of securing it and not do it in a positive, unequivocal manner? I wish I could place it in any other view than a

trifling one. It is only intended to attack every project of introducing amendments.—If they are serious, why do they not join us, and ask in a manly, firm and resolute manner, for these amendments. Their view is to defeat every attempt to amend. When they speak of their subsequent recommendations they tell you that amendments must be got, and the next moment they say they are unnecessary!

I beg pardon of this House for having taken up more time than came to my share, and I thank them for the patience and polite attention with which I have been heard. If I shall be in the minority, I shall have those painful sensations, which arise from a conviction of being overpowered in a good cause. Yet I will be a peaceable citizen!—My head, my hand, and my heart shall be at liberty to retrieve the loss of liberty, and remove the defects of that system—in a constitutional way.—I wish not to go to violence, but will wait with hopes that the spirit which predominated in the revolution, is not yet gone, nor the cause of those who are attached to the revolution yet lost—I shall therefore patiently wait in expectation of seeing that Government changed so as to be compatible with the safety, liberty and happiness of the people.¹⁷

Governor *Randolph*,—Mr. Chairman.—One parting word I humbly supplicate.

The suffrage which I shall give in favor of the Constitution, will be ascribed by malice to motives unknown to my breast. But although for every other act of my life, I shall seek refuge in the *mercy* of God—for this I request his *justice* only. Lest however some future annalist should in the spirit of party vengeance, deign to mention my name, let him recite these truths,—that I went to the Federal Convention, with the strongest affection for the Union; that I acted there in full conformity with this affection; that I refused to subscribe; because I had, as I still have, objections to the Constitution, and wished a free inquiry into its merits; and that the accession of eight States reduced our deliberations to the single question of Union or no Union.

Mr. President now resumed the Chair and Mr. *Mathews* reported, that the Committee had according to order, again had the proposed Constitution under their consideration, and had gone through the same and come to several resolutions thereupon, which he read in his place, and afterwards delivered in at the Clerk's table, where the same were again read, and are as followeth:

WHEREAS the powers granted under the proposed Constitution are the gift of the people, and every power not granted thereby, remains with them, and at their will: No right therefore of any denomination, can be cancelled, abridged, restrained or modified by the Con-

gress, by the Senate or House of Representatives, acting in any capacity, by the President, or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes: And among other essential rights, liberty of conscience and of the press cannot be cancelled, abridged, restrained or modified by any authority of the United States:

AND WHEREAS any imperfections which may exist in the said Constitution ought rather to be examined in the mode prescribed therein for obtaining amendments, than by a delay with a hope of obtaining previous amendments, to bring the Union into danger:

Resolved, That it is the opinion of this Committee, That the said Constitution be ratified.

But in order to relieve the apprehensions of those, who may be solicitous for amendments, *Resolved, That it is the opinion of this Committee, That whatsoever amendments may be deemed necessary be recommended to the consideration of the Congress, which shall first assemble under the said Constitution, to be acted upon according to the mode prescribed in the fifth article thereof.*

The first resolution being read a second time, a motion was made and the question being put to amend the same by substituting in lieu of the said resolution and its preamble, the following resolution;

“Resolved, That previous to the ratification of the new Constitution of Government recommended by the late Federal Convention, a declaration of rights asserting and securing from encroachment the great principles of civil and religious liberty, and the unalienable rights of the people, together with amendments to the most exceptionable parts of the said Constitution of Government, ought to be referred by this Convention to the other States in the American confederacy for their consideration.”

It passed in the negative—Ayes 80—Noes 88.

On motion of Mr. *Patrick Henry*, seconded by Mr. *Theodorick Bland*, the ayes and noes on the said question were taken as followeth:¹⁸

AYES—Mr. Edmund Custis, Mr. John Pride, Mr. Edmund Booker, Mr. William Cabell, Mr. Samuel Jordan Cabell, Mr. John Trigg, Mr. Charles Clay, Mr. Henry Lee (of Bourbon), The Hon. John Jones, Mr. Binns Jones, Mr. Charles Patteson, Mr. David Bell, Mr. Robert Alexander, Mr. Edmund Winston, Mr. Thomas Read, Mr. Benjamin Harrison, The Hon. John Tyler, Mr. David Patteson,¹⁹ Mr. Stephen Pankey, jun., Mr. Joseph Michaux, Mr. Thomas H. Drew, Mr. French Strother, Mr. Joel Early, Mr. Joseph Jones, Mr. William Watkins, Mr. Meriwether Smith, Mr. James Upshaw, Mr. John Fowler, Mr. Samuel Richardson, Mr. Joseph Haden, Mr. John Early, Mr. Thomas Arthurs, Mr. John

Guerrant, Mr. William Sampson, Mr. Isaac Coles, Mr. George Carrington, Mr. Parke Goodall, Mr. John Carter Littlepage, Mr. Thomas Cooper, Mr. John Marr, Mr. Thomas Roane, Mr. Holt Richeson, Mr. Benjamin Temple, Mr. Stephens Thompson Mason, Mr. William White, Mr. Jonathan Patteson, Mr. Christopher Robertson, Mr. John Logan, Mr. Henry Pawling, Mr. John Miller, Mr. Green Clay, Mr. Samuel Hopkins, Mr. Richard Kennon, Mr. Thomas Allen, Mr. Alexander Robertson, Mr. John Evans, Mr. Walter Crocket, Mr. Abraham Trigg, Mr. Matthew Walton, Mr. John Steele, Mr. Robert Williams, Mr. John Wilson (of Pittsylvania), Mr. Thomas Turpin, Mr. Patrick Henry, Mr. Robert Lawson, Mr. Edmund Ruffin, Mr. Theodorick Bland, Mr. William Grayson, Mr. Cuthbert Bullitt, Mr. Thomas Carter, Mr. Henry Dickenson, Mr. James Monroe, Mr. John Dawson, Mr. George Mason, Mr. Andrew Buchanan, Mr. John Howel Briggs, Mr. Thomas Edmunds, The Hon. Richard Carey, Mr. Samuel Edmi(n)son, and Mr. James Montgomery.

NOES—The Hon. Edmund Pendleton, Esq; President, Mr. George Parker, Mr. George Nicholas, Mr. Wilson Nicholas, Mr. Zachariah Johnson, Mr. Archibald Stuart, Mr. William Dark, Mr. Adam Stephen, Mr. Martin M'Ferran, Mr. William Fleming, Mr. James Taylor (of Caroline), The Hon. Paul Carrington, Mr. Miles King, Mr. Worlich Westwood, Mr. David Stuart, Mr. Charles Simms, Mr. Humphrey Marshall, Mr. Martin Pickett, Mr. Humphrey Brooke, Mr. John Shearman Woodcock, Mr. Alexander White, Mr. Warner Lewis, Mr. Thomas Smith, Mr. George Clendinen, Mr. John Stewart, Mr. William Mason, Mr. Daniel Fisher, Mr. Andrew Woodrow, Mr. Ralph Humphreys, Mr. George Jackson, Mr. John Prunty, Mr. Isaac Vanmeter, Mr. Abel Seymour, His Excellency Governor Randolph, Mr. John Marshall, Mr. Nathaniel Burwell, Mr. Robert Andrews, Mr. James Johnson, Mr. Robert Breckenridge, Mr. Rice Bullock, Mr. William Fleet, Mr. Burdit Ashton, Mr. William Thornton, Mr. James Gordon (of Lancaster), Mr. Henry Towles, Mr. Levin Powell, Mr. William Overton Callis, Mr. Ralph Wormley, jun., Mr. Francis Corbin, Mr. William M'Clerry, Mr. Willis Riddick, Mr. Solomon Shepherd, Mr. William Clayton, Mr. Burwell Bassett, Mr. James Webb, Mr. James Taylor (of Norfolk), Mr. John Stringer, Mr. Littleton Eyre, Mr. Walter Jones, Mr. Thomas Gaskins, Mr. Archibald Woods, Mr. Ebenezer Zane, Mr. James Madison, Mr. James Gordon (of Orange), Mr. William Ronald, Mr. Anthony Walke, Mr. Thomas Walke,²⁰ Mr. Benjamin Wilson, Mr. John Wilson (of Randolph), Mr. Walker Tomlin, Mr. William Peachey, Mr. William M'Kee, Mr. Andrew Moore, Mr. Thomas Lewis, Mr. Gabriel Jones, Mr. Jacob Rinker, Mr. John Williams, Mr. Benjamin Blunt, Mr. Samuel Kello,

Mr. John Hartwell Cocke, Mr. John Allen, Mr. Cole Digges, Mr. Henry Lee (of Westmoreland), Mr. Bushrod Washington, The Hon. John Blair, The Hon. George Wythe, Mr. James Innes, and Mr. Thomas Mathews.

And then the main question being put that the Convention do agree with the Committee in the said first resolution;

It was resolved in the affirmative—Ayes 89—Noes 79.

On motion of Mr. *George Mason*, seconded by Mr. *Patrick Henry*, the ayes and noes on the said main question were taken as followeth:

AYES—The Hon. Edmund Pendleton, Esq; President, Mr. George Parker, Mr. George Nicholas, Mr. Wilson Nicholas, Mr. Zachariah Johnson, Mr. Archibald Stuart, Mr. William Dark, Mr. Adam Stephen, Mr. Martin M'Ferran, Mr. William Fleming, Mr. James Taylor (of Caroline), The Hon. Paul Carrington, Mr. David Patteson, Mr. Miles King, Mr. Worlich Westwood, Mr. David Stuart, Mr. Charles Simms, Mr. Humphrey Marshall, Mr. Martin Pickett, Mr. Humphrey Brooke, Mr. John Shearman Woodcock, Mr. Alexander White, Mr. Warner Lewis, Mr. Thomas Smith, Mr. George Clendinen, Mr. John Stewart, Mr. William Mason, Mr. Daniel Fisher, Mr. Andrew Woodrow, Mr. Ralph Humphreys, Mr. George Jackson, Mr. John Prunty, Mr. Isaac Vanmeter, Mr. Abel Seymour, His Excellency Governor Randolph, Mr. John Marshall, Mr. Nathaniel Burwell, Mr. Robert Andrews, Mr. James Johnson, Mr. Robert Breckenridge, Mr. Rice Bullock, Mr. William Fleet, Mr. Burdet Ashton, Mr. William Thornton, Mr. James Gordon (of Lancaster), Mr. Henry Towles, Mr. Levin Powell, Mr. William Overton Callis, Mr. Ralph Wormely, jun., Mr. Francis Corbin, Mr. William M'Clerry, Mr. Willis Riddick, Mr. Solomon Shepherd, Mr. William Clayton, Mr. Burwell Bassett, Mr. James Webb, Mr. James Taylor (of Norfolk), Mr. John Stringer, Mr. Littleton Eyre, Mr. Walter Jones, Mr. Thomas Gaskins, Mr. Archibald Woods, Mr. Ebenezer Zane, Mr. James Madison, Mr. James Gordon (of Orange), Mr. William Ronald, Mr. Anthony Walke, Mr. Thomas Walke,²¹ Mr. Benjamin Wilson, Mr. John Wilson (of Randolph), Mr. Walker Tomlin, Mr. William Peachey, Mr. William M'Kee, Mr. Andrew Moore, Mr. Thomas Lewis, Mr. Gabriel Jones, Mr. Jacob Rinker, Mr. John Williams, Mr. Benjamin Blunt, Mr. Samuel Kello, Mr. John Hartwell Cocke, Mr. John Allen, Mr. Cole Digges, Mr. Henry Lee (of Westmoreland), Mr. Bushrod Washington, The Hon. John Blair, The Hon. George Wythe, Mr. James Innes, and Mr. Thomas Mathews.

NOES—Mr. Edmund Custis, Mr. John Pride, Mr. Edmund Booker, Mr. William Cabell, Mr. Samuel Jordan Cabell, Mr. John Trigg, Mr. Charles Clay, Mr. Henry Lee (of Bourbon), The Hon. John Jones, Mr.

Binns Jones, Mr. Charles Patteson, Mr. David Bell, Mr. Robert Alexander, Mr. Edmund Winston, Mr. Thomas Read, Mr. Benjamin Harrison, The Hon. John Tyler, Mr. Stephen Pankey, jun., Mr. Joseph Michaux, Mr. Thomas H. Drew, Mr. French Strother, Mr. Joel Early, Mr. Joseph Jones, Mr. William Watkins, Mr. Meriwether Smith, Mr. James Upshaw, Mr. John Fowler, Mr. Samuel Richardson, Mr. Joseph Haden, Mr. John Early, Mr. Thomas Arthurs, Mr. John Guerrant, Mr. William Sampson, Mr. Isaac Coles, Mr. George Carrington, Mr. Parke Goodall, Mr. John Carter Littlepage, Mr. Thomas Cooper, Mr. John Marr, Mr. Thomas Roane, Mr. Holt Richeson, Mr. Benjamin Temple, Mr. Stevens Thompson Mason, Mr. William White, Mr. Jonathan Patteson, Mr. Christopher Robertson, Mr. John Logan, Mr. Henry Pawling, Mr. John Miller, Mr. Green Clay, Mr. Samuel Hopkins, Mr. Richard Kennon, Mr. Thomas Allen, Mr. Alexander Robertson, Mr. John Evans, Mr. Walter Crocket, Mr. Abraham Trigg, Mr. Matthew Walton, Mr. John Steele, Mr. Robert Williams, Mr. John Wilson (of Pittsylvania), Mr. Thomas Turpin, Mr. Patrick Henry, Mr. Robert Lawson, Mr. Edmund Ruffin, Mr. Theodorick Bland, Mr. William Grayson, Mr. Cuthbert Bullitt, Mr. Thomas Carter, Mr. Henry Dickenson, Mr. James Monroe, Mr. John Dawson, Mr. George Mason, Mr. Andrew Buchanan, Mr. John Howell Briggs, Mr. Thomas Edmunds, The Hon. Richard Cary, Mr. Samuel Edmi(n)son, and Mr. James Montgomery.²²

The second resolution being then read a second time, a motion was made and the question being put to amend the same by striking out the preamble thereto;

It was resolved in the affirmative.

And then the main question being put that the Convention do agree with the Committee in the second resolution so amended;

It was resolved in the affirmative.

On motion, *Ordered*, That a Committee be appointed to prepare and report a form of ratification, pursuant to the first resolution; and that his Excellency Governor Randolph, Mr. Nicholas, Mr. Madison, Mr. Marshall, and Mr. Corbin, compose the said Committee.

On motion, *Ordered*, That a Committee be appointed to prepare and report such amendments as shall by them be deemed necessary to be recommended, pursuant to the second resolution; and that the Hon. George Wythe, Mr. Harrison, Mr. Mathews, Mr. Henry, His Excellency Governor Randolph, Mr. George Mason, Mr. Nicholas, Mr. Grayson, Mr. Madison, Mr. Tyler, Mr. John Marshall, Mr. Monroe, Mr. Ronald, Mr. Bland, Mr. Meriwether Smith, The Hon. Paul Carrington, Mr. Innes, Mr. Hopkins, The Hon. John Blair, and Mr. Simms, compose the said Committee.

His Excellency Governor Randolph reported, from the Committee appointed, according to order, a form of ratification, which was read and agreed to by the Convention, in the words following:

VIRGINIA, to wit:

WE the Delegates of the people of Virginia, duly elected in pursuance of a recommendation from the General Assembly, and now met in Convention, having fully and freely investigated and discussed the proceedings of the Federal Convention, and being prepared as well as the most mature deliberation hath enabled us, to decide thereon, DO, in the name and in behalf of the people of Virginia, declare and make known that the powers granted under the Constitution, being derived from the people of the United States may be resumed by them whensoever the same shall be perverted to their injury or oppression, and that every power not granted thereby remains with them and at their will: That therefore no right of any denomination, can be cancelled, abridged, restrained or modified, by the Congress, by the Senate or House of Representatives acting in any capacity, by the President or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes: and that among other essential rights, the liberty of conscience and of the press cannot be cancelled, abridged, restrained or modified by any authority of the United States.

With these impressions; with a solemn appeal to the searcher of hearts for the purity of our intentions, and under the conviction, that, whatsoever imperfections may exist in the Constitution, ought rather to be examined in the mode prescribed therein, than to bring the Union into danger by a delay, with a hope of obtaining amendments, previous to the ratification:

We the said Delegates, in the name and in behalf of the People of Virginia, do by these presents assent to, and ratify the Constitution recommended on the seventeenth day of *September*, one thousand seven hundred and eighty seven, by the Federal Convention, for the Government of the United States; hereby announcing to all those whom it may concern, that the said Constitution is binding upon the said People, according to an authentic copy hereto annexed, in the words following:

*(See the Constitution of the United States, in the first volume.)*²³

On motion, *Ordered*, That the Secretary of this Convention cause to be engrossed, forthwith, two fair copies of the form of ratification, and of the proposed Constitution of Government, as recommended by the Federal Convention on the seventeenth day of *September*, one thousand seven hundred and eighty-seven.

And then the Convention adjourned until to-morrow morning, twelve o'clock.

1. Convention printer Augustine Davis printed the minutes for 25 June as a three-page broadside which included the resolution calling for ratification, the roll-call votes on previous amendments and ratification, and the Form of Ratification with the text of the Constitution (Evans 21552. For a photographic copy of this broadside, see Mfm:Va. For another broadside printing by Davis of the minutes of 25 June, see Convention Debates, 27 June, note 1, below.). Seven Virginia newspapers printed various parts of the minutes (none of which included the text of the Constitution): *Virginia Gazette and Independent Chronicle*, 28 June; *Virginia Independent Chronicle*, 2 July; *Norfolk and Portsmouth Journal*, 2 July; *Virginia Gazette and Weekly Advertiser*, 3 July; *Virginia Herald*, 3 July; *Virginia Centinel*, 9 July; and *Kentucky Gazette*, 26 July and 2 August. Six out-of-state newspapers printed significant portions of the minutes. The ratification resolution, the roll calls (with the names of the delegates), and the Form of Ratification (without the text of the Constitution) appeared in the *Pennsylvania Packet*, 1, 7 July; *Philadelphia Independent Gazetteer*, 2, 8 July; and *New York Journal*, 3, 9 July. Briefer excerpts of the minutes were reprinted in the *Massachusetts Centinel*, 12 July; *Providence United States Chronicle*, 17 July; and *Massachusetts Gazette*, 18 July.

The Form of Ratification was printed widely: as a broadside twice in Richmond, and once each in Baltimore, New York City, and Poughkeepsie; in the July issue of the *New York American Magazine*; in the August issue of the *Philadelphia American Museum*; and in fifty-seven newspapers by 24 July: Vt. (2), N.H. (3), Mass. (10), R.I. (4), Conn. (8), N.Y. (9), N.J. (2), Pa. (8), Md. (3), Va. (7), S.C. (1).

2. For Massachusetts' adoption of the Constitution with recommendatory amendments, see CC:508.

3. James Innes (1754–1798), a graduate of the College of William and Mary and a lawyer, was an officer in the Continental Army from 1776 to 1778 and judge advocate of the Continental Army in 1782. Innes represented James City County in the House of Delegates, 1780–81, and Williamsburg, 1781–82, 1785–86, and from 1786 to 1796 he was state attorney general. As Williamsburg's lone Convention delegate, he voted to ratify the Constitution.

4. See Patrick Henry's speech, Convention Debates, 24 June (RCS:Va., 1480).

5. See William Grayson's speech, Convention Debates, 24 June (RCS:Va., 1497).

6. For "hewers of wood and drawers of water," see Joshua 9:21.

7. Article VI, clause 3, which states that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States," was read on 23 June, the day on which the Convention completed its clause-by-clause consideration of the Constitution. Unfortunately, stenographer David Robertson was not present that day so that the recorded debates are not as full as usual. Therefore, it is uncertain to whom Innes refers.

8. Tyler was a judge in the Court of Admiralty, the judges of which apparently did not have much to do even though they also served on the appeals bench. Benjamin Waller, Tyler's predecessor as judge, explained to James Madison that "During the War, the Admiralty Court did much Business, and decided more Property than any Court in the State; the Commonwealth's Share of the Condemnations, I am persuaded, did then fully defray the Judges Salaries. Since the Peace Matters are changed" (28 November 1785, Rutland, *Madison*, VIII, 427–28).

9. For Tyler's role in the adoption of the resolution calling the Annapolis Convention to consider the regulation of commerce, see RCS:Va., xxxiv.

10. On 4 June 1781, as the British under Lord Cornwallis invaded Virginia, the House of Delegates met in Charlottesville and decided that the presence of 40 of 146 delegates was sufficient to constitute a quorum.

11. Job 38:11.

12. Virginia ceded its territory northwest of the Ohio River on 20 December 1783, and Congress accepted the cession on 1 March 1784.

13. In 1855 Alexander H. H. Stuart (the son of Archibald Stuart, Johnston's fellow Augusta County delegate) said that "Johnston was a farmer, of imperfect education, but of uncommon sagacity & strength of mind—He possessed great influence in the county of Augusta, & made a speech in the Convention which attracted a good deal of attention for its strong common sense views of the subjects under discussion" (to Hugh Blair Grigsby, 27 September 1855, Miscellaneous Manuscripts, Hugh Blair Grigsby Folder, DLC).

14. Johnston was the father of at least eleven children, all of whom still lived at home in 1787.

15. As chairman of the committee on religion in the 1785–86 session of the House of Delegates, Johnston was instrumental in obtaining the passage (in January 1786) of the "Act for establishing religious freedom" (Hening, XII, 84–86). In 1870 Hugh Blair Grigsby noted that at the time this act was being considered Johnston addressed the House of Delegates in this manner: "Mr. Chairman, I am a Presbyterian, a rigid Presbyterian as we are called; my parents before me were of the same profession; I was educated in that line. Since I became a man, I have examined for myself, and I have seen no cause to dissent. But, sir, the very day that the Presbyterians shall be established by law, and become a body politic, the same Zachariah Johnston will be a dissenter. Dissent from that religion I cannot in honesty, but from that establishment I will" (Howard McKnight Wilson, *The Tinkling Spring: Headwater of Freedom, A Study of the Church and Her People, 1732–1952* [Fishersville, Va., 1954], 226–27).

16. On 1 December 1787, the legislature passed "An act declaring tobacco receivable in payment of certain taxes for the year one thousand seven hundred and eighty seven" (Hening, XII, 455–57).

17. For commentaries on the conciliatory nature of Henry's speech, see James Madison to Alexander Hamilton, and to George Washington, 27 June; Philadelphia *Independent Gazetteer*, 2 July; and William Nelson, Jr., to William Short, 12 July (all in V below); and Washington to Tobias Lear, 29 June (VI below).

18. The printer omitted commas after those names followed by "jun." or the name of a county in parentheses. In these cases, the editors have supplied commas.

19. Patteson was the only delegate to change sides. On the second roll-call vote, he voted to ratify the Constitution.

20. Augustine Davis omitted Walke's name in his three-page broadside version of the minutes (Evans 21552).

21. See note 20 (immediately above).

22. William Heth placed the time of this vote at about 2:00 P.M., Stephen Austin at 2:30, and an anonymous Convention delegate and the Petersburg *Virginia Gazette* at about 3:00 (William Heth, Diary, 25 June; Stephen Austin to Jeremiah Wadsworth, 25 June; the Petersburg *Virginia Gazette*, 26 June; and the New York *Daily Advertiser*, 3 July; all in V below).

23. Preceding his report of the Convention's first-day proceedings, David Robertson printed the text of the Constitution (including added sub-headings describing the contents of various articles or sections), the resolutions of the Constitutional Convention, and the letter of the President of the Convention to the President of Congress. (See Mfm:Va.)

The Virginia Convention
Thursday
26 June 1788

Debates

An engrossed form of the ratification agreed to yesterday, containing the proposed Constitution of Government, as recommended by the Federal Convention on the seventeenth day of *September*, one thousand seven hundred and eighty-seven, being prepared by the Secretary, was read and signed by the President in behalf of the Convention.

On motion, *Ordered*, That the said ratification be transmitted by the President, in the name of this Convention, to the United States in Congress assembled.¹

On motion, *Ordered*, That there be allowed to the President of this Convention for his services, the sum of forty shillings, per day, including his daily pay as a Member; to the Secretary, the sum of forty pounds; to the Chaplain, the sum of thirty-two pounds; to the Serjeant, the sum of twenty-four pounds; to the Clerk of the Committee of Privileges, the sum of twenty pounds; and to each of the Door-Keepers, the sum of fifteen pounds, for their respective services.²

And then the Convention adjourned until to-morrow morning, ten o'clock.

1. The engrossed copy of the Form of Ratification is printed immediately below.

2. This motion was adopted in accordance with the act of 12 December 1787 which empowered the state Convention "to make such reasonable allowances to the officers of the said Convention for their services" as it thought necessary. The same act reserved in the treasury up to £8,000 to defray the Convention's expenses and any expenses that the Convention deemed necessary to communicate with the other states respecting the proposed Constitution (RCS:Va., 190-91).

On 30 June the legislature, acting upon a letter received from the state treasurer (Jaquelin Ambler) on the funds available for defraying the Convention's expenses, adopted "An act to make good the appropriations of money for the maintenance of scouts and rangers; the pay of the members of the convention, and of the general assembly." The act empowered the state treasurer to draw £6,000 "from the funds appropriated to the payment of the interest on the military debt" in order to pay the scouts and rangers "on the western frontier" and the expenses of the Convention. If any money was left over, it was to be applied toward the payment of the expenses of the legislature. (For the text and passage of this act, see Mfm:Va.) On 30 June the legislature also prohibited any Convention member who had already drawn his per diem and travel expenses for his Convention service from also drawing the same allowances as a member of the legislature then meeting (Mfm:Va.). In October 1788 Treasurer Ambler reported that £5,509 10d had been applied to the expenses of the Convention and the June session of the legislature, and to some of the expenses for scouts and rangers (Mfm:Va.). Among the delegates, the largest single payment went to President Edmund Pendleton who received £53 12s.

For a compilation of the payments made to the Convention delegates, officers, printer, and others who performed services for the Convention, see below. For the Convention's Attendance Book, which contains per diem and travel expenses, and for excerpts from the Auditor's Journal, which contain a listing of the payments, see Mfm:Va. For individual accounts of expenses incurred by Convention delegates William Cabell, Sr., Paul Carrington, William Fleming, and Archibald Stuart, see Mfm:Va.

The Virginia Form of Ratification, 26 June¹

Virginia towit

We the Delegates of the People of Virginia duly elected in pursuance of a recommendation from the General Assembly and now met in Convention having fully and freely investigated and discussed the proceedings of the Fœderal Convention and being prepared as well as the most mature deliberation hath enabled us to decide thereon Do in the name and in behalf of the people of Virginia declare and make known that the powers granted under the Constitution being derived from the people of the United States may be resumed by them whensoever the same shall be perverted to their injury or oppression and that every power not granted thereby remains with them and at their will: that therefore no right of any denomination can be cancelled abridged restrained or modified by the Congress by the Senate or House of Representatives acting in any Capacity by the President or any Department or Officer of the United States except in those instances in which power is given by the Constitution for those purposes: & that among other essential rights the liberty of Conscience and of the Press cannot be cancelled abridged restrained or modified by any authority of the United States. With these impressions with a solemn appeal to the Searcher of hearts for the purity of our intentions and under the conviction that whatsoever imperfections may exist in the Constitution ought rather to be examined in the mode prescribed therein than to bring the Union into danger by a delay with a hope of obtaining Amendments previous to the Ratification. We the said Delegates in the name and in behalf of the People of Virginia do by these presents assent to and ratify the Constitution recommended on the seventeenth day of September one thousand seven hundred and eighty seven by the Fœderal Convention for the Government of the United States hereby announcing to all those whom it may concern that the said Constitution is binding upon the said People according to an authentic Copy hereto annexed in the Words following:

[At this point the text of the Constitution appears.]

Done in Convention this twenty Sixth day of June one thousand seven hundred and eighty eight

By Order of the Convention

Edmd Pendleton President

1. Engrossed MS, RG 11, Certificates of Ratification of the Constitution and the Bill of Rights . . . , 1787-92, DNA. President Edmund Pendleton transmitted the engrossed Form and the Convention's recommendatory amendments to Congress on 28 June. (See below for Pendleton's letter.) For photographic copies of the Form of Ratification sent to Congress and retained by Virginia, see Mfm:Va. For the Virginia printings of the Form of Ratification, see *Convention Debates*, 25 June, note 1 (above).

Draft Structural Amendments to the Constitution, ante-27 June

The structural amendments printed below are from a four-page document found in the George Mason Papers at the Library of Congress. The document is undated and is in an unidentified handwriting. The amendments were drafted before the Wythe committee presented its report on amendments to the Convention on 27 June, and most likely after 9 June, the day that an Antifederalist committee chaired by George Mason sent a copy of amendments to New York Antifederalists. Another copy of the "Draft Structural Amendments," possibly in the handwriting of Botetourt Convention delegate William Fleming, is in the William Fleming Papers at Washington and Lee University, Lexington, Va. For the most part, this mutilated copy differs only in capitalization and punctuation.

The Mason committee's amendments, sent to New York on 9 June, probably served as the basis for the "Draft Structural Amendments." Not all of the Mason committee's amendments, however, are included among those in the "Draft." The omitted amendments deal with (1) the establishment and powers of an executive council, (2) the appointment power of the President, (3) the ratification of treaties, (4) the executive control of the army and navy, (5) the passage of a mutiny act, (6) the impeachment of the President and other executive officers, and (7) the restrictions placed upon federal judges.

Amendments found in the "Draft Structural Amendments" that do not appear in the Mason committee amendments deal with (1) the publication of the journals of both houses of Congress, (2) the publication of the financial statements and accounts of the United States, (3) the establishment, regulation, and employment of the militia, (4) the governing of the federal capital, (5) the term of the president, (6) the judicial power of the United States, and (7) the challenge of prospective jurors in criminal prosecutions.

The provision on representation in Congress in the "Draft Structural Amendments" includes a substantial addition to the Mason committee's amendment (see note 2, below); while the amendment on the power of Congress to levy taxes in the "Draft" lacks a significant passage found in the Mason committee's amendment (see note 3, below). (For the text of the Mason committee's amendments, see RCS:Va., 821-23.)

The report of the Wythe committee, presented to the Convention on 27 June, includes five structural amendments (numbers 16-20) that are not among "Draft Structural Amendments" and the amendment on direct taxes in the Wythe report is significantly different from the "Draft." The Wythe report does not include the "Draft's" third proposed amendment on the regulation of elections by Congress and it includes significant phrases in two amendments not found in the "Draft" (see notes 4 and

5, below). (For the text of the Wythe committee's structural amendments, see RCS:Va., 1551-56.)

Amendments proposed to the new Constitution of Government in Addition to the Declaration of Rights

That each State in the Union shall respectively retain every Power, Jurisdiction and Right which is not by this Constitution expressly¹ delegated to the Congress of the United States, or to the Departments of the federal Government

That there shall be one Representative for every thirty thousand, according to the Enumeration or Census mentioned in the Constitution, until the whole number of Representatives amounts to two hundred; (after which that Number shall be continued or encreased, as the Congress shall direct, upon the Principles fixed in the Constitution, by apportioning the Representatives of each State to some greater number of People from time to time as Population encreases.—)²

That Congress shall not exercise the Powers, respecting the Regulation of Elections, vested in them by the fourth Section of the first Article of the Constitution, but in Cases where a State neglects or refuses to make the Regulations therein mentioned, or shall make Regulations subversive of the Rights of the People to a free and equal Representation in Congress, agreeably to the Constitution, or shall be prevented from making Elections by Invasion, Rebellion or Insurrection; and in any of these Cases, such Powers shall be exercised by the Congress only until the Cause be removed.—

That the Congress do not lay direct Taxes,³ but when the Revenue arising from the Duties on Imports is insufficient for the public Exigencies, nor then until Congress shall have first made a Requisition upon the States, to assess, levy and pay their respective Proportions of such Requisitions, according to the Enumeration or Census fixed in the Constitution in such way and manner as the Legislature of the State shall judge best; and if any State shall neglect or refuse to pay its Proportion pursuant to such Requisition, then Congress may assess and levy such States Proportion together with interest thereon at the rate of six per Centum per annum from the time of payment prescribed in such Requisition.—

That the Members of the Senate and House of Representatives shall be ineligible to and incapable of holding any civil office under the authority of the United States, during the time for which they shall respectively be elected.

That the Journals of the Proceedings of the Senate and House of

Representatives shall be published at least once in every Year except such parts thereof relating to Treaties Alliances or Military Operations as in their Judgment require Secrecy.—

That a regular Statement and account of the Receipts and Expenditures of all public money shall be published at least once in every Year.

That no commercial Treaty shall be ratified, without the concurrence of two thirds of the whole Number of the Members of the Senate, and no Treaty ceding, contracting, restraining or suspending the territorial Rights or Claims of the United States, or any of them, or their or any of their Rights or Claims to fishing in the American Seas, or navigating the American Rivers shall⁴ be ratified without the Concurrence of three fourths of the whole number of the Members of both Houses respectively.—

That no navigation Law or Law regulating Commerce shall be passed without the Consent of two thirds of the Members present in both Houses

That no standing Army or regular Troops shall be raised or kept up in time of Peace without the Consent of two thirds of the Members present in both Houses.—

That no Soldier shall be enlisted for a longer Term than four Years; except in time of War, and then for no longer Term than the continuance of the War.—

That each State respectively shall have the Power to provide for organizing, arming and disciplin[in]g its own Militia, whensoever the Congress shall omit or neglect to provide for the Same.—

That the Militia shall not be Subject to martial Law, except when in actual Service, in time of War, Invasion or Rebellion; and when not in the actual Service of the United States, shall be Subject only to such Fines, Penalties and Punishments as shall be directed or inflicted by the Laws of its own State.—

That the exclusive Power of Legislation given to the Congress over the federal Town and its adjacent District,⁵ shall extend only to such Regulations as respect the Police and good Government thereof

That no Person shall be capable of being President of the United States, for more than eight years in any Term of sixteen Years.—

That the Judicial Power of the United States shall be vested in one supreme Court, and in such Courts of Admiralty as the Congress may from time to time ordain and establish in any of the different States.—

The Judicial Power shall extend to all Cases in Law and Equity arising under Treaties made or which shall be made under the Authority of the United States; to all Cases affecting Ambassadors, other foreign

Ministers and Consuls; to all Cases of Admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States and between Persons claiming Lands under the Grants of different States.—In all Cases affecting Ambassadors other foreign Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction; in all the other Cases before mentioned the supreme Court shall have appellate Jurisdiction, as to matters of Law only; except in Cases of Equity, and of Admiralty and maritime Jurisdiction in which the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. But the judicial Power of the United States shall extend to no Case where the Cause of Action shall have originated before the Ratification of this Constitution, except in Disputes between States about their Territory, Disputes between Persons claiming Lands under the Grants of different States, and Suits for Debts due to the United States.—

That in criminal Prosecutions, no man shall be restrained in the Exercise of the usual and accustomed Right of challenging or excepting to the Jury.—

1. The Wythe committee's report does not include the word "expressly."
2. The text in angle brackets is not in the Mason committee's draft.
3. The following statement appears in the Mason committee's draft at this point: "nor Excises upon any Articles of the Growth, or manufactured from the Growth of any of the American States."
4. At this point the Wythe committee's report reads: "be made, but in cases of the most urgent and extreme necessity, nor shall any such treaty."
5. At this point the Wythe committee's report reads: "and other places, purchased or to be purchased by Congress of any of the States."

The Virginia Convention Friday 27 June 1788

Debates¹

(Another engrossed form of the ratification agreed to on Wednesday last, containing the proposed Constitution of Government, as recommended by the Federal Convention on the seventeenth day of *September*, one thousand seven hundred and eighty seven, being prepared by the Secretary, was read, and signed by the President in behalf of the Con[ven]tion.)²

On motion, *Ordered*, That the said ratification be deposited by the

Secretary of this Convention in the archives of the General Assembly of this State.

Mr. *Wythe* reported, from the Committee appointed, such amendments to the proposed Constitution of Government for the United States, as were by them deemed necessary to be recommended to the consideration of the Congress which shall first assemble under the said Constitution, to be acted upon according to the mode prescribed in the fifth article thereof; and he read the same in his place, and afterwards delivered them in at the Clerk's table, where the same were again read, and are as followeth:

That there be a Declaration or Bill of Rights asserting and securing from encroachment the essential and unalienable rights of the people in some such manner as the following:³

1st. That there are certain natural rights of which men when they form a social compact cannot deprive or divest their posterity, among which are the enjoyment of life, and liberty, with the means of acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

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

3d. That Government ought to be instituted for the common benefit, protection and security of the people; and that the doctrine of non-resistance against arbitrary power and oppression, is absurd, slavish, and destructive to the good and happiness of mankind.

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

5th. That the Legislative, Executive and Judiciary powers of Government should be separate and distinct, and that the members of the two first may be restrained from oppression by feeling and participating the public burthens, they should at fixed periods be reduced to a private station, return into the mass of the people, and the vacancies be supplied by certain and regular elections; in which all or any part of the former members to be eligible or ineligible, as the rules of the Constitution of Government, and the laws shall direct.

6th. That elections of Representatives in the Legislature ought to be free and frequent, and all men having sufficient evidence of permanent common interest with, and attachment to the community, ought to have the right of suffrage: and no aid, charge, tax or fee can

be set, rated, or levied upon the people without their own consent, or that of their Representatives, so elected, nor can they be bound by any law, to which they have not in like manner assented for the public good.

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

8th. That in all criminal and capital prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence and be allowed counsel in his favor, and to a fair and speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty (except in the government of the land and naval forces) nor can he be compelled to give evidence against himself.

9th. That no freeman ought to be taken, imprisoned, or disseized of his freehold, liberties, privileges or franchises, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty, or property, but by the law of the land.

10th. That every freeman restrained of his liberty is entitled to a remedy to enquire into the lawfulness thereof, and to remove the same, if unlawful, and that such remedy ought not to be denied nor delayed.

11th. That in controversies respecting property, and in suits between man and man, the ancient trial by jury, is one of the greatest securities to the rights of the people, and ought to remain sacred and inviolable.

12th. That every freeman ought to find a certain remedy by recourse to the laws for all injuries and wrongs he may receive in his person, property, or character. He ought to obtain right and justice freely without sale, completely and without denial, promptly and without delay, and that all establishments or regulations, contravening these rights, are oppressive and unjust.

13th. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

14th. That every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers, and property: all warrants therefore to search suspected places, or seize any freeman, his papers or property, without information upon oath (or affirmation of a person religiously scrupulous of taking an oath) of legal and sufficient cause, are grievous and oppressive, and all general warrants to search suspected places, or to apprehend any suspected person without specially naming or describing the place or person, are dangerous and ought not to be granted.

15th. That the people have a right peaceably to assemble together to consult for the common good, or to instruct their Representatives; and that every freeman has a right to petition or⁵ apply to the Legislature for redress of grievances.

16th. That the people have a right to freedom of speech, and of writing and publishing their sentiments; that the freedom of the press is one of the greatest bulwarks of liberty, and ought not to be violated.

17th. That the people have a right to keep and bear arms: that a well regulated militia composed of the body of the people trained to arms, is the proper, natural and safe defence of a free State. That standing armies in time of peace are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the community will admit; and that in all cases, the military should be under strict subordination to and governed by the civil power.

18th. That no soldier in time of peace ought to be quartered in any house without the consent of the owner, and in time of war in such manner only as the laws direct.

19th. That any person religiously scrupulous of bearing arms ought to be exempted upon payment of an equivalent to employ another to bear arms in his stead.

20th. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men have an equal, natural and unalienable right to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established by law in preference to others.

AMENDMENTS TO THE CONSTITUTION.⁶

1st. That each State in the Union shall respectively retain every power, jurisdiction and right, which is not by this Constitution delegated to the Congress of the United States, or to the departments of the Federal Government.

2d. That there shall be one Representative for every thirty thousand, according to the enumeration or census mentioned in the Constitution, until the whole number of Representatives amounts to two hundred; after which that number shall be continued or increased as Congress shall direct, upon the principles fixed in the Constitution, by apportioning the Representatives of each State to some greater number of people from time to time as population increases.

3d. When the Congress shall lay direct taxes or excises, they shall immediately inform the Executive power of each State, of the quota of such State according to the census herein directed, which is pro-

posed to be thereby raised; and if the Legislature of any State shall pass a law which shall be effectual for raising such quota at the time required by Congress, the taxes and excises laid by Congress, shall not be collected in such State.

4th. That the Members of the Senate and House of Representatives shall be ineligible to, and incapable of holding any civil office under the authority of the United States, during the time for which they shall respectively be elected.

5th. That the journals of the proceedings of the Senate and House of Representatives shall be published at least once in every year, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy.

6th. That a regular statement and account of the receipts and expenditures of all public money, shall be published at least⁷ once in every year.

7th. That no commercial treaty shall be ratified without the concurrence of two-thirds of the whole number of the Members of the Senate; and no treaty, ceding, contracting, restraining or suspending the territorial rights or claims of the United States, or any of them, or their, or any of their rights or claims to fishing in the American seas, or navigating the American rivers, shall be made, but in cases of the most urgent and extreme necessity, nor shall any such treaty be ratified without the concurrence of three fourths of the whole number of the Members of both Houses respectively.

8th. That no navigation law or law regulating commerce shall be passed without the consent of two-thirds of the Members present, in both Houses.

9th. That no standing army or regular troops shall be raised, or kept up in time of peace, without the consent of two-thirds of the Members present, in both Houses.

10th. That no soldier shall be inlisted for any longer term than four years, except in time of war, and then for no longer term than the continuance of the war.

11th. That each State respectively shall have the power to provide for organizing, arming, and disciplining its own militia, whensoever Congress shall omit or neglect to provide for the same. That the militia shall not be subject to martial law, except when in actual service in time of war, invasion or rebellion, and when not in the actual service of the United States, shall be subject only to such fines, penalties and punishments, as shall be directed or inflicted by the laws of its own State.

12th. That the exclusive power of Legislation given to Congress over

the Federal Town and its adjacent district, and other places, purchased or to be purchased by Congress of any of the States, shall extend only to such regulations as respect the police and good government thereof.

13th. That no person shall be capable of being President of the United States for more than eight years in any term of sixteen years.

14th. That the Judicial power of the United States shall be vested in one Supreme Court, and in such Courts of Admiralty as Congress may from time to time ordain and establish in any of the different States: The Judicial power shall extend to all cases in law and equity arising under treaties made, or which shall be made under the authority of the United States; to all cases affecting Ambassadors, other foreign Ministers and Consuls; to all cases of Admiralty and Maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, and between parties claiming lands under the grants of different States. In all cases affecting Ambassadors, other foreign Ministers and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction; in all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, as to matters of law only; except in cases of equity, and of Admiralty and Maritime jurisdiction, in which the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make: But the Judicial power of the United States shall extend to no case where the cause of action shall have originated before the ratification of this Constitution; except in disputes between States about their territory; disputes between persons claiming lands under the grants of different States, and suits for debts due to the United States.⁸

15th. That in criminal prosecutions, no man shall be restrained in the exercise of the usual and accustomed right of challenging or excepting to the jury.

16th. That Congress shall not alter, modify, or interfere in the times, places, or manner of holding elections for Senators and Representatives, or either of them, except when the Legislature of any State shall neglect, refuse, or be disabled by invasion or rebellion to prescribe the same.

17th. That those clauses which declare that Congress shall not exercise certain powers, be not interpreted in any manner whatsoever, to extend the powers of Congress; but that they be construed either as making exceptions to the specified powers where this shall be the case, or otherwise, as inserted merely for greater caution.

18th. That the laws ascertaining the compensation of Senators and

Representatives for their services, be postponed in their operation, until after the election of Representatives immediately succeeding the passing thereof; that excepted, which shall first be passed on the subject.

19th. That some tribunal other than the Senate be provided for trying impeachments of Senators.

20th. That the salary of a Judge shall not be encreased or diminished during his continuance in office otherwise than by general regulations of salary, which may take place on a revision of the subject at stated periods of not less than seven years, to commence from the time such salaries shall be first ascertained by Congress.

AND the Convention do, in the name and behalf of the people of this Commonwealth, enjoin it upon their Representatives in Congress to exert all their influence and use all reasonable and legal methods to obtain a RATIFICATION of the foregoing alterations and provisions in the manner provided by the fifth article of the said Constitution; and in all Congressional laws to be passed in the mean time, to conform to the spirit of these amendments as far as the said Constitution will admit.

And so much of the said amendments as is contained in the first twenty articles, constituting the Bill of Rights, being again read;

Resolved, That this Convention doth concur therein.

The other amendments to the said proposed Constitution, contained in twenty one articles, being then again read, a motion was made, and the question being put, to amend the same by striking out the third article, containing these words;

“When Congress shall lay direct taxes or excises, they shall immediately inform the Executive power of each State, of the quota of such State according to the census herein directed, which is proposed to be thereby raised; and if the Legislature of any State shall pass a law which shall be effectual for raising such quota at the time required by Congress, the taxes and excises laid by Congress shall not be collected in such State.”

It passed in the negative,—Ayes 65—Noes 85.

On motion of Mr. *George Nicholas*, seconded by Mr. *Benjamin Harrison*, the ayes and noes on the said question were taken as followeth;⁹

AYES—Mr. George Parker, Mr. George Nicholas, Mr. Wilson Nicholas, Mr. Zachariah Johnson, Mr. Archibald Stuart, Mr. William Dark, Mr. Adam Stephen, Mr. Martin M’Ferran, Mr. James Taylor (of Caroline), Mr. David Stuart, Mr. Charles Simms, Mr. Humphrey Marshall, Mr. Martin Pickett, Mr. Humphrey Brooke, Mr. John Shearman Woodcock, Mr. Alexander White, Mr. Warner Lewis, Mr. Thomas Smith,

Mr. John Stewart, Mr. Daniel Fisher, Mr. Alexander Woodrow, Mr. George Jackson, Mr. John Prunty, Mr. Abel Seymour, His Excellency Governor Randolph, Mr. John Marshall, Mr. Nathaniel Burwell, Mr. Robert Andrews, Mr. James Johnson, Mr. Rice Bullock, Mr. Burdet Ashton, Mr. William Thornton, Mr. Henry Towles, Mr. Levin Powell, Mr. William Overton Callis, Mr. Ralph Wormeley, jun., Mr. Francis Corbin, Mr. William M'Clerry, Mr. James Webb, Mr. James Taylor (of Norfolk), Mr. John Stringer, Mr. Littleton Eyre, Mr. Walter Jones, Mr. Thomas Gaskins, Mr. Archibald Woods, Mr. James Madison, Mr. James Gordon (of Orange), Mr. William Ronald, Mr. Thomas Walke, Mr. Anthony Walke, Mr. Benjamin Wilson, Mr. John Wilson, Mr. William Peachey, Mr. Andrew Moore, Mr. Thomas Lewis, Mr. Gabriel Jones, Mr. Jacob Rinker, Mr. John Williams, Mr. Benjamin Blunt, Mr. Samuel Kello, Mr. John Allen, Mr. Cole Digges, Mr. Bushrod Washington, The Hon. George Wythe, and Mr. Thomas Mathews.

NOES—The Honorable Edmund Pendleton, Esq; President, Mr. Edmund Custis, Mr. John Pride, Mr. William Cabell, Mr. Samuel Jordan Cabell, Mr. John Trigg, Mr. Charles Clay, Mr. William Fleming, Mr. Henry Lee (of Bourbon), Mr. John Jones, Mr. Binns Jones, Mr. Charles Patteson, Mr. David Bell, Mr. Robert Alexander, Mr. Edmund Winston, Mr. Thomas Read, the Honorable Paul Carrington, Mr. Benjamin Harrison, the Honorable John Tyler, Mr. David Patteson, Mr. Stephen Pankey, jun., Mr. Joseph Michaux, Mr. French Strother, Mr. Joseph Jones, Mr. Miles King, Mr. Joseph Haden, Mr. John Early, Mr. Thomas Arthurs, Mr. John Guerrant, Mr. William Sampson, Mr. Isaac Coles, Mr. George Carrington, Mr. Parke Goodall, Mr. John Carter Littlepage, Mr. Thomas Cooper, Mr. William Fleete, Mr. Thomas Roane, Mr. Holt Richeson, Mr. Benjamin Temple, Mr. James Gordon, (of Lancaster), Mr. Stephens Thompson Mason, Mr. William White, Mr. Jonathan Patteson, Mr. John Logan, Mr. Henry Pawling, Mr. John Miller, Mr. Green Clay, Mr. Samuel Hopkins, Mr. Richard Kennon, Mr. Thomas Allen, Mr. Alexander Robertson, Mr. Walter Crocket, Mr. Abraham Trigg, Mr. Solomon Shepherd, Mr. William Clayton, Mr. Burwell Bassett, Mr. Matthew Walton, Mr. John Steele, Mr. Robert Williams, Mr. John Wilson, Mr. Thomas Turpin, Mr. Patrick Henry, Mr. Edmund Ruffin, Mr. Theodorick Bland, Mr. William Grayson, Mr. Cuthbert Bullit, Mr. Walker Tomlin, Mr. William M'Kee, Mr. Thomas Carter, Mr. Henry Dickenson, Mr. James Monroe, Mr. John Dawson, Mr. George Mason, Mr. Andrew Buchanan, Mr. John Hartwell Cocke, Mr. John Howell Briggs, Mr. Thomas Edmonds, the Honorable Richard Cary, Mr. Samuel Edmison, and Mr. James Montgomery.

And then the main question being put that this Convention doth concur with the Committee in the said amendments;

It was resolved in the affirmative.

On motion, *Ordered*, That the foregoing amendments be fairly engrossed upon parchment, signed by the President of this Convention, and by him transmitted, together with the ratification of the Fœderal Constitution, to the United States in Congress assembled.¹⁰

(On motion, *Ordered*, That a fair engrossed copy of the Ratification of the Federal Constitution, with the subsequent amendments this day agreed to, signed by the President, and attested by the Secretary of this Convention, be transmitted by the President, in the name of the Convention, to the Executive or Legislature of each State in the Union.¹¹

Ordered, That the Secretary do cause the Journal of the proceedings of this Convention to be fairly entered in a well bound book, and after being signed by the President, and attested by the Secretary, that he deposit the same in the archives of the Privy Council or Council of State.¹²

On motion, *Ordered*, That the Printer to this Convention do strike forthwith fifty copies of the Ratification and subsequent amendments of the Fœderal Constitution, for the use of each County in the Commonwealth.

On motion, *Ordered*, That the Public Auditor be requested to adjust the accounts of the Printer to the Convention for his services, and of the workman who made some temporary repairs and alterations in the New-Academy, for the accommodation of the Convention, and to grant his warrant on the Treasurer for the sum due the respective claimants.¹³

On motion, *Resolved*, unanimously, That the thanks of the Convention be presented to the President, for his able, upright, and impartial discharge of the duties of that office.

Whereupon the President made his acknowledgment to the Convention for so distinguished a mark of its approbation.

And then the Convention adjourned "*sine die*."

Signed,

EDMUND PENDLETON, PRESIDENT.

Attest.

JOHN BECKLEY, SECRETARY.)

1. The minutes of 27 June (minus the text in angle brackets) were reprinted in Augustine Davis's *Virginia Independent Chronicle* on 2 July, and in the *New York Journal* on 10 July. These reprintings were based upon Davis's four-page broadside of the Convention's actions on 25 and 27 June (Evans 21553). (For a photographic reproduction

of this broadside, see Mfm:Va.) The minutes of 27 June, minus the text in angle brackets and the roll-call vote on the third structural amendment, were reprinted in the *Virginia Gazette and Weekly Advertiser*, 3 July; *Virginia Centinel*, 9 July; *Kentucky Gazette*, 9, 16 August; and, in whole or in part, in thirteen newspapers and one magazine outside Virginia by the first week of August: Conn. (1), N.Y. (2), N.J. (2), Pa. (6), Md. (3).

2. This engrossed copy of the Form of Ratification is in the Virginia State Library and is photographically reproduced in Mfm:Va.

3. For a comparison of this declaration of rights and the declaration drafted on or before 9 June by an Antifederalist committee chaired by George Mason and sent by Mason to New York Antifederalists on 9 June, see "Editors' Note: The Ratification of the Constitution and the Recommendation of Amendments," 25–27 June (above).

4. The words "or judge" do not appear in the manuscript Journal of the Convention, although they are found in the printed Journal.

5. The words "petition or" do not appear in the manuscript Journal of the Convention, although they are found in the printed Journal.

6. For a comparison between these amendments and those drafted on or before 9 June by an Antifederalist committee chaired by George Mason and sent by Mason to New York Antifederalists on 9 June, see "Editors' Note: The Ratification of the Constitution and the Recommendation of Amendments," 25–27 June (above). For a comparison between these amendments and another set of amendments, probably drafted between 9 and 27 June, see the editorial note to "Draft Structural Amendments to the Constitution," ante-27 June (above).

7. The words "at least" do not appear in the manuscript Journal of the Convention, although they are in the printed Journal.

8. A draft of this amendment, in the handwriting of an unidentified person, is in the Virginia Historical Society and is cataloged as Mss 13:1788, June 27:2. Although the draft amendment differs somewhat from the amendment printed here, the meaning is essentially the same. On the draft, a second person commented on the proviso which begins with the words "But the Judicial power." This second person noted: "this proviso is too general, & will preclude in every Instance, the following Cases, in which the federal Court ought to have Jurisdiction. viz. disputes between States about their Territory, & Disputes between Individuals claiming Lands under the Grants of different States." (For a transcription and a photographic reproduction of this draft amendment, see Mfm:Va.)

9. The printer omitted commas after those names followed by "jun.," or the name of a county in parentheses. In those cases, the editors have supplied commas.

10. Dated 28 June, President Edmund Pendleton's letter forwarding the Form of Ratification and the recommendatory amendments is printed below under that date.

11. On 30 June the state legislature resolved that the secretary of the Convention be allowed £15 for preparing fifteen engrossed copies of the Form of Ratification and the recommendatory amendments (Mfm:Va.). For a discussion of Pendleton's letter to the state executives and its enclosure, see Pendleton to the President of Congress, 28 June, note 1 (below).

12. A smooth manuscript Journal of the Convention, located in the Virginia State Library, is neither signed by the president nor attested by the secretary. For a photographic reproduction of the Journal, see Mfm:Va.

13. On 2 July Augustine Davis was paid £110 10s "for Printing [the] Journals of the late Convention & 4300 Copies of the Ratification together with the declaration of Rights and Amendments proposed by the Convention." The next day, the firm of Ingham & Bentzes received £4 10s "for a Necess'yhouse built for the use of the late Convention" (*Virginia Auditor's Journal*, 8 May–30 August 1788, pp. 568, 570, Vi).

Copies of the printed Convention Journal were ready for distribution by 1 July because on that day John Smith of Botetourt County, writing from Richmond, sent a copy of the Journal to John Brown in Congress (Brown to Smith, 9 July, Mfm:Va.).

Meeting of Antifederalist Convention Delegates Friday Evening, 27 June

On the evening of 27 June some Antifederalists, on the recommendation of George Mason, met in the chamber of the Virginia Senate to consider the adoption of an address to their constituents. Mason drafted an address, but withdrew it when he discovered that most of the delegates were opposed to an inflammatory address. "A Spectator of the Meeting," whose account was published on 9 July (below), reveals that opposition to Mason was voiced by Benjamin Harrison, John Tyler, and Robert Lawson; while David Meade Randolph, writing after 1791 (see note 4, below), says that Patrick Henry spoke against any further opposition to the Constitution. James Madison thought that Henry and Mason were of a similar mind and that the attempt to get Antifederalists to sign an address "was made under . . . auspices" of those two men (to Thomas Jefferson, 24 July, V below).

Despite the announced intention of Antifederalists that their address would be "an exhortation to acquiescence," Madison voiced a suspicion (on the day of the meeting) "that the ill-will to the Constitution will produce [— —] every peaceable effort to disgrace & destroy it." Two days later, on 29 June, Madison wrote that "The intended address of the Minority proved to be of a nature apprehended by me. It was rejected by the party themselves when proposed to them, and produced an auspicious conclusion to the business." If the address had been adopted, stated Madison on 24 July, it "would probably have done mischief" (to Alexander Hamilton, 27 June, and to Jefferson, 24 July, both in V below; and to Hamilton, 29 June, VI below).

A Spectator of the Meeting *Virginia Independent Chronicle, 9 July*¹

Previous to the adjournment of the late Convention, a proposition was made by Mr. Mason, that the minority should meet at the public buildings and prepare an address to reconcile the minds of their constituents to the new plan of government.

Accordingly a very full meeting was had, when to their surprise an address was offered for their signatures, tending to irritate, rather than to quiet the public mind.

A number of that respectable body immediately withdrew, others for some time either remained in silence, or, in general terms recommended temper and moderation,—till at length, Benjamin Harrison, Esq; of Charles City, rose, and in a firm and manly stile opposed not only the address which had been read, but earnestly recommended an adjournment without taking any farther steps in the business.—He observed they had done their duty as free and independent men, in opposing the constitution, but as it had been adopted by a majority of their countrymen it became their duty to submit as good citizens, until those destructive consequences to their liberty should appear,

which the minority apprehended, in which however he hoped they would be mistaken. He reminded them of their promises in Convention to unite the people in the opinion of the majority, and by their precept and example endeavor to secure harmony and order among their fel[l]ow citizens. The opinion was supported by the Honorable John Tyler and General Lawson so successfully, that Mr. Mason discovering their sentiments to prevail generally, prudently and with temper withdrew his address.²—An adjournment *sine die* took place—It is to be hoped that the laudable example of those patriots will be followed by their constituents, and that the fears of those who have opposed the new government will shortly be removed.

Massachusetts Centinel, 26 July³

What principles actuate *some* of the flaming opposers of the Federal System, may be discovered in the late conduct of the Hon. Mr. Mason, of Virginia. This gentleman, after the Constitution was ratified, requested the minority to meet at a publick place, for the *ostensible* purpose of addressing their constituents—recommending to them a cheerful acquiescence in the adoption that had taken place: But when thus assembled, he introduced a fiery, irritating manifesto—which he would have sent out to divide the State, had it not been for the patriotism of a majority of the persons assembled—who seeing the serpent in the grass, exposed it, and prevented any thing of the sort taking place.⁴

Carlisle Gazette, 24 September

Extract of a letter from a gentleman in Charlotevillia, (Virginia) dated 23d July 1788.

“I congratulate you on the adoption of the new government by ten states, I am impatient to see it put in motion, and anticipate with heart felt joy the numerous advantages which it will produce to our too long afflicted country. The good people of this state appear to be perfectly reconciled to the determination of its convention—Mr. MASON wished to excite some confusion by a publication addressed to those who were averse to the new government, but he was warmly opposed by the antifederalists, and compelled to relinquish his design. As soon as the debates of the Virginia convention are published [I] shall send you a copy.”

*David Meade Randolph's "Anecdote of Patrick Henry"*⁵

The birth of party spirit has been variously conjectured: the result of the Richmond Convention for the adoption of the Federal Constitution, was one of its imputed parents. In the evening of the day of

the final vote, General Meade and Mr. Cabell assembled the *discontents* in the old Senate Chamber; and after a partial organization of the party, a deputation was sent to Patrick Henry inviting him to take the chair. The venerated patriot accepted. Understanding that it was their purpose to concert a plan of resistance to the operations of the Federal Government, he addressed the meeting with his accustomed animation upon important occasions; observing, "he had done his duty strenuously, in opposing the Constitution, in the *proper place*,—and with all the powers he possessed. The question had been fully discussed and settled, and, that as true and faithful republicans, they had all better go home! They should cherish it, and give it fair play—support it too, in order that the federal administration might be left to the untrammelled and free exercise of its functions:" reproving, moreover, the half suppressed factious spirit which he perceived had well nigh broken out. The impressive arguments of Mr. Henry produced the gratifying effect he had hoped for.

1. This account was reprinted in the *Virginia Herald*, 17 July, and in nine out-of-state newspapers by the end of July: N.H. (1), Mass. (2), Conn. (1), N.Y. (4), N.C. (1).

2. This address has not been located.

3. This item was reprinted in the *Springfield Hampshire Chronicle*, 6 August. It was possibly based upon "A Spectator of the Meeting" (immediately above).

4. "Decius" XVII, *Virginia Independent Chronicle*, 1 April 1789, also criticized George Mason, stating that "it was him who first started the idea of keeping up an opposition to the constitution after it had been fairly decided on by the people; to which, effect, a remonstrance was introduced, which wore so much of the native bitterness and austerity of the father on its countenance, as to make the hearts of the most daring revolt at the sight;—whence he became as solitary and contemptible with his own party in remonstrance then, as he had been publicly infamous in his attacks on the other before." (For the complete article, see Mfm:Va.; and for the identification of John Nicholas, Jr., of Albemarle County, as the author of the "Decius" letters, see Boyd, XVI, 139n-41n.)

5. Printed: "Anecdotes of Patrick Henry. From the Manuscripts of the late David Meade Randolph," *Southern Literary Messenger*, I (1834-1835), 332. This undated account was apparently written after 1791 because in that year Everard Meade, referred to by David Meade Randolph as "General Meade," was still a colonel. Everard Meade represented Amelia in the House of Delegates, 1780-81, 1782-84, but he was not a delegate to the state Convention. (By 1794, he had become a brigadier general in the state militia.) Mr. Cabell was probably either William Cabell, Sr., or his son Samuel Jordan Cabell, both of whom represented Amherst County and voted against ratification of the Constitution. David Meade Randolph was Everard Meade's nephew.

Editors' Note

George Mason: Draft Legislative Resolutions Reprimanding Governor Edmund Randolph, c. 28 June

At the same time that George Mason was involved with the meeting of Antifederalist Convention delegates on the evening of 27 June (immediately above), he also drafted resolutions that challenged the failure

of Governor Edmund Randolph to lay before the Virginia Convention a letter written on 8 May by New York Governor George Clinton. In this letter, Clinton complained about the long delay in receiving Randolph's circular letter of 27 December 1787 to the state executives, which included copies of the 12 December Virginia act providing for the payment of the state convention delegates and "such reasonable expences as may be incurred," if the convention "should deem it necessary to hold any communications with any of the sister states or the Conventions thereof which may be then met." Mason was not a member of the special June 1788 session of the legislature and his draft resolutions reprimanding Randolph do not appear on the Journals of either house. (For a full discussion of this matter and the texts of some of the accompanying documents, see RCS:Va., 788-93.)

**President Edmund Pendleton to the President of Congress
Richmond, 28 June¹**

A General Convention of the people of this Commonwealth having ratified on their part the Constitution proposed for the Government of the United States, by their direction I have the honor of transmitting to Congress, through your Excellency, the Instrument of Ratification, together with sundry amendments which they wish to take place therein, after being considered in the mode prescribed in the Constitution

1. RC, PCC, Item 71, Virginia State Papers, 1775-1788, II, folio 611, DNA. Congress received Pendleton's letter and its enclosures on 14 July (PCC, Item 185, Despatch Books, 1779-1789, IV, folio 36, DNA). The engrossed parchment copy of the amendments has not been located, but Benjamin Bankson, a clerk of Congress, made a copy of the amendments in what is known as "Bankson's Journal." (For this journal, see RG 11, United States Government Documents Having General Legal Effect, "Ratifications of the Constitution," With Copies of Credentials of Delegates to the Constitutional Convention, DNA.) For the Form of Ratification received by Congress, see "The Virginia Form of Ratification," 26 June (above). On 28 June Pendleton, as instructed by the Convention, also wrote a similar letter to each state executive enclosing an engrossed manuscript copy which included the Form of Ratification and the amendments.

Convention Expenses, 2 June 1788–6 February 1789

This compilation of Convention expenses for each of the 170 delegates and nine others who performed some service for the Convention has been obtained from the "Convention Attendance Book" and two volumes of the journal of the Auditor of Public Accounts (8 May–30 August 1788 and 1 September 1788–19 March 1789), all of which are in the Virginia State Library.

The "Convention Attendance Book" contains one page for each county, city, or borough in Virginia that sent delegates to the Convention. Whenever a delegate asked for payment, a clerk usually recorded the current date, the first day on which the delegate attended, the number of days for which the delegate was seeking a ten-shilling per diem allowance, the compensation based on the mileage to and from Richmond, and the cost of ferriages. Some delegates asked for payment early in the Convention and then requested the balance in a second and even a third payment. Some entries are incomplete, consisting only of the first requests for compensation. No information is given for forty delegates. (For a photographic reproduction of the attendance book, see Mfm:Va.)

Under the accounting category "Officers of Civil Government," the journal of the Auditor of Public Accounts lists warrants issued to delegates and those who performed services for the convention. The first entry for a Convention expense is 7 June 1788; the last 6 February 1789. Each entry consists of two columns. The first column gives the name of the delegate and the county he represented, while the second column lists the amount authorized by the warrant, in pounds, shillings, and pence. A typical entry reads: "Warrant to Wm. Fleet—a Delegate in Convention from King & Queen. 4.17.7½."

One hundred and sixteen delegates received one payment; forty-six obtained payment in two installments; and three were paid three times. Five delegates are not included in the journal. Ten delegates—Humphrey Brooke, Edmund Custis, James Gordon of Orange, William Grayson, Miles King, George Mason, Stephen Pankey, Jr., Meriwether Smith, John Stringer, and James Webb—are incorrectly listed as being paid for legislative service instead of Convention service. Payments to several members combined their service in the Convention and the June 1788 session of the legislature. Four legislators in the June session—Hezekiah Davison, John Elliot, William Lowther, and Jonathan Parsons—are incorrectly listed as receiving payments for Convention attendance and are not included in this compilation. (For photographic reproductions of the relevant pages of the auditor's journal, see Mfm:Va.)

In compiling the following listing, the attendance book has been compared with the auditor's journal. In both sources, the amount of pay is identical for ninety-three delegates, while it differs for thirty-four members. The journal provides the only payment information for thirty-eight delegates and payments to three members appear only in the attendance book. Two delegates are not listed in either source. When the two sources differ, payment has been determined by subtracting payments for legislative service, by adjusting payment totals to reflect each day that the delegate was in attendance, and by correcting clerical errors.

Payments to Convention Delegates

DELEGATE (VOTE ON CONSTITUTION)	COUNTY	PAYMENTS			DATE ARRIVED (DAYS PAID)
Robert Alexander (N)	Campbell	16	7	3	4 June (23)
John Allen (Y)	Surry	15	1	0	
Thomas Allen (N)	Mercer	33	8	6	2 June (17)
Robert Andrews (Y)	James City	15	8	0	
Thomas Arthur (N)	Franklin	16	15	3	9 June (19)
Burdet Ashton (Y)	King George	16	2	6	2 June (26)
Burwell Bassett (Y)	New Kent	14	13	4	
David Bell (N)	Buckingham	15	14	6	2 June (26)
John Blair (Y)	York	15	8	0	
Theodorick Bland (N)	Prince George	14	12	6	2 June (26)
Benjamin Blunt (Y)	Southampton	16	19	3	2 June (26)
Edmund Booker (N)	Amelia	14	7	3	2 June (25)
Robert Breckinridge (Y)	Jefferson	39	18	6	2 June (26)
John Howell Briggs (Y)	Sussex	15	1	3	2 June (26)
Humphrey Brooke (Y)	Fauquier	15	5	3	
Andrew Buchanan (N)	Stafford	14	6	0	5 June (23)
Cuthbert Bullitt (N)	Prince William	17	4	0	
Rice Bullock (Y)	Jefferson	40	2	0	2 June (26)
Nathaniel Burwell (Y)	James City	15	13	5	2 June (26)
Samuel Jordan Cabell (N)	Amherst	17	7	0	2 June (26)
William Cabell, Sr. (N)	Amherst	17	7	0	2 June (26)
William Overton Callis (Y)	Louisa	15	0	0	2 June (26)
George Carrington (N)	Halifax	17	10	6	2 June (26)
Paul Carrington (Y)	Charlotte	17	10	5	2 June (26)
Thomas Carter (N)	Russell	28	6	6	2 June (26)
Richard Cary (N)	Warwick	16	7	9	2 June (26)
Charles Clay (N)	Bedford	16	15	3	2 June (23)
Green Clay (N)	Madison	37	2	6	2 June (26)
William Clayton (Y)	New Kent	14	2	0	
George Clendinen (Y)	Greenbrier	17	6	0	2 June (17)
John Hartwell Cocke (Y)	Surry	15	13	0	2 June (26)
Isaac Coles (N)	Halifax	17	13	6	2 June (26)
Notley Conn (not voting)	Bourbon	—	—	—	
Thomas Cooper (N)	Henry	21	2	6	2 June (26)
Francis Corbin (Y)	Middlesex	16	1	0	2 June (26)
Walter Crockett (N)	Montgomery	23	2	3	
Edmund Custis (N)	Accomack	26	18	0	
William Darke (Y)	Berkeley	19	19	0	
John Dawson (N)	Spotsylvania	15	6	0	2 June (25)
Henry Dickenson (N)	Russell	27	2	6	2 June (26)
Cole Digges (Y)	Warwick	16	4	0	2 June (26)
Thomas H. Drew (N)	Cumberland	7	16	6	
Joel Early (N)	Culpeper	16	10	0	2 June (25)
John Early (N)	Franklin	20	5	3	2 June (26)

Samuel Edmiston (N)	Washington	25	0	6	2 June (26)
Thomas Edmunds (N)	Sussex	15	1	3	2 June (26)
John Evans (N)	Monongalia	26	18	0	2 June (26)
Littleton Eyre (Y)	Northampton	20	4	0	2 June (26)
Daniel Fisher (Y)	Greensville	16	11	0	2 June (26)
William Fleet (Y)	King and Queen	15	4	4½	2 June (26)
William Fleming (Y)	Botetourt	19	17	3	2 June (26)
John Fowler (N)	Fayette	37	2	6	2 June (26)
Thomas Gaskins (Y)	Northumberland	18	9	6	————
Parke Goodall (N)	Hanover	13	14	5	————
James Gordon (Y)	Lancaster	17	6	6	2 June (26)
James Gordon, Jr. (Y)	Orange	16	6	0	2 June (26)
William Grayson (N)	Prince William	16	18	0	————
John Guerrant (N)	Goochland	14	2	4	2 June (26)
Joseph Haden (N)	Fluvanna	11	18	0	————
Benjamin Harrison (N)	Charles City	11	0	0	2 June (20)
Patrick Henry (N)	Prince Edward	16	5	3	————
Samuel Hopkins, Jr. (N)	Mecklenburg	17	5	0	————
Ralph Humphreys (Y)	Hampshire	21	13	0	2 June (26)
James Innes (Y)	Williamsburg	13	0	0	2 June (26)
George Jackson (Y)	Harrison	26	18	0	2 June (26)
James Johnson (Y)	Isle of Wight	17	1	5½	2 June (26)
Zachariah Johnston (Y)	Augusta	17	16	0	2 June (26)
Binns Jones (N)	Brunswick	15	5	3	———— (24)
Gabriel Jones (Y)	Rockingham	17	16	0	2 June (26)
John Jones (N)	Brunswick	14	6	6	———— (22)
Joseph Jones (N)	Dinwiddie	14	1	3	2 June (26)
Walter Jones (Y)	Northumberland	15	19	3	3 June (25)
Samuel Kello (Y)	Southampton	16	1	0	————
Richard Kennon (N)	Mecklenburg	17	11	10	————
Miles King (Y)	Elizabeth City	16	16	9½	2 June (26)
Robert Lawson (N)	Prince Edward	16	1	0	————
Henry Lee (N)	Bourbon	39	4	6	6 June (22)
Henry Lee (Y)	Westmoreland	15	19	0	————
Thomas Lewis (Y)	Rockingham	17	16	0	2 June (26)
Warner Lewis (Y)	Gloucester	16	12	9	2 June (26)
John Carter Littlepage (N)	Hanover	13	18	0	2 June (26)
John Logan (N)	Lincoln	37	2	6	2 June (26)
William McClerry (Y)	Monongalia	26	18	0	2 June (26)
Martin McFerran (Y)	Botetourt	21	7	3	————
William McKee (Y)	Rockbridge	19	0	0	2 June (26)
James Madison (Y)	Orange	14	0	0	3 June (25)
John Marr (N)	Henry	21	2	6	2 June (26)
Humphrey Marshall (Y)	Fayette	36	6	6	2 June (26)
John Marshall (Y)	Henrico	13	0	0	2 June (26)
George Mason (N)	Stafford	17	19	0	————
Stevens Thomson Mason (N)	Loudoun	18	12	0	3 June (25)
William Mason (Y)	Greensville	13	9	3	2 June (22)

Thomas Mathews (Y)	Norfolk Borough	16	0	9	2 June (22)
Joseph Michaux (N)	Cumberland	16	1	4	2 June (26)
John Miller (N)	Madison	37	2	6	2 June (26)
James Monroe (N)	Spotsylvania	15	16	0	_____
James Montgomery (N)	Washington	26	1	0	_____
Andrew Moore (Y)	Rockbridge	19	0	0	2 June (26)
George Nicholas (Y)	Albemarle	16	4	0	2 June (26)
Wilson Cary Nicholas (Y)	Albemarle	16	4	0	2 June (26)
Stephen Pankey, Jr. (N)	Chesterfield	12	16	10	2 June (25)
George Parker (Y)	Accomack	22	13	8	_____
Charles Patteson (N)	Buckingham	15	7	4	_____ (23)
David Patteson (Y)	Chesterfield	13	5	3	2 June (26)
Jonathan Patteson (N)	Lunenburg	16	5	3	2 June (26)
Henry Pawling (N)	Lincoln	37	2	6	2 June (26)
William Peachy (Y)	Richmond	16	10	6	2 June (26)
Edmund Pendleton (Y) as president	Caroline	53	12	0	_____
Martin Pickett (Y)	Fauquier	17	9	3	2 June (26)
Thomas Pierce (not voting)	Isle of Wight	—	—	—	_____
Levin Powell (Y)	Loudoun	19	5	3	_____
John Pride (N)	Amelia	14	14	6	2 June (26)
John Prunty (Y)	Harrison	26	18	0	2 June (26)
Edmund Randolph (Y)	Henrico	13	0	0	_____
Thomas Read (N)	Charlotte	17	2	6	2 June (26)
Samuel Richardson (N)	Fluvanna	15	12	0	_____
Holt Richeson (N)	King William	14	17	0	2 June (26)
Willis Riddick (Y)	Nansemond	17	6	0	2 June (26)
Jacob Rinker (Y)	Shenandoah	19	8	0	2 June (26)
Thomas Roane (N)	King and Queen	15	2	0	2 June (26)
Alexander Robertson (N)	Mercer	37	18	6	2 June (26)
Christopher Robertson (N)	Lunenburg	16	4	6	2 June (25)
William Ronald (Y)	Powhatan	13	5	8	_____
Edmund Ruffin (N)	Prince George	14	2	0	_____ (25)
William Sampson (N)	Goochland	15	0	0	2 June (26)
Abel Seymour (Y)	Hardy	20	14	0	2 June (25)
Solomon Shepherd (Y)	Nansemond	17	6	0	2 June (26)
Charles Simms (Y)	Fairfax	18	6	0	2 June (26)
Meriwether Smith (N)	Essex	13	2	6	5 June (22)
Thomas Smith (Y)	Gloucester	17	6	0	2 June (26)
John Steele (N)	Nelson	38	6	6	4 June (24)
Adam Stephen (Y)	Berkeley	20	5	0	_____
John Stringer (Y)	Northampton	20	4	0	2 June (26)
French Strother (N)	Culpeper	16	12	0	2 June (26)
Archibald Stuart (Y)	Augusta	17	6	0	_____
David Stuart (Y)	Fairfax	18	10	9	2 June (26)
John Stuart (Y)	Greenbrier	17	6	0	2 June (17)
James Taylor (Y)	Caroline	15	4	0	2 June (26)
James Taylor (Y)	Norfolk	18	8	0	2 June (26)

Benjamin Temple (N)	King William	14	6	6	
William Thornton (Y)	King George	15	8	0	5 June (24)
Walker Tomlin (Y)	Richmond	16	2	0	2 June (26)
Henry Towles (Y)	Lancaster	17	6	6	2 June (26)
Abraham Trigg (N)	Montgomery	21	17	3	
John Trigg (N)	Bedford	18	9	3	2 June (26)
Thomas Turpin, Jr. (N)	Powhatan	14	2	10	2 June (26)
John Tyler (N)	Charles City	14	4	0	2 June (26)
James Upshaw (N)	Essex	15	1	0	2 June (26)
Isaac Vanmeter (Y)	Hardy	20	14	0	2 June (25)
Anthony Walke (Y)	Princess Anne	18	8	0	2 June (26)
Thomas Walke (Y)	Princess Anne	19	0	0	2 June (26)
Matthew Walton (N)	Nelson	38	16	11	2 June (26)
Bushrod Washington (Y)	Westmoreland	14	19	0	4 June (23)
William Watkins (N)	Dinwiddie	13	13	9	
James Webb (Y)	Norfolk	18	13	6	2 June (26)
Worlich Westwood (Y)	Elizabeth City	16	17	0	2 June (26)
Alexander White (Y)	Frederick	19	17	3	2 June (26)
William White (N)	Louisa	13	8	0	2 June (26)
John Williams (Y)	Shenandoah	19	8	0	2 June (26)
Robert Williams (N)	Pittsylvania	19	14	4	2 June (26)
Benjamin Wilson (Y)	Randolph	25	1	0	2 June (26)
John Wilson (N)	Pittsylvania	19	15	3	2 June (26)
John Wilson (Y)	Randolph	24	1	0	4 June (24)
Edmund Winston (N)	Campbell	16	2	0	4 June (23)
John Shearman Woodcock (Y)	Frederick	19	12	6	
Andrew Woodrow (Y)	Hampshire	21	13	0	2 June (26)
Archibald Woods (Y)	Ohio	27	13	0	2 June (26)
Ralph Wormeley, Jr. (Y)	Middlesex	17	4	0	2 June (26)
George Wythe (Y)	York	15	8	0	
Ebenezer Zane (Y)	Ohio	27	3	4	2 June (25)

Other Payments

John Beckley, Secretary	40	0	0
Augustine Davis, Printer	110	10	0
William Drinkard, Sr., Doorkeeper	15	0	0
William Drinkard, Jr., Doorkeeper	15	0	0
Daniel Hicks, Doorkeeper	15	0	0
Ingham & Bentzes, for "a Necessary House"	4	10	0
Edmund Pendleton, Jr., Clerk Comte. on Priv.	20	0	0
William Pierce, Sergeant at Arms	24	0	0
The Reverend Abner Waugh, Chaplain	32	0	0

V.
**THE DEBATE OVER THE CONSTITUTION AND
COMMENTARIES ON THE VIRGINIA CONVENTION
June–July 1788**

Introduction

Public Commentaries on the Constitution and the Convention

Important gaps exist for some of Virginia's ten newspapers, all weeklies that each printed four regular issues in June. Only twenty-seven of the forty regular issues are extant. Complete runs exist for six newspapers: *Fredericksburg Virginia Herald*, *Norfolk and Portsmouth Journal*, *Richmond Virginia Gazette and Weekly Advertiser*, *Richmond Virginia Independent Chronicle*, *Winchester Virginia Centinel*, and *Kentucky Gazette*. The *Virginia Independent Chronicle* also printed at least two extraordinary issues. The *Winchester Virginia Gazette* has only two extant issues, and the *Richmond Virginia Gazette and Independent Chronicle* has one regular issue and one supplement extant. No issues have been found for either the *Alexandria Virginia Journal* or the *Petersburg Virginia Gazette*. Several items from the *Petersburg Virginia Gazette*, however, were reprinted in other newspapers, and some appear below. (For a full discussion of Virginia's newspapers, see RCS:Va., xliii–xliv.)

Virginia's newspapers devoted little space to the coverage of the state Convention. On 4 and 11 June, the *Virginia Independent Chronicle* published the Convention proceedings for 2–7 and 9 June; and on 25 June, it described the two plans for ratification before the Convention on 24 and 25 June. Excerpts from the *Chronicle's* reports were reprinted in several Virginia newspapers. Augustine Davis of the *Chronicle* struck a three-page broadside containing the proceedings of 25 June (including the two roll-call votes and the Form of Ratification) and a four-page broadside containing the proceedings of the 25th and the 27th (including all forty recommendatory amendments). (See *Convention Debates*, 25 June, note 1, and *Convention Debates*, 27 June, note 1, both in IV above.) In early July several newspapers published the Convention proceedings for 25 and 27 June. The *Kentucky Gazette* did not report Virginia ratification until 26 July and it did not complete its reprinting of the Convention proceedings of 25 and 27 June until 16 August. Virginia newspapers also published brief summaries of the Convention's proceedings and a few extracts of letters from Richmond

describing these proceedings. Some newspapers ran advertisements proposing a subscription edition of the Convention debates (RCS:Va., 903).

The majority of the principal essays (both original and out-of-state articles) printed in June in Virginia's newspapers criticized the Constitution, a significant departure from the material published through May 1788. Almost all of the original Antifederalist essays were printed in the *Virginia Independent Chronicle*. (See below for these essays.) Other original Antifederalist articles possibly appeared in no longer extant newspapers. No major out-of-state Antifederalist items have been located in Virginia newspapers, although the *Virginia Gazette and Independent Chronicle* advertised the sale of the pamphlet edition of Luther Martin's *Genuine Information*, first offered for sale in Philadelphia on 12 April (CC:389, 678).

Only one major original Federalist item has been found in a Virginia newspaper in June—the *Virginia Independent Chronicle's* two-part "A Delegate Who Has Caught Cold" (printed below). On 4 June the *Virginia Independent Chronicle* reprinted George Washington's June 1783 circular letter to the state executives (CC:4). The Federalist articles reprinted from other states were: "An American" (Tench Coxe), *Pennsylvania Gazette*, 21 May (RCS:Va., 832–43); the "Spurious Centinel" XV, *Pennsylvania Mercury*, 16 February (CC:534); and an unsigned piece from the *Pennsylvania Packet*, 3 June, explaining why no country was "better calculated for commerce" than the United States (CC:Vol. 5). The *Norfolk and Portsmouth Journal* and the *Virginia Independent Chronicle* announced the availability of the second volume of *The Federalist* which had been advertised for sale first in New York City on 28 May. Upon the request of James Madison, copies of Volume I had been sent in mid-May from New York City to Virginia by Alexander Hamilton for the use of the Virginia Convention delegates, and in early June Hamilton forwarded copies of Volume II. (For the circulation of the book edition of *The Federalist* in Virginia, see RCS:Va., 652–55.)

News items from other states continued to appear in Virginia newspapers in June. These included: (1) speculations about the prospects for ratification in South Carolina, New Hampshire, and, most particularly, New York; (2) an account of the violence between Federalists and Antifederalists in Dobbs County, N.C.; (3) reports of the South Carolina Convention, including the texts of some speeches, the vote on ratification, the Form of Ratification, and the acquiescence of some Antifederalists in ratification; (4) a description of Charleston's federal procession celebrating South Carolina's ratification; (5) an announcement of the Georgia act ceding 30,000,000 acres to the United States

which was to go into effect when nine states ratified the Constitution; (6) an assertion that the new government under the Constitution would help Georgia resolve its Indian problems; (7) a statement of the admiration for the Constitution in England; (8) a criticism of the notion of a "federal city"; (9) an account of the celebration of Maryland ratification in Portsmouth, N.H.; and (10) a report of the dispatching by Baltimore merchants of the *Federalist*, a miniature ship, as a gift to George Washington at Mount Vernon. Washington's letter of 8 June, thanking the merchants appeared in Virginia's newspapers early in July. (For this letter, see Fitzpatrick, XXIX, 516-17.)

Of these news items, those pertaining to South Carolina ratification were particularly popular; South Carolina was the eighth state to ratify and that news arrived shortly after the Virginia Convention convened. In fact, the *Virginia Independent Chronicle* devoted almost a page and a half of its 18 June issue to the South Carolina Convention. The news of ratification by New Hampshire (the ninth state) reached Richmond on 29 June, and it was not reported in Virginia's newspapers until the first and second weeks of July.

The publication of extracts of letters was a favorite device of eighteenth-century newspapers for the dissemination of information and propaganda. Printers usually gave the date and place of writing and only rarely the name of the letter writer or recipient. Anonymous letter writers were occasionally identified by profession, public office, or social standing. Sometimes, these "letters" were fictitious; more often than not, however, they were genuine, even if often edited for publication. Since Virginia ratification was so critical, Virginians (especially those in Richmond) kept their correspondents in other states informed about the course of the Virginia Convention, often predicting whether or not the Convention would ratify the Constitution and by what majority. Consequently, more than thirty extracts of letters from Virginia concerned with the Convention have been located in out-of-state newspapers, especially those in Philadelphia, New York City, and Boston. About twenty extracts of Richmond letters, dated between 4 and 26 June, are printed below or in part VI; five of the letter writers were identified as Virginia Convention delegates. Other letters printed below originated in Petersburg, Norfolk, or just simply Virginia. The Convention delegates whose letters have been identified are Francis Corbin, Patrick Henry, and Edmund Randolph. Occasionally, newspapers contained summaries of letters.

Private Commentaries on the Constitution and the Convention

The volume of extant Virginia letters on the Constitution, substantial since mid-September 1787, mushroomed in June and July 1788. Close to one hundred private letters, most of them written by Virginians,

are printed below and in Part VI. The most active correspondent was Convention delegate James Madison, who wrote at least twenty-eight letters (primarily on the Convention) between 4 and 29 June. Madison wrote Alexander Hamilton at least eight times, and George Washington and Rufus King six times each. The letters of thirteen other Convention delegates appear below and in Part VI.

Letter writers (both Virginians and non-Virginians), in addition to discussing most aspects of the Virginia Convention, speculated on the prospects of ratification in New Hampshire, North Carolina, and New York, and the disastrous impact that the failure of Virginia and New York to ratify would have on the American Union. Virginia and New York Antifederalists corresponded on proposed amendments to the Constitution; and Federalists in the New Hampshire, New York, and Virginia conventions agreed by letter to establish an express system to carry the news of their ratifications to each other (RCS:Va., 811–29, 1672–75). Perhaps, at no other time in the ratification debate were both Federalists and Antifederalists so intent upon disseminating information.

Hugh Williamson to John Gray Blount
New York, 3 June (excerpt)¹

... All Eyes here are looking with Hope or fear towards Virga. The opposition have great Confidence in the mulish obstinacy of P Henry, Mason & R H Lee. We all admire the beautiful Trope of Col: Mason at the Court House in the County where he was elected.² You may have been taught said he to respect the Characters of the Members of the late Convention. You may have supposed that they were an assemblage of great Men—There is nothing less true. From the Eastern States there were Knaves and Fools from the states southward of Virga. They were a parcel of Coxcombs and from the middle States Office Hunters not a few. . . .

1. RC, Blount Papers, Duke University. Printed: LMCC, VIII, 747. For another excerpt from this letter, see Prince William County Election (RCS:Va., 608–9).

2. For the election of Mason in Stafford, see RCS:Va., 613–14.

William Grayson to Nathan Dane
Richmond, 4 June¹

I recieved your kind letter for which I am extremely thankful: At present I have only time to let you know that the Convention has met & Edmund Pendleton the Chancelor & who is for the Constitution was *unanimously* elected Presidt.—The debates began to day, but no

question has been taken indicative of superiority on either side:—We have agreed to go through the Constitution by paragrap[h]s,—this is in our favor

The Numbers Yesterday, were as nearly equal as possible, but two unlucky circumstances happened to day.—Govr. Randolph declared in favor of adopting the Constitution & news has come to town that So. Carolina has ratified—I have just come from a meeting & though We are alarmed we do not despond.—the district of Kentucki is with us, & if we can get over the four Counties, which lye on the Ohio between the Pensylvy. line & Big Sandy Creek, the day is our own,—

Please to communicate this to Mr. Gerry, & let him know I have not time to write requesting him at the same time to prevent my being quoted in a public newspaper—I shall write you from time to time when this business laps & give you the best information in my power.² from yr. Affect. Frd. & Most Obe Ser

[P.S.] Give my compliments. to Mr. Smith³ & let him see this—

1. RC, Dane Papers, DLC. The letter was postmarked at Fredericksburg on 5 June. Dane (1752–1835), a Beverly, Mass., lawyer, represented that state in Congress from 1785 to 1788. Like Grayson, Dane opposed the Constitution in Congress in September 1787. After Virginia ratified, however, Dane hoped that the three remaining states would adopt the Constitution and help to ensure that amendments would be proposed in the first federal Congress (to Melancton Smith, 3 July, John Wingate Thornton Collection, New England Historic Genealogical Society).

2. Congressman Dane received Grayson's letter in New York City on 12 June, at which time he wrote to Elbridge Gerry, a Massachusetts Antifederalist leader. (Dane's 12 June letter to Gerry, paraphrasing Grayson's letter, is in the Lilly Library, Indiana University, Bloomington.) Grayson's letter was among the first of many that was received in New York City about the proceedings of the Virginia Convention. On 12 June the *New York Journal* lamented that definitive news about the prospects of Virginia ratification had not yet arrived. The *Journal* noted that "There are several private letters received, in this city, of a *conjectural* nature, respecting the *present* political sentiments of several of the members in that assembly; but, since 'the proof of the pudding is in the eating,' a suspension of judgment is presumed advisable."

3. Grayson refers to Antifederalist leader Melancton Smith, a delegate to the New York Convention which was scheduled to convene on 17 June. Both men had opposed the Constitution in Congress in September 1787 (CC:95).

James Madison to Rufus King

Richmond, 4 June¹

I thank you sincerely for your favor previous to your leaving N. York. The information in it is agree[a]ble and useful.²

Our Convention met on Monday. I did not arrive till the evening of that day. Mr. Pendleton had been unanimously put into the chair. The debates commenced to day. The Govr. has declared the day of previous amendments past, and thrown himself fully into our scale.

M-s-n & H-y appeared to take different & awkward ground, & the federal party are apparently in the best spirits. There is reason to believe nevertheless that the majority will be but small, & may possibly be yet defeated. There are several perplexing circumstances with which we have to contend, and of which the utmost advantage will be taken. A little time will enable me to speak a more explicit language. adieu Yrs. affectly

1. RC, King Papers, NHi.

2. On 25 May, King wrote Madison that Federalists had won the spring elections in Massachusetts and Connecticut and that the New Hampshire Convention would ratify the Constitution by "a handsome majority." King, who left New York City for Boston soon after he wrote Madison, requested that Madison keep him informed about the Virginia Convention because of the "real anxiety" in Massachusetts over Virginia's ratification (Rutland, *Madison*, XI, 57-58). Madison wrote King on 9, 13, 18, 22, and 25 June (below; and Rutland, *Madison*, XI, 167).

James Madison to George Washington
Richmond, 4 June¹

Your favor of the 2d. ulto.² was not recd. till my arrival here on monday evening. I found, contrary to my expectation that not only a very full house had been made on the first day, but that it had proceeded to the appointment of the President & other officers. Mr. Pendleton was put into the chair without opposition. Yesterday little more was done than settling some forms and Resolving that no question general or particular should be propounded till the whole plan should be considered & debated clause by clause. This was moved by Col. Mason,³ and contrary to his expectations, concurred in by the other side. To day the discussions commenced in Committee of the whole. The Governor has declared the day of previous amendments passed, and thrown himself fully into the federal scale. Henry & Mason made a lame figure & appeared to take different and awkward ground. The federalists are a good deal elated by the existing prospect. I dare not however speak with certainty as to the decision. Kentucke has been extremely tainted, is supposed to be generally adverse, and every piece of address is going on privately to work on the local interests & prejudices of that & other quarters. In haste I am Dr Sir Yrs. Affectly.

1. RC, Washington Papers, DLC.

2. On 2 May Washington had written Madison, informing him that the Maryland Convention had overwhelmingly ratified the Constitution (Rutland, *Madison*, XI, 33).

3. Mason was possibly following the advice of Richard Henry Lee, who on 7 May had recommended a similar procedure to Mason (RCS:Va., 785).

Collin McGregor to Neil Jamieson
New York, 4 June (excerpt)¹

... With respect to the Securities I see you leave me entirely to do wt. them as may appear most advantageous.—this is now the Critical period; for should Virga. *reject* the N. Constitution final Settlements & other Continental debt will fall for a time; if she accedes they will appreciate immediately.²—Mr. Hart writes me that it is still doubtful how it will go; but his opinion is that there is a *small* Majority in favor, and so Convinced is he of this Circumstance that he has made a pretty Considerable purchase of F. Settlements, on his own Account, and I have made a further purchase for him here to the amount of £800 this Curr[enc]y Same Certificates, & taken one third of it on myself.—As Mr. Hart is on the Spot, he will be able soon to discover how it is likely to go and he keeps me regularly advised of prospects, so that if things should not look well, that I may Sell.

The State of So. Carolina has adopted the Constitution by a great Majority; and this makes the Eight[h] State which have Ratified it.—this may have great influence on the Virga. Convention which are now sitting.—

I am sorry to Say that the Country Interest have greatly outnumber'd this part of the State, and there is a great Majority of the Members for our Convention which meets the 20th inst. Stren[u]ously opposed to the New Government;³ however, we are in hopes that if Virga. adopts our Convention will not reject; but adjourn for a time; ~~to get other instructions~~ for they must at length come into the measure; Virga-Making. . . .

1. FC, Collin McGregor Letterbook, 1788–1789, NN. The name of the addressee does not appear on the letter, but internal evidence reveals that the letter was written to Neil Jamieson.

2. The Philadelphia mercantile firm of Coxe and Frazier predicted that “certi[fi]cate[s] will be up to 4/3 the moment Virginia adopts, as there are not two of the Brokers who will sell now” (to Walter Livingston, 12 June, Coxe Papers, Series I, Volumes and Printed Material, American Letterbook of Coxe and Frazier, PHI). From New York, Peter Collin wrote Nicholas Low that “This morning I delivered Mr Bingham the Certificate I got at the Treasury for those you had deposited there, and I informed him also that no more of the kind could be got at present, as the Holders were unwilling to part with any before they hear from Virginia, in hopes that if the new Constitution is adopted there they would be considerably higher” (18 June, Low Papers, NH).

3. Reports that the Antifederalists had a large majority in the New York Convention, scheduled to meet on 17 June, circulated widely. One such report, published in the *New York Journal*, 12 June, stated that 46 of the 65 Convention delegates were “decidedly opposed” to the Constitution.

The Impartial Examiner III

Virginia Independent Chronicle, 4 June¹

Besides those inherent rights, which should be established as fundamental principles, independent of the constitution, there are certain other maxims essential to every free government. These should pervade the whole plan. They should be interwoven with its very texture. And, as it is necessary that the first should be preserved sacred and inviolate; so ought the last to be regarded as indispensable. These should be the leading properties, the head—the soul of the system; whilst those exist entire, supreme and uncontroled.

It will not be denied, that *all power is originally vested in the people, and that it should be exercised either immediately by themselves, or mediately by their representatives.* These are *maxims*, without the observance of which the liberty of every nation must expire. When the power is exercised by their representatives, it is expedient that the representation be *whole and complete.* It should be *ample*, that amongst the *members* there may be a competent knowledge of the *constituents*, their sentiments, connections, views and habits; and that amongst the *constituents* there may generally be a due degree of knowledge respecting the virtues and abilities of the *members.*

In extensive territories, where the people are widely dispersed, and individuals can have very little communication beyond the circle of their own neighbourhood, the representation should also be extensive. In countries thus situated, unless the legislature be numerous, there cannot be expected amongst the *members* thereof a general knowledge of their constituents: and when the *member* to be elected bears a very small proportion to the *number* of electors, it is utterly improbable that the *majority* should have an adequate knowledge of those, who will be elected. So that a great part of the community must in a manner be obliged to submit their most important concerns into the hands of a few persons unknown to themselves, and of whose wisdom, integrity and patriotism they can form no competent judgment.

Again, the representation should be *complete*, that is, it should be such as to comprehend every species of interest within the society. All orders of men, who have any permanent interest in the government, as far as practicable, ought to be represented. Regarding, then, the great diversity, which pervades most communities, from the highest funded concerns through the various stages of mercantile and mechanic interests, we must discover the necessity of an extensive delegation. When, therefore, the number of *representatives* in a legislature is very small, this affords objections, not only because they are not

numerous enough to contain a competent knowledge of their constituents: they are inadequate to, and cannot sufficiently respect, all the complicated, variant and opposite interests, which must necessarily subsist in a commonwealth, whose inhabitants are spread over a wide-extended country. The smallness of their number enhances the dignity of their *seats*; and none can expect to obtain a *seat*, except men of the most elevated station. Thus in the beginning of a government so constituted there will be laid a foundation for the exercise of undue influence, whereby every branch of supreme power will be in a manner monopolized by one set of men: and thus the delegation will become partial. For, besides the effect of this undue influence in elections, the dispersed situation of the electors, together with that of the candidates, will ever produce much division amongst the suffrages;—and so the select party, who will be distinguished by their superior wealth, being the leading *junto* in this business, will easily procure a competent number to decide for themselves or their favorites.

Thus it will generally happen, that elections will be determined, not by the majority of the people, but perhaps by an inconsiderable part of them; and the persons chosen will be such, whose situation and rank in life had removed them far from a knowledge of the *great body* of the people. They will consequently be unacquainted with the customs, feelings, opinions and wishes of most of their constituents; and as the constituents will be unacquainted with their representatives,—*these* will not possess the confidence of *those*. Doubt and distrust will prevail.—That course of congenial sentiment—that reciprocity of common interest between *legislature* and *bulk* of the nation, which should be the soul of *republicanism*, and are the chief objects of a free, unbiassed and general representation, will not exist in this kind of government. How, then, can it be expected that a strict regard to the *good* of all will mark the public proceedings? Who can really imagine that a *body*, thus constituted and thus invested with sovereign authority, will regularly devote their labors to promote the happiness, prosperity and freedom of a community, over whom they bear the rule—when they view themselves advanced to this state of exaltation—when this high degree of dignity will tempt them to look down with indifference, perhaps contempt, on the inhabitants of a spacious territory, as the subjects of their government—and when they contemplate these, as generally unconnected with themselves in all their most important concerns?—The uniform experience of ages operates against the idea. It may be dangerous to indulge in such a scheme of policy—lest its fairest prospects should prove visionary indeed!—lest in its exercise the directly contrary effects should be produced.

For the foregoing reasons, the legislative powers proposed to be granted according to the new system appear liable to material objections. For herein the number of representatives being too small to encourage the idea of a *full* or *complete* deputation, there is no prospect of securing a due regard to all the different interests necessarily arising amongst the numerous inhabitants of America, spread over a territory so extensive—so vast—so various in climate, products, habits and connections.

That part of the legislature, which is particularly denominated the *house of representatives*, is indeed the only popular branch; and although these officers are to be chosen by the immediate suffrages of the people, yet their dignity, being necessarily great in proportion as their number is small, fair and unbiassed elections are scarcely probable, if not impracticable.

In the appointment and constitution of the other branch, the *senate*, we have but the shade of a deputation from the people. The state-legislatures, it seems, are to elect this *body*. The objections, which apply to the *house of representatives*, hold more strongly with regard to this, in as much as longer continuance in office will be productive of more danger; and the mode of appointment, by rendering them more independent of the people, will preclude *these* from having any decisive influence on their conduct.

It is no argument in favor of the manner proposed, that it is the same, by which the members of the present Congress are chosen. The nature and end of the one being totally different from those of the other, if they be duly considered, it may, perhaps, be thought not inexpedient to vary the proceedings respecting them. The Congress under the present confederation are the deputies of sovereign states in the full exercise of independent government. These deputies are appointed by the legislatures thereof, not for the purpose of regulating the internal police of the states, but to superintend their general and foreign affairs so far as all the states are concerned in common. When, therefore, the legislature of any state is actually existing and in the exercise of their office, it seems not improper that such deputies should be appointed by them: for in strictness they appear to be the deputies of the legislature; and are to them immediately amenable. The proposed *senate* are to exercise a share of legislation in the general government, and to participate in the sovereignty of America. Thus circumstanced, they will know not any authority superior to that, whereof they themselves possess a part. They are intended, as such, to be a branch of the representation of the people. To the people they ought to be amenable: and by the people they ought to be chosen.

1. For "The Impartial Examiner" I and II, printed in the *Chronicle* on 20, 27 February, and 5 March, and 28 May, see RCS:Va., 387-94, 420-24, 459-66, 885-89.

George Washington: To the Executives of the States (1783) Virginia Independent Chronicle, 4 June

To encourage ratification of the Constitution, Virginia Federalists often reminded their fellow Virginians that George Washington was a firm supporter of the Constitution and a longtime advocate of a strong central government. This Federalist technique began soon after the adjournment of the Constitutional Convention in September 1787 and continued through the meeting of the Virginia Convention of June 1788. On 29 May 1788 "C. D.," on behalf of others but especially himself, asked Augustine Davis of the Richmond *Virginia Independent Chronicle* to print Washington's circular letter of June 1783 to the state executives. This letter, a plea for a strong central government, was one of Washington's last public acts as commander in chief of the Continental Army and one of the most praised and widely circulated public documents during the Confederation Period. On 4 June 1788, two days after the Virginia Convention convened, Augustine Davis published the letter.

George Washington's retained copy is dated 8 June 1783. The letter sent to Virginia's governor is dated the 12th and that printed in the *Chronicle* the 18th. Washington declared: (1) the powers of Congress had to be increased; (2) the public debt had to be paid; (3) the militia had to be made uniform; and (4) the states had to abandon "local prejudices and policies."

For the text of the circular letter and a discussion of its publication, circulation, and impact, see CC:4.

From John Brown New York, 5 June (excerpt)¹

... We are all waiting with the utmost anxiety & impatience to hear the fate of the new Constitution in Virginia. The final adoption or rejection of it in a great measure depends upon the determination of her Convention of which I have heard with pleasure that you are a Member I have heard that the Delegates from Kentucky are all in the Opposition.² I am at a loss to account for the general disaffection of that District to a System of Government upon which in my opinion the peace & Glory of the United States depend. I have carefully examined the proposed plan as it may affect the District in particular & must candidly assure that I have not been able to discover that it contains Principles partially injurious to the Interest of Kentucky. We have nothing to fear respecting the Navigation of the Mississip[p]i a total change of Policy with respect to that Subject had taken place not only in Congress but throughout the Eastern States—Our political System is in a wretched situation wholly inadequate to the purposes of

Government. A change must take place & in my opinion we cannot under our present Circumstances obtain a better than the plan proposed—

Congress have determind that Kentucky ought to be admitted in to the Union & have referrd it to a Committee consisting of a Member from each State to examine whether by the Articles of Confederation power is delegated to Congress for that purpose, if not to frame an Additional Article vesting in them the necessary power—to be submitted to the different States for their ratification—I expect this will be the result & that we shall not be admitted at the present time—I shall be able to inform you with more certainty in a few days as the Committee are to meet tomorrow³—

Pray write to me by every post & inform me fully the News of Kentucky—I shall set out for that Country in July by the rout[e] of Fort Pitt My best Complts to my friends from that Country in Convention—

1. RC, Miscellaneous Manuscripts, Filson Club, Louisville, Ky. The letter has no addressee, but in his 21 June letter to James Breckinridge (below) Brown said that he had written to Thomas Allin, Matthew Walton, and John Fowler—state Convention delegates from the Kentucky counties of Mercer, Nelson, and Fayette. Brown's 5 June letter was probably written at the behest of James Madison, who was concerned about the lack of support for the Constitution in Kentucky. (See Brown to Madison, 12 May, RCS:Va., 793–95; and Brown to Madison, 7 June, Rutland, *Madison*, XI, 88–90.)

2. For the opposition to the Constitution in Kentucky, see Madison to Brown, 9 April (RCS:Va., 711–12). Madison also wrote to Brown on 21 April, but that letter has not been located.

3. Acting on an address from “the representatives of the people of Kentucky in convention” received on 29 February, Congress in the Committee of the Whole recommended on 2 June “That in their opinion it is expedient that the district of Kentucky be erected into an independent state and therefore they submit the following resolution, That the address and resolutions from the district of Kentucky with the acts of the legislature of Virginia therein specified be referred to a committee consisting of a member from each state, to prepare and report an act for acceding to the independence of the said district of Kentucky and for receiving the same into the Union as a member thereof, in a mode conformable to the Articles of Confederation.”

On 3 June Congress appointed a grand committee of one delegate from each state to report an act granting statehood to Kentucky. On 2 July the grand committee asked to be discharged. Brown made a motion, seconded by Edward Carrington, that Congress ratify the compact between Virginia and Kentucky calling for separate statehood for Kentucky. The next day Brown's motion was postponed and another motion was adopted to defer the statehood question to the new Congress under the Constitution (JCC, XXXIV, 72–73, 194, 198, 287, 287–94).

Bushrod Washington to George Washington Richmond, 7 June¹

The convention has hitherto made a very slow progress towards finishing the business before them, and leads me to apprehend, that we shall be detained here much longer than I at first expected. We

have determined to go through the constitution clause by clause, before any question shall be put. This regulation, if attended to, would expedite the business, by confining us to the particular parts objected to. But the debates have hitherto been general and desultory, although we have proceeded no farther than the third section of the first clause. The defects of the old confederation, and the necessity of framing an entirely new one, seem to have claimed the principal share of our attention.

Mr. Henry on Thursday called upon the friends to the proposed plan to point out the objections to the present federal constitution. This challenge, which was given with an appearance of great confidence, drew from the governor yesterday a very able and elegant harangue for two hours and a half;² for I suppose you have been informed of Mr. Randolph's determination to vote for the proposed government without previous amendments. He pointed out those defects, and painted in a masterly and affecting manner the necessity of a more solid union of the States. Mr. Henry's confidence in the power and greatness of Virginia, which he said she might rest upon though dismembered from her sister States, was very well exposed by the above speaker. Mr. Madison followed, and with such force of reasoning, and a display of such irresistible truths, that opposition seemed to have quitted the field. However, I am not so sanguine as to trust appearances, or even to flatter myself that he made many converts. A few I have been confidently informed he did influence, who were decidedly in the opposition. Mr. Nicholas concluded the day with a very powerful speech, inferior to none that had been made before as to close and connected argument.³ Were I to attempt to predict the fate of the constitution, it must be founded on conjecture.

1. Printed: Jared Sparks, ed., *The Writings of George Washington* . . . (12 vols., Boston and Charleston, 1838-1839), IX, 378n. Either Bushrod Washington or editor Jared Sparks misdated this letter 6 June. Internal evidence clearly indicates that it was written on 7 June. Henry issued his "challenge" to the proponents of the Constitution on Thursday, 5 June, and he was answered on the 6th by Edmund Randolph, James Madison, and George Nicholas. Since Bushrod Washington refers to Randolph's speech of "yesterday," it becomes clear that he wrote this letter on the 7th. For the speeches by Henry, Randolph, Madison, and Nicholas, see RCS:Va., 951-68, 971-1003.

2. An extract of a 6 June Richmond letter, printed in the *Pennsylvania Packet*, 13 June, stated that Governor Randolph "spoke for three hours to-day before he sat down." See also James Duncanson to James Maury, 7, 13 June, at note 7 (immediately below).

3. On 6 June William Heth noted in his diary that "Debates run high, & the opposition warm. the question, I fancy will be very doubtful" (Mfm:Va.).

James Duncanson to James Maury
Fredericksburg, 7, 13 June (excerpts)¹

My dear Friend

... Our Convention has been sitting a Week this day, & all the Town are at this moment, looking out for Intelligence by the Stage this Evening, being Saturday, many of your acquaintances here are at Richmond, waiting the result of this important business, our accounts thursday were rather favorable, as it was then generally supposed, there was a Majority in favor of the Constitution. we shall probably know more of the matter this Evening, but admitting it is as we wish, I am sorry to tell you, that the Minority will be too respectable, however two fortunate events have taken place since their meeting, as we have received accounts this Week, of South Carolina having adopted the measure by a large Majority of no less than 76, which makes the eight[h] State, another favorable circumstance for us, is the Governor (who is a Member of our Convention,) having declared himself avowedly in favor of it, & his conduct will we hope influence others, you cannot conceive how the Anti party, reprobate, curse, & abuse, this Man, but notwithstanding all that is advanced to his prejudice, I think it will be found, that he has acted as a friend to his Country in this instance²—at the last meeting of the Assembly, he published a piece of some length,³ explaining his reasons, for refusing his Signature, to the Constitution in the grand Convention at Philadelphia, he stated many objections & wished for amendments, but reflecting upon the matter since, & finding so many of the States had already adopted it, & that the leading Knaves against it, in our Convention were determined to reject it [at] all events, even at the risk of dissolving the Union, which it plainly appears now, Henry, Mason, & their party, would not hesitate to sacrifice to their wicked & Ambitious Views, he thought it best to declare for the new form, with all it's supposed imperfections, than hazard so destructive, fatal & ruinous a measure, which must plunge us into Anarchy & confusion, & be attended with the most horrid consequences; true it is, that several of the proposed amendments, would be of great Service to Virginia could they be obtained, but this & every State, must give up something for the good of the whole—There has been a great deal wrote, & still more said upon this subject for nine Months past, but all the Objections may be reduced to two, these are, as one of the Writers⁴ happily expresses himself, debt & dignity, the dread of paying old debts, & the fear of many losing their influence & consequence; these operate more in this State, than all the other objections put together—I sincerely wish the business was

well over & amicably settled, for you never saw your Country Men so much agitated, not even at the time of Cornwallis's Invasion, every Man warm for or against the measure, & nothing but debate and altercation in all companies—I wish the Convention may conduct themselves with temper & moderation for very little of either is observed out of Doors.

Our Assembly are to meet the 23d inst., to reconsider the Circuit Bill, the Judges pretend to have found some flaw or defect in it, contrary to the Bill of rights &c, but it is supposed by some, that the true cause of their Complaint, & which indeed they hint at in their Remonstrance is, that the Assembly have added to their duty, & forgot to increase their Salary, be this as it may, they refuse to act under the Law in it's present form, so that in all probability the Bill will be lost.⁵ . . .

The Stage is at last arrived, & the Streets full of People going to & from the Post Office, the Anti party are again in high Spirits, as the accounts this Evening, are more in their favor than those on Thursday, they suppose they have a Majority of two, & the Federalists think they have one, however I have seen Mr. Fitzhugh⁶ who left Richmd yesterday, & he assures me, it is impossible at this time to say, how the matter may be determined, they have yet done nothing, all has been Skirmishing at long shot, but he supposes the Members will begin to be impatient in the course of ensuing Week, & that they will come to close quarters, several of the Speakers for the new Government have not yet opened their Mouths, the others have hardly any but Mason & Henry, the former plans, & the latter executes, Mr. Fitzhugh says there was a good deal of debate on Friday, the Governor opened, Henry replied, the latter was again answered by Mr. Maddison & Geo. Nicholas, all in Speeches of considerable length, as some of them were on their feet upwards of two hours, & not one of them so short a time as one,⁷ Mr. Fitzhugh tells me that he took a great deal of pains, to ascertain the sence of the Convention upon the subject before them, & he is of opinion that there is a Majority of 12 or 14 for the adoption, but he is afraid Henry & Mason if they find this, that they will fall upon some means to prevent the question being put, by inflaming the minds of the People, & prevailing upon them to put a stop to their proceedings by force, but this he mentioned to me in confidence, Richmond is exceedingly crowded, & many of no principle & desperate Fortunes are attending there, so that they would find little difficulty in accomplishing the business, if this should take place, you will say it is high time, we should have some kind of Government, better than the one we live under at present—They were obliged to adjourn from

the Assembly House to the play House,⁸ on account of the prodigious number of People from all parts of the Country, a great proportion of them Anti Federalists, & clamorous in their opposition out of Doors, ready to pursue any desperate step countenanced by their party within the House, so that I am very much alarmed that Mr. Fitzhugh[h]'s apprehensions are too well founded—Old Pendleton is President. . . . P: S: Tuesday [10?]th Friday 13th

. . . your Brother Thompson Mason got [— —] to the Convention for Loudon,⁹ & I am told is as Violent & noisy a Man as any there opposed to every good measure, his Colle[ague]¹⁰ is a better man & for the adoption. . . .

Neither Tuesday's Stage or yesterdays brought us any thing conclusive from Richmond, Mr. Patton¹¹ & several of the other Gentlemen returned last night, they seem to have no doubt of the new Government being adopted, but as they are all friends to the measure some allowances are to be made, the letters I have seen from Dawson & the anti party, the two last Stages, speak

1. RC (incomplete), Maury Papers, ViU.

2. Commenting upon similar news, President of Congress Cyrus Griffin said that he was "not a little happy that the important business of the proposed Constitution is going on so well in Virginia—Governor Randolph's recantation, 'tho embarrassing enough with respect to himself, may produce some pleasing consequences" (to Thomas FitzSimons, 16 June, Gratz Collection, Old Congress, PHi).

3. Edmund Randolph's 10 October 1787 letter to the Speaker of the House of Delegates was published around 27 December, about two weeks before the October 1787 session of the legislature adjourned (RCS:Va., 260–75).

4. See "The State Soldier" III, *Virginia Independent Chronicle*, 12 March (RCS:Va., 488–89). See also Charles Mortimer to John Mortimer, 8 June (immediately below).

5. For the district court bill, see RCS:Va., 797n–98n.

6. Probably William Fitzhugh whose plantation, "Chatham," was across the Rappahannock River from Fredericksburg.

7. For more on the length of Governor Edmund Randolph's speech, see Bushrod Washington to George Washington, 7 June, at note 2 (immediately above).

8. On 3 June the delegates began to meet in the quarters of the Academy of Sciences and Fine Arts in the New Theatre (RCS:Va., 910, note 6, 913).

9. Stevens Thomson Mason, George Mason's nephew, voted against ratification of the Constitution. James Maury and Stevens Thomson Mason were married to sisters, Mary Elizabeth and Catherine Armistead of Louisa County.

10. Levin Powell voted to ratify the Constitution.

11. Possibly Robert Patton, a Scotch immigrant and a member of the Fredericksburg mercantile firm of Patton and Dalrymple.

Charles Mortimer to John Mortimer Fredericksburg, 8 June (excerpt)¹

. . . Inform Mr. Barclay I sent you a bill to pay off my balance, and present my respects to him and family—We are in great hopes, tell him that our Convention will adopt the Constitution 'tho its violently

opposed by designing knaves, & their adherentz, who dread the payment of debts and losing their power and influence, in Assemblies to make laws derogatory to Justice²—

1. FC, Minor Family Papers, Commonplace Book of Mary Anne Fauntleroy (Mortimer) Randolph of "The Grove," ViHi. Charles Mortimer, a wealthy physician and merchant, was Fredericksburg's first mayor after it was incorporated as a town in 1782. His son John "was bound and bred to Mercantile Buisness under Messrs. Barclay Merchts in Phila. . . . He has a knowledge of Accounts and something of the French language" (Charles Mortimer to Thomas Jefferson, 27 November 1790, Boyd, XVIII, 219n).

2. Mortimer probably took this idea from "The State Soldier" III, *Virginia Independent Chronicle*, 12 March (RCS:Va., 488–89). See also James Duncanson to James Maury, 7, 13 June, at note 4 (immediately above).

Nancy Simms to Charles Simms

8 June (excerpts)¹

I Recd a letter from you my dear Charles—yesterday dated the 4th of June—I am happy to hear you are well, and must beg you will use every precaution to keep your self so—I have always heard Richmond was an unhealthy situation and as you are subject to Bilious complaints—I have my fears—for you. . . . I am no Politician—But am pleased to hear the new constitution is likely to be adopted, as I pay great deference to your opinion and Judgment in weighty matters and as you think it will Conduce to the happiness and Prosperity of America—I have not a doubt but it will. . . .

1. RC, The Papers of Charles Simms (Peter Force Collection), DLC. The place of writing is not given, but the letter was probably written from the Simms home in Alexandria. Charles Simms (1755–1819), a lawyer, and Nancy Douglass of New Jersey were married in 1778. Simms represented West Augusta in the fifth revolutionary convention (1776) and the House of Delegates, 1776–77; he represented Fairfax in the House, 1785–86, 1792–93, 1796–97, and the state Convention, voting to ratify the Constitution.

From George Washington

Mount Vernon, 8 June (excerpt)¹

I have received your favor of the 4th, and am happy to find that matters so far as you had proceeded, had assumed an auspicious aspect. I hope the good sense of the Country will be superior to, and overcome the local views of some, and the arrogant and malignant pride of others.—The decided majority by which the proposed Constitution was ratified in South Carolina, and the almost absolute certainty of its adoption in New Hampshire, will contribute, more than a little, to dispel the mist which may, have blinded the eyes of the wavering (if they have minds open to conviction—and capable of foreseeing the

consequences of rejection & seperation) & must one would think, turn them into the right road. . . .

1. Copy, Jared Sparks Papers, Harvard University. The name of recipient does not appear. Since a part of the letter (not printed here) discusses the affairs of the Potowmack Navigation Company, the letter was possibly written to one of the two Fairfax Convention delegates, David Stuart or Charles Simms, both of whom were associated with Washington in that company.

**George Washington to James Madison
Mount Vernon, 8 June¹**

I am much obliged by the few lines you wrote to me on the 4th.² and though it is yet too soon to rejoice one cannot avoid being pleased at the auspicious opening of the business of your Convention.—Though an ulterior opinion of the decision of this State on the Constitution would at any time previous to the discussion of it in the Convention have been premature yet I have never dispaired of its adoption here.—What I have mostly apprehended is that the insiduous arts of its opposers to alarm the fears and to inflame the passions of the Multitude may have produced instructions to the Delegates that would shut the door against argument and be a bar to the exercise of the judgment—If this is not the case I have no doubt but that the good sense of this Country will prevail against the local views of designing characters and the arragant opinions of chagreened and disappointed Men—The decision of Maryland & South Carolina by such large Majorities and the moral certainty of the adoption By New-Hampshire will make *all* except desperate Men look before they leap into the dark consequences of Rejection

The Ratification by eight States without a negative—By three of them unanimously—By Six against one in another—By three to one in another—By two for one in two more—and by *all* the weight of *abilities* & *property* in the other is enough one would think to produce a cessation of opposition—I do not mean that numbers alone is sufficient to produce conviction in the Mind, but I think it is enough to produce some change in the conduct of any Man who entertains a doubt of his infalibility

Altho' I have little doubt of your having received a copy of the enclosed pamphlet, yet I send it.—It is written with much good sense & moderation—I conjecture, but upon no certain ground, that Mr. Jay is the Author of it.—He sent it to me sometime ago, since which I have received two or three more copies.³—

1. RC, Princeton University.

2. Printed above.

3. For John Jay's pamphlet, see RCS:Va., 804, note 3.

**George Washington to John Jay
Mount Vernon, 8 June¹**

By the last Mail, I had the pleasure to receive your letter of the 29th. of May²—and have now the satisfaction to congratulate you on the adoption of the Constitution by the Convention of South Carolina.—

I am sorry to learn there is a probability that the majority of members in the New York Convention will be Antifederalists.—Still I hope that some event will turn up before they assemble, which may give a new complexion to the business.—If this State should, in the intermediate time, make the ninth that shall have ratified the proposed Government, it will, I flatter myself, have its due weight.—To shew that this event is now more to be expected than heretofore, I will give you a few particulars which I have from good authority & which you might not, perhaps, immediately obtain through any public channel of conveyance.—

On the day appointed for the meeting of the Convention, a large proportion of the members assembled & unanimously placed Mr Pendleton in the Chair.—Having on that & the subsequent day chosen the rest of their Officers & fixed upon the mode of conducting the business, it was moved by someone of those opposed to the Constitution to debate the whole by paragraphs, without taking any question until the investigation should be completed.³—This was as unexpected as acceptable to the Federalists; and their ready acquiescence seems to have somewhat startled the opposition for fear they had committed themselves.—

Mr Nicholas opened the business by very ably advocating the system of Representation.—Mr Henry in answer went more vaguely into the discussion of the Constitution, intimating that the Federal Convention had exceeded their powers & that we had been, and might be happy under the old Confederation—with a few alterations.—This called up Governor Randolph, who is reported to have spoken with great pathos in reply: and who declared, that, since so many of the States had adopted the proposed Constitution, he considered the sense of America to be already taken & that he should give his vote in favor of it without insisting previously upon amendments.—Mr Mason rose in opposition & Mr Madison reserved himself to obviate the objections of Mr Henry and Colo. Mason the next day.⁴—Thus the matter rested when the last accounts came away.

Upon the whole, the following inferences seem to have been drawn—that Mr Randolphs declaration will have considerable effect with those

who had hitherto been wavering.—That Mr Henry & Colonel Mason took different & awkward ground—& by no means equalled the public expectation in their speeches—That the former has, probably, receded somewhat from his violent measures to coalesce with the latter—and that the leaders of the opposition appear rather chagreened & hardly to be decided as to their mode of opposition.—

The *sanguine* friends to the Constitution counted upon a majority of twenty at their first meeting, which number they imagine will be greatly increased: while those equally strong in their wishes, but more temperate in their habits of thinking speak less confidently of the greatness of the majority and express apprehensions of the arts that may yet be practised to excite alarms particularly with the members from the Western District (Kentucke).—All, however, agree that the beginning has been as auspicious as could possibly have been expected.—A few days will now ascertain us of the result.

1. RC, John Jay Papers, Rare Book and Manuscript Library, Columbia University.

2. Jay's 29 May letter is in the Washington Papers at the Library of Congress.

3. For this motion, made by George Mason, see Convention Debates, 3 June (RCS:Va., 914).

4. George Nicholas, Patrick Henry, Edmund Randolph, George Mason, and James Madison delivered these speeches on 4 June (RCS:Va., 917–41).

George Washington to Jonathan Trumbull Mount Vernon, 8 June (excerpt)¹

... I have at length found a moments leizure to take up my pen & to tell you in [a] few words the state of politics in this part of the Union.—

Our Convention has been assembled about a week, & so far as I am advised of their proceedings seem to have made as auspicious a beginning as could have been expected.—Mr. Mason & Mr. Henry are at the head of the opposition.—In favor of the Constitution are many very able men—among these we count Messrs. Pendleton, Madison, Wythe, Blair, Nicholas, Innis, Marshall & a long train of other wor-thies—Governor Randolph (in answer to a speech in which Mr. Henry insinuated that the Fœderal Convention had exceeded their powers, and that nothing forbade us to live happy under the old Confederation with some alterations) described pathetically our perilous situation as a full justification of the proceedings of the Fœderal Convention; and declared, since so many of the States had adopted the Constitution without alterations that he should vote for it in its present form;² Upon the whole (tho' great and unwearied artifices have been practiced to

prejudice the people in many parts of the State against the New Government) I cannot avoid hoping, and believing, to use the fashionable phrase that Virginia will make the ninth column in the federal Temple.—May all things turn out for the best in respect to this highly favoured Continent, is the constant & unfeigned prayer of My dear Trumbull Your most Affecte. friend

1. RC, Hampton L. Carson Collection, Rare Book Department, Free Library of Philadelphia. Printed: Fitzpatrick, XXIX, 511–12. On 20 June Trumbull replied that “The Support which the new Constitution will receive from the State of Virginia must fill every Well Wisher to its Adoption, with heart felt pleasure & satisfaction.—Under the Influence of these feelings, I anticipate the Joy of soon hearing the compleat ratification of your State” (Washington Papers, DLC). On 20 July Washington commented to Trumbull on Virginia’s ratification: “The Majority, it is true, was small, and the minority respectable in many points of view. But the great part of the minority here, as in most other States, have conducted themselves with great prudence and political moderation; insomuch that we may anticipate a pretty general and harmonious acquiescence” (Fitzpatrick, XXX, 20–22).

2. Edmund Randolph delivered this speech on 4 June (RCS:Va., 931–36).

James Madison to Alexander Hamilton **Richmond, 9 June¹**

The Heat of the weather² &c. has laid me up with a bilious attack: I am not able therefore to say more than a few words.

No material indications have taken place since my last.³ The chance at present seems to be in our favor. But it is possible things may take another turn.—Oswald of Phila. came here on Saturday; and has closet interviews with the leaders of the Opposition.⁴ Yours affely.

1. RC, Hamilton Papers, DLC. Nathan Dane, a Massachusetts delegate to Congress, probably referred to this letter when he wrote Theodore Sedgwick on 17 June that he had “Just seen a letter from a member of the Virginia Convention—(Madison) dated the 9th. instant but nothing new—the friends of the Constitution calculate on a majority—but do not Speak with certainty” (Sedgwick Papers, MHi).

2. The hot weather had begun several days earlier. On 8 June William Heth noted: “The weather extremely warm, as it has been for some days.” Heavy showers probably brought some relief on the 8th and 9th, but on the 10th Heth recorded “Very warm weather” (Mfm:Va.).

3. Probably the Madison letter that is quoted in Nicholas Gilman to John Sullivan, 12 June (below).

4. Eleazer Oswald, the publisher of the Philadelphia *Independent Gazetteer*, traveled to Richmond to deliver letters that New York Antifederalist John Lamb had written to Virginia Antifederalists, seeking their cooperation in obtaining amendments to the Constitution. On 9 June Convention delegates William Grayson, Patrick Henry, and George Mason replied to Lamb, and Oswald carried their letters to New York. See RCS:Va., 811–29.

**James Madison to Rufus King
Richmond, 9 June¹**

I have been for two days & still am laid up with a bilious attack. Writing is scarcely practicable & very injurious to me. I can only say to you therefore appearances have not changed sensibly since my last.² I think we have a majority as yet; but the other party are ingenious & indefatigable.

1. RC, King Papers, NHi.
2. Madison to King, 4 June (above).

**Virginia Antifederalist Convention Delegates to John Lamb
Richmond, 9 June**

William Grayson, Patrick Henry, and George Mason each responded favorably to letters from the New York Federal Republican Committee that suggested cooperation between the Virginia and New York conventions for the purpose of proposing amendments to the Constitution. Mason enclosed in his letter a declaration of rights and structural amendments proposed by a committee of Antifederalist Convention delegates, of which Mason was chairman. For these letters, the declaration of rights, and the structural amendments, see RCS:Va., 816-23.

**Edward Carrington to Thomas Jefferson
New York, 9 June¹**

I had the honor to write you by the last packet by Mr. Barlow and Master G. W. Greene,² since which south Carolina has acceded to the new Constitution by a great Majority. the inclosed papers contain the act, and some of the debates of the Convention.

Virginia is now sitting, having met last Monday, but we have not yet received any intelligence as to the probable turn the business will take there. I am inclined to think the critical Stage in which this convention meets the affair, will have much influence upon the opinions of many who Set out in the opposition. In adopting they will certainly avoid Commotion, and, at worst, accept a constitution upon which eight States have already agreed to hazard their happiness, and which may be amended, should it be found to operate badly; in rejecting, they may produce commotion, with but little prospect of preventing the adoption. the five States who have not yet acceded, would never agree in their objects, and could even this be brought about, they must at last rather yield to the 8, than these to the five; and it appears that the submission on either side must be intire, for should the 8 think of a compromise with the 5, there would be difficulty in agreeing what

points to yield. these considerations will, I apprehend, have their effect in the Convention of Virginia, & produce an issue different from that which might have taken place under other circumstances. I am happy to find that the five are so separated that there cannot be a possible effort, to Unite in an attempt to dismember the union. had the southern States joined in opinion as to the constitution, I verily believe such a desperate step would have been tried, but it would have ended in their destruction, and perhaps that of all the others.

Mr. Madison & myself have sent you sundry Pamphlets and pieces which have been written by the Friends of the constitution;³ I have endeavoured to select from those which have been written on the other side, that which is reputed the best, to send you now, that you may fairly judge of the arguments brought forward amongst us pro & Con. the two Books enclosed contain a number of letters under the signature of the Federal Farmer, but the Author is not known—these letters are reputed the best of any thing that has been written in the opposition.⁴

I hope by the next opportunity to be able to send you the second Volume of the *Federalist*.⁵

1. RC, Jefferson Papers, DLC.

2. Connecticut poet Joel Barlow and his ward George Washington Greene, son of the late General Nathanael Greene, were traveling to France, where Barlow was to serve as European agent of the Scioto Company and where Greene was to be educated (Boyd, XIII, 157n).

3. For example, see James Madison to Jefferson, 22 April, note 4; and Carrington to Jefferson, 14 May, note 3 (RCS:Va., 746, 796).

4. “Federal Farmer” published two volumes of letters addressed to the “Republican”: *Observations Leading to a Fair Examination of the System of Government Proposed by the Late Convention . . .* and *An Additional Number of Letters . . .*. The volumes were advertised for sale in New York City in early November 1787 and in early May 1788, respectively. For their importance, see CC:242.

5. The second volume of *The Federalist* had just appeared, being first advertised for sale in New York City on 28 May.

Alexander White to Mary Wood Richmond, 10–11 June¹

When Matters of such importance are transacting—you will naturally think it in my power to make important communications—but it really is not because nothing conclusive is yet done—We met according to the recommendation of Assembly in the House of Delegates, chose Mr Edmund Pendleton President appointed the necessary Officers and adjourned to a new House on Shockoe Hill this is a Spacious and Airy Building sufficiently large to accommodate all the Members—and all those who desire to be Spectators—It is quite uncertain when the Convention will rise—Mr Henry and Col: Mason only have yet spoke

against the Gover[n]ment—the President, Madison, Randolph Nicholas—C. H. Lee²—and Corbin for it—We who wish the adoption of the Constitution conceive we have a Majority for it—those who are opposed to it, flatter themselves with similar expectations—

I see Jemmy every day, and have several times seen his wife, they are both well³ I have myself enjoyed good health and Spirits and am well accommodated.—We have every day a gay circle of Ladies—to hear the debates—and have the pleasure of believing them all Federalists—I can form no opinion of the time the Convention will rise—for my own part I am certain of being detained till after the rising of the Assembly What the Event of their Proceedings may be I know not—Please to remember me affectionately to the girls—

[P. S.] 10th June afternoon—

Mr Monroe an old Friend of mine spoke 3 Hours against the Constitution—June 11th. Col: Mason Spoke again—also Col: Grayson on the same side—If Col: Mason is really the great man I expected, his cause must be bad indeed—or my Senses gone—if I ever had any

1. RC, Miscellaneous Manuscripts, DLC. This letter is addressed to “Mrs. Wood/near/Winchester.” White represented Frederick in the state Convention and voted to ratify the Constitution. Mary Rutherford Wood, the widow of Colonel James Wood (founder of Winchester), was White’s mother-in-law.

2. Colonel Henry Lee of Westmoreland.

3. Probably General James Wood, Mary Wood’s son, who was in Richmond serving on the Council of State.

St. Jean de Crevecoeur to William Short New York, 10 June (excerpt)¹

... Good news from Charles Town are Just now arrived by Mr. Keane a Member of the Convention & a delegate in Congress;² spite of the most Extraordinary efforts made in S: Carolina by the partisance of your nefarious & highly Criminal P. Henry, to Form a Confederation of the Southern States, the Constitution has Triumphed over its Numerous Enemies, Inclosed I send you the Charles town Papers the Perusal of which will please you & Mr. Jefferson I am persuaded; you’ll see that the Processional Idea of Boston has been adopted & Followed in Maryland as well as in South Carolina;³ there are Eight States; Now for Virginia the Convention of which is now Setting; & from its decision depends the Success of or the destruction of this Great Improvement in the union of These States—the most powerfull opposition will be made, & all the Talents of Mr. Henry made use of To breake & split the union; if Virginia accepts it, you may Look on the adoption To be Genral. Neither New York Nor New Hampshire will dare refuse it;

but if on the other hand, shd. Henry Triumph be assured that this highly anti-federal State, will refuse it also; our Govr. has declared himself,⁴ & we Know that $\frac{2}{3}$ of the chosen delegates are obstinate anti-federalists on whom No arguments No Conviction can make the Least Impression; Now is the Critical hour & which in Virg remarkable from the opinion of Mr. Henry the fate of America seems now to depend, the First post will bring us some Letters from Richmond which will Enable us to form some Jugement, of the Temper of that assembly which Sat last Monday [- - -] Eight days; if it MisCarries, The Flames of Civil War I am persuaded will be first Kindled in your Country, for both Pa[r]ties are & will be still more Encensed agt. Each other— Emigration to ye West Ward are Still going on: & God know how far the Maritime States will be depopulated by it,—they begin already to quit Kentucky to go more Westerly, for never Satisfyed with what they have Your countrymen are always pursuing the desire of being better. . . .

1. RC, Short Papers, DLC. This letter was docketed: "Crevecoeur June. 10/July. 10."

2. John Kean, a Charleston merchant, was a delegate to Congress from 1785 to 1787.

3. Shortly after their state conventions ratified the Constitution, the inhabitants of Boston (8 February), Baltimore (1 May), and Charleston (27 May) celebrated by holding "grand" or "federal" processions. For widely circulated descriptions of these processions, see the *Massachusetts Centinel*, 9 February; *Baltimore Maryland Gazette*, 2 May; *Charleston City Gazette*, 28 May; and *Charleston Columbian Herald*, 29 May.

4. New York Governor George Clinton was slow to announce his position on the Constitution.

Alexander Quarrier to John Henderson Richmond, 10 June (excerpts)¹

dear friend

I Just take the pen to tell you we are in health in my last I told you I Expected money when the Convention would sit I have not rece[i]ved any as yet but am Confident I shall by the [time] they break up. . . .

. . . disputes run high here for and against the fd Constitution I Expect it will be adopted . . .

1. RC, Hollingsworth Papers, PHi. The letter was addressed to "Mr John Henderson/ninth-street/Philadelphia." Since 1785, Quarrier (1746–1827) had lived in Richmond, having settled there after his Philadelphia coachmaking business was destroyed by fire. Henderson was assisting in the sale of some of Quarrier's Philadelphia property.

Peter Singleton to Charles Pettigrew Kempville, 10 June (excerpt)¹

. . . The new federal Governmt. is now under the Consideration of the Convention of this State, and I am inform'd by Letters from some of my Friends members of the Convention, that they are deliberating

on, and discussing every Paragraph; but no Question is to be offered, until they have gone through the whole. The Governor has expressed himself in Favour of the general Union, wch. hath occasioned a Pensiveness, not to say gloominess, in a part of the House, whose sentiments do not accord with his; and has explained his Conduct with considerable address "If, says he, I had signed the proposed Constitution, I feared, judging from very recent Circumstances, that it would have wanted that best Sanction, the Hearts of the People: If I had absolutely rejected it, the Union would have been endangered.—But now when seven States have agreed to it, I act under very different Impressions. I mean not to apologize to any Individual, to the House, or to the People.—I am to answer for my Conduct only to my own Conscience & my God."²—South Carolina I have a few Days ago heard, makes the 8th. State in the Union & I expect that Virginia will soon be added to the number. But I cannot speak with Certainty as there are many adversaries to it & not inconsiderable ones.³ . . .

1. RC, Pettigrew Papers, North Carolina Division of Archives and History. Printed: Sarah McCulloh Lemmon, ed., *The Pettigrew Papers* (2 vols. to date, Raleigh, N.C., 1971–), I, 57–58. Singleton, a former justice of the peace and sheriff of Princess Anne County, was a wealthy Kempsville planter. A 1789 poll list has this notation next to his name—"ali[a]s Czar." Singleton, a vestryman of Lynnhaven (Episcopal) Parish, had corresponded with the Reverend Pettigrew a few years earlier concerning a pastorate. The Lynnhaven vestry offered Pettigrew the position, but later withdrew its offer and appointed someone else. Pettigrew (c. 1744–1807) lived at "Belgrade," Harvey's Neck, Perquimans County, N.C. (Singleton had resided in Perquimans for a time after the Revolution.) In 1794 Pettigrew was elected the first Episcopal bishop of North Carolina, but he was never consecrated.

2. For Governor Edmund Randolph's 4 June speech supporting the Constitution, see RCS:Va., 931–36.

3. In his reply on 14 July Pettigrew commented on Virginia's ratification. "In respect to the new federal Constit[ut]ion I have had the pleasure to see that your Convention have adopted & ratified it, but with a caution which does them honor, for I still think, though a friend to it upon the whole, that the people might have been better guarded from the future encroachments of ambition when stimulated by the infatuating influence of power." Pettigrew thought that, although North Carolina would ratify, there would be opposition to the Constitution (Lemmon, ed., *Pettigrew Papers*, I, 58–60).

Massachusetts Gazette, 10 June¹

Extract of a letter from a gentleman in Virginia,
to his friend in this town [Boston].

"I received your obliging letter, and a volume of the debates of your Convention, of both which testimonies of your regard I have the justest sense, and return you, dear sir, my sincere acknowledgments. (The Federal Constitution will be adopted by us.) I wish the Federal Convention had provided that none but wise and understanding men

should read and give their opinion of it. The Constitution had at first some powerful opposers in this state, but the opposition at present is feeble; they have had time to deliberate, and their tempers are now come to. (The reception and discussion it met with from your state, has removed the film of prejudice from the eyes of many well-meaning men of our state. They have agreed to speak well of it. A few hypocrites and old Tories, whose approbation we do not value a straw, remain unconverted.) It is not in the power of every one to understand its excellence; it is the gift of God; so while such declaim against it, and *strip off the garb of tyranny*, as they call it, they only discover their own nakedness.

(“North-Carolina generally follows this state, and it is probable she will join us in the decision of this great national and all-important question.”)

1. Reprinted: *New Hampshire Gazette*, 12 June (minus the second paragraph); *Hartford American Mercury*, 16 June; *Philadelphia Independent Gazetteer*, 18 June; *Pennsylvania Packet*, 19 June; *Philadelphische Correspondenz*, 24 June. On 11 June the *Massachusetts Centinel* reprinted the text enclosed in angle brackets. Within ten days, this version was reprinted in whole or in part eight times: Mass. (3), R.I. (2), Conn. (1), N.Y. (2).

James Madison to Tench Coxe Richmond, 11 June¹

On my arrival which was the second day of the Convention, I found yours of the ult: the papers contained in which I have disposed of in the manner most likely to be of service.² I should have acknowledged the favor sooner; but have not been well since I recd it; and for several days preceeding yesterday was confined to my room with a bilious attack. I am now able to resume my seat in the Convention: though am extremely feeble. We make but slow progress. The parties are pretty nicely balanced; and pretend each to be sanguine of victory. I think the majority has been as yet in favor of the Consti[tu]tion. Great exertions & ingenuity are however employed to turn the undecided few against it, by appealing to their local and particular interests and prejudices. Should this party be wrought on effectually of which there is some danger, the event will probably be unfavorable, or at least extremely doubtful. It is still more to be apprehended that the enemies to the Constitution will contrive to procrastinate the debates, till the weariness of the members will yield to a postponement of the final decision to a future day; and to an intermediate adjournment. The extreme heat of the weather,³ the approach of harvest, the meeting of the Assembly the latter end of the month, and the nice division of parties will favour such a project.

1. RC, Madison Papers, DLC. This letter was mentioned by William Jackson of Philadelphia in a letter which he wrote to John Langdon on 20 June (Mfm:Va.).

2. On 19 May Coxe sent Madison "An American," an essay which he had written on the Constitution. Printed in the *Pennsylvania Gazette* on 21 May, "An American" was reprinted in three Virginia newspapers between 28 May and 12 June (RCS:Va., 832-43).

3. For more on the hot weather, see Madison to Alexander Hamilton, 9 June, note 2 (above).

Tench Coxe to James Madison Philadelphia, 11 June (excerpt)¹

We have been made very happy by the accots from Richmond by yesterday's post which were to the 5th. of June. From them we learn that Governor R. has acquiesced in the evident sense of the Majority of the States and of the people & that all *Questions* were to be defer'd till the whole should be considered in parts—and a letter from the head of the Convention expresses the fullest belief, that the Constitution will be ratified. This latter information is carefully kept from *print* on acct. of the delicate Situation of the writer.² Our opposition has been done for some days. The Adoption by so large & such a Majority in Maryland made a great impression on them. South Carolina completed the matter, & before the accots. from your Convention two very active and very able opponents in the City had openly treated the Business as the future Government of America. Our people seem disposed to be kind & unmindful of all that has past, for which I am happy in giving them a considerable Degree of Credit, as indeed the mode of opposing here was very unbecoming.

The course of things at New York has proved very unfavorable unless the Virtue, Knowledge and Abilities of the friends of the Constitution in that Convention, work such Conversions as were effected in Massachusetts. The accots. from your State will also have a great effect, & have gone forward by this morning's stage. They will reach New York at furthest on the Morning of the 12th, and New Hampshire on the 19th, by post, or earlier by a short passage by Water, or by a private hand. In the enclosed paper you will find an address to the New York Convention, which being just put to the press when the accots. from Virginia arrived I had time to add a line in the last paragraph affirming that Virginia would adopt. If you think it may serve any useful purpose in your State or North Carolina you will be pleased to have it introduced into your Newspapers³—

The opinion of men of knowledge and judgment in New York, before the complexion of yr. house was known, was that their Convention might be induced to adjourn, & such was the plan proposed by the friends of the Constitution.

I submit to you the propriety of striking out the words "*and North Carolina*", and changing the word "*three*" for *two* in the 3d. Column of the *Pennsylvanian*.⁴ I fear one of the impediments to Adoption in N. Carolina is paper Money—and that they may fear the honest payment of debts that would be produced by disuse of a paper Medium. There can be no impropriety in your marking the Alteration thus authorized. . . .

1. RC, Madison Papers, DLC. Printed: Rutland, *Madison*, XI, 103–5. In a letter to Coxe on 18 June, Madison added this postscript: "This instant your favr. of 11. is handed to me" (*ibid.*, 151).

2. On 11 and 12 June, the *Pennsylvania Gazette* and *Pennsylvania Packet*, respectively, reprinted extracts of Virginia letters, dated 4 June, declaring that the Virginia Convention would probably ratify the Constitution (both below). Neither newspaper identified the letter writer as "the head of the Convention." Governor Edmund Randolph spoke in support of the Constitution on 4 June (RCS:Va., 931–36).

3. Coxe's essay, signed "A Pennsylvanian," appeared in the *Pennsylvania Gazette* on 11 June (CC:Vol. 5). It has not been found in any extant Virginia or North Carolina newspaper. In the last paragraph, "A Pennsylvanian" noted that "nearly two thirds of the states have already adopted" the Constitution. He then added: "Virginia too will certainly ratify it."

4. Near the top of the third column, "A Pennsylvanian" stated: "Ask your merchants and other citizens, who have monies due in New-Jersey, the three southern states, and Rhode-Island. In Jersey and North-Carolina they can compel payment of their debts, but must receive a paper money, depreciated 25 per cent."

John Vaughan to John Dickinson Philadelphia, 11 June (excerpt)¹

I have the pleasure of informing you that letters of the 5 from Richmond, just received by me & others mark, "that they met in full Convention the day appointed[,] Chose officers, *Pendleton for president* & the next day it was resolved "That no question should be taken upon the parts or untill the whole was discussed Clause by Clause & that a Committee of the Whole house should be formed to make the discussion more full & Complete[']

[["The first & Second Section were debated, the Speeches lengthy, but the Antifœderals were disappointed by Govr. Randolph who declared in favor of the Adoption without insisting upon previous amendments—

"My sentiments upon the propriety of previous amendments are much altered since the period of my Sitting in Convention at Pha.— 8 States have now adopted & are not likely to rescind their opinion— & a Contrary line of Conduct in the present Exigency of Public affairs would throw us into the greatest confusion, perhaps involve the ruin of our Country—I would rather lose my hand than not sign that act

upon which In the present State of affairs our political Salvation depends—”²

A majority was reckon'd upon previous to this declaration—that Majority of course we suppose encrease—Mason, Henry & others offer great Concessions if Certain Amendments are secured—It rests with them to bring them forward, but I believe they will not retard the business.—

The above is chiefly extracted from a letter of a member of Convention. . . .

1. RC, Dickinson Papers, Library Company of Philadelphia.

2. On 4 June Governor Edmund Randolph spoke in support of the Constitution (RCS:Va., 931-36).

**John Vaughan to John Langdon
Philadelphia, 11 June¹**

I enclose you an account of what has passed in Virginia; I have seen & recd letters from thence—Randolph declared that “Circumstances were much altered since he had proposed amendments & was Setting in Grand Convention that Eight States have now adopted it; that there was no probability they would rescind there opinion, that for Virginia to take a contrary line of Conduct would not tend to the accomplishment of the object of previous amendment but merely to throw the Country into Confusion & probably Cause its ruin; that under this impression he would rather lose his hand than not employ it in signing his approbation of the Adoption of it[’]”²—my letter 5 June³ previous to Randolphs declaration a majority supposed for it—Successive to it, an addition to this Majority—indeed the previous resolutions fix me in the belief of its Speedy Adoption—

Mason Henry &c now propose *great Concessions* if Joind in bringing Amendments forward, but as a member of Convention observes *They* may bring *forward*, but will not carry thro’⁴—I think I am not too sanguine—however reserve is most becoming unless the knowledge of these Sentiments should be of use—I shall communicate what May further occur—

[P.S.] New York looks black—but hope the Storm will be Dissipated, men of Sense do not doubt it

1. RC, Langdon/Elwyn Papers, New Hampshire Historical Society. One of Vaughan’s enclosures in this letter probably included what he later called “the first Resolves of the Convention of Virginia.” (See Vaughan to Langdon, 16 June, below.) On 11 June three Philadelphia newspapers, the *Independent Gazetteer*, *Pennsylvania Packet*, and *Pennsylvania Journal*, published the Convention minutes for 2 June, while the last two also printed the minutes for the 3rd.

2. On 4 June Governor Edmund Randolph spoke in support of the Constitution (RCS:Va., 931-36).

3. Possibly Vaughan's 6 June letter to Langdon in which he predicted Virginia would ratify the Constitution (Langdon/Elwyn Papers, New Hampshire Historical Society).

4. George Mason and Patrick Henry were members of a committee of opposition that had already drafted a declaration of rights and structural amendments which were sent to New York Antifederalists. See RCS:Va., 819-23.

Denatus

Virginia Independent Chronicle, 11 June

To the MEMBERS of the VIRGINIA FEDERAL CONVENTION, collectively, and individually.

GENTLEMEN, Happy in the enjoyment of my own reflections, the tranquility of my neighbours, and the peace and prosperity of every good man, I pass a great part of my time in solitude. At these periods, the foederal constitution, with the criticisms of the wise upon it, made their appearance. Considering the work itself, I could not bring it within my view. To me, the commentators have bewildered the subject, and hid it from my mind, in impenetrable obscurity. After reading it three times carefully, I formed an opinion, which I still retain, and which, daily, sinks deeper into my belief. That opinion I now lay before you, in hopes that some thought of mine, may be worthy of observation and contribute to the general good.

Men of learning and experience, judge of others with humanity. You have too much liberality, and too great a desire for the improvement of every useful degree of human study, to blame me for this address. Those who determine without reason, may think otherwise: to them I reply,

That all men have as great a right, either together, or in opposition to each other, to reason upon suppositions, as upon facts, and to censure the conduct of men, as to approve it; that evil may be prevented, by the fear of blame and punishment: for all men, in the same society, have a right to enquire into all opinions, to examine all subjects, to represent all grievances, to shew what laws are pernicious or defective, and to lay before the public their sentiments, agreeable to truth. Where this reciprocation is not allowed, social liberty is in a great measure destroyed.—The press is the vehicle of this intelligence—I will enjoy the privilege, and return to the matter in hand.

I object to the said constitution, generally, and specially—but, wish that it may be adopted, and if possible, with amendments.—This appears strange. Be pleased to suspend your opinions, until you hear my reasons.

I renounce it entirely, because, in my opinion, it was composed

without any legal authority. As far as I can learn, the express purpose of the convention was, to revise and amend, the articles of the union. Instead of this, which they had law to do, they followed their own imaginations, contrary to law. Instead of repairing the old and venerable fabrick, which sheltered the United States, from the dreadful and cruel storms of a tyrannical British ministry, they built a stately palace after their own fancies, and in every convenient part of the floor, and of the foundation, securely planted the seeds of monarchy. In the equity of things, it avails nothing, to say, if the people do not like it, they may let it alone. The innovation, and the injury to public justice, is still the same. Had they preserved only one article of the union, and built the present constitution to it, the objection of innovation would be unreasonable: But they have done what you know. A more fatal innovation may be made at a future day, for as Junius says, "one precedent creates another, they soon accumulate and constitute law—What yesterday was fact, to-day is doctrine—Examples are supposed to justify the most dangerous measures, and where they do not suit exactly, the defect is supplied by analogy."¹

Supposing the above objection had never existed. I remonstrate against the constitution, because, to me it appears incomprehensible and indefinite. For these divine attributes, its pious friends, say, by way of encomium, that it is a gift from heaven—Such observers know very little of gifts from heaven: but enthusiasts must rave. I will venture to make a bold observation here I think the sun never shone upon a man that could take it within his view—No being, that we have any knowledge of, but the Deity, can see through it—God, the first cause of all things, sees through the whole down to the final effect.—Contracted man, takes the effect, and struggles up to the cause; then, along the steps he has ascended, looks down to the effect again—This is the way that mechanics regulate their ideas.—A millwright stands at the water-wheel, and mentally sees the cause and effect of every movement in a complicated flour-mill, regularly on to the meal-trough—he then understands the machinery—If he cannot see, regularly along to the meal-trough, he does not understand it.—The water, is the cause of every movement—The mechanic knows how every thing will happen—The constitution, if adopted, will be the cause acting upon the conduct of men and nations.—And where is the man who can see through the constitution to its effects? The constitution of a wise and free people, ought to be as evident to simple reason, as the letters of our alphabet—This constitution I think is calculated for men of high monarchical principles, and to swallow up the constitutions of the different states.

Human nature ever hath, is, and will be the same, while this world continues under the same divine law.—History in all ages, affords instances of this truth too shocking to be mentioned. Let any man examine his own mind, and he will discover a mixture of democratical, aristocratical, and monarchical principles; and perhaps I would not be far wrong, to add, despotic and tyrannical.—Let whoever doubts of this, turn his attention sharply, to any man he is acquainted with.—Suppose then, the simile is directly in point.—That an uncommonly strong man possessed of every implement of war, and thirteen weak men, but denied the use of any weapon of defence, were to receive a grant of lands, in some uninhabited part of the world, and by mutual agreement, proposed by this same strong man to be governed by him, in such a manner, that no matter what any of them did, or might desire to do, for the happiness of all,—it could be of no effect, unless it agreed at that time with his peculiar cast of mind, because, not *their* voices, but *his*, must be the *supreme law of the land*.—Would not these thirteen men be very simple.—And if this mighty strong man would twist their heads off, some day in his wrath—Is it not what might be naturally expected? I'll tell you how he would act. Common decency, and the shame which naturally attends the outset of an unjustifiable course of life, would induce him to exercise in conjun[ct]ion, those attributes of his soul, which were the purer parts of democracy, aristocracy, and monarchy. This time would be the happiest of their days.—By and by the latent qualities of power, and hatred of restraint, having gathered strength, from time, and conscious superiority, would bury democracy, and incline him to move the land mark a little. The people remonstrate against the encroachment—The aristocrat, makes a parade of bombastical wisdom, says the land-mark was not evidently fixed upon the face of the ground, but only ideal—The people seem satisfied.—He studies their imbecility, and moveth the land-mark a little farther.—The people exclaim against this violation of plighted faith—By this time he has become a monarch in his own intentions, claps his hand on his sword to unarmed men, gives a stamp, and moveth the land mark farther still.—The people exclaim to heaven against him for redress, and say, that to each man he promised to *guarantee* the full possession of his property—Guarantee! says the tyrant, true I did, but you see now, I do not choose to do it, and where is the power to compel me? Heaven is neuter in this second dispute.—The genius of real liberty, who had waded through seas of blood to crush oppression and licentiousness, whispers these to unhappy men. The tyrant perceives the conference, draws his sword, and pronounces the following words—You see I have the command of every weapon of war. I am a

man mighty in battle: You are destitute of any thing to defend yourselves. I have every necessary for two years; you can command nothing; and if you do not quietly relinquish the whole of your possessions, into my management, before the end of twelve months I will sacrifice you as a striking example to succeeding ages, that those people who inconsiderately resign their natural rights into the hands of others may expect the same fate.

I object to it also, because, it appears to be a huddled piece of work: and (that in the general bustle) they forgot to put a bill of rights to it. A bill of rights! say Mr. Wilson and others, to confederated powers, is unnecessary²—Very truly, to powers properly confederated, but this is no confederation. It is a national government, i. e. through a little time, the incroachment will so prevail, that the fœderal constitution will expunge entirely the state constitutions—It appears to be a confederation now, but the monarch who is asleep in its bosom, at a convenient time, will awaken with a vengeance!—There would be no need of a bill of rights, were the states properly confederated. The land-mark clearly drawn between the powers that give, and the power given:—And where the remaining parts of the powers that give, are ever to be held sacred by the power given. The remaining parts of the powers that give, or the residue, of our state constitutions, would be a bill of rights, to the power given, or the fœderal constitution. Had this distinction been clearly fixed, so as to prevent any future controversy, the constitution in question, would have been a glorious, and an immortal example of human wisdom. But alas! this is not the case—There is no barrier to the power of the fœderal constitution. It will easily overleap our state constitutions with impunity. When this comes to be the case, and the fœderal constitution sovereign in all things, we ought to have a bill of rights, to save us from oppression. The want of this, is of an alarming nature, and I hope will be one of your amendments.

Had the creator of the universe thought proper to form mankind without selfish and dissocial passions, I think I can maintain, that we would be happy, and in little need of human government. Reason, or the internal voice of infinite wisdom, would be the sole conductor of man.—But for purposes best known to this almighty sovereign of pure goodness and order, we are subject to many jarring propensities. Among these, vanity, ambition, and the love of riches, are not the least.—While reason and conscience can confine the passions, their action and re-action on each other, constitute human happiness. But, when they overcome reason and conscience, they produce our misery. To guard against this misfortune, as much as human foresight could

discover, ought to have been the chief business of the late foederal convention. This necessary and heavy part of the work is not mentioned in the constitution, and for this reason I object to it—Some will say this is no objection—It would have been simple in the convention to debate on preventing those things which have no being, and which, if necessary, may be done by Congress at a future period. I may be wrong, but in my way of thinking, it is an objection, for the source of all the revolutions and calamities that ever will befall the United States of America, lie dormant in the human mind this very day. The prevention of these misfortunes, which will flow from the passions, instead of being utterly neglected, ought to have employed the most solemn moments of the convention, and ought to have been the point, to which all their views should have tended.

Here it may be asked “and pray, Sir, what do you wish should have been done?” Far be it from me, so contracted in my views and experience, to say absolutely, that any thing should have been done.

As I have, I will continue to give my opinion as the constitution of a free people ought to be formed in the best possible manner for the happiness of them, and their posterity, it ought to contain some mode, rivited through its very essence, for the present and succeeding ages, to be educated in the principles of morality, religion, jurisprudence, and the art of war. This is a duty which the framers of a constitution owe to posterity.—For the neglect of which, by men so famed for wisdom, very few excuses indeed, can be admissable—The first, or second article of the said constitution, ought to contain something to this effect—That as soon as possible, academies shall be established at every proper place throughout the United States for the education of youth in morality; the principles of the christian religion without regard to any sect, but pure and unadulterated as left by its divine author and his apostles: The principles of natural, civil, and common law, and of our constitution: And the art of defending and conquering nations in battle, either by land or sea—These academies to be regulated from time to time by Congress, and their establishment to be perpetual.

As man is an accountable being, to his creator and to his fellow-creatures, the study of morality would enable him to act consistent with his duty to society, and the study of religion, with his duty to God. I will venture to affirm, that was this mode established we would have fewer law suits, less backbiting, slander, and mean observations, more industry, justice and real happiness, than at present. Says a pious writer, “be careful not to neglect religion in the education of your children, in vain will you endeavour to conduct them by any other path: If they are dear to you, if from them you expect to receive credit

or comfort from religion must be derived their happiness and your own." Another elegant writer observes nearly in the same manner, speaking to a father of his son. "Teach him science, and his life will be useful. Teach him religion and his death will be happy."

The study of jurisprudence would prepare our young men, and our old men, for every department of public business. They would be qualified, in point of education, for every office at home, and as their virtues and genius merited, would be appointed consuls or ambassadors abroad. Far other is the case now. How absurd it is, to send men to do the business of which they, are ignorant. To make laws, and unacquainted with the principal ties of social union. If this remark is thought hard, I appeal to our late acts of Assembly, and to the sufferings of the nineteen-twentieths of our people. The multiplicity of our jarring laws—Their inconsistency in some instances, with common sense—The honest man being pointed at by the Assembly, ever since the revolution—The struggle for instalments³—The execution law⁴—The perspicuity of the district law,⁵ and to crown all the tenacious continuance of the *holy six months law*—I think ought to cool the enthusiasm of every anti federalist.

Were these academies established, the study of the art-military, and the militia exercise, would qualify us for crushing at once, every enemy to our government, foreign or domestic. Like the Roman generals we would have the statesman and the warrior united in the same man—Our people educated in this manner, at stated times, would put the theory of fortification, gunnery, and manouevring of armies into practice. We would march, encamp, have mock battles and sieges, go through every part of the military duty as if in real war, then return home, prepare our arms for a moments warning, and each man fall to his occupation as before. This would guard against effeminacy: It is the natural way to enjoy the sweets of society, and to prevent any nation, or people from disturbing our quiet. We see in private life, that the man who wishes to hector over another, is more sound than substance, and when he meets with manly opposition, fights at a distance. He does not turn out hand to hand, alone, and on equal terms, as a brave man ought to do, but fights most valiantly, throughout the regions of fancy: So it is in nations. Would Portugal choose to declare war against France or England? Would any of the powers contiguous to Russia, choose to declare war against that empire? I think they would not, because they would be conscious of having to contend with a superior power, and according to my way of thinking, if the United States of America were wisely cemented together, as one people and properly educated in the sciences of morality, theology, jurisprudence,

and war, the greatest of the forementioned powers would not dare to insult either our citizens or our ships. The great art in this business would be, to regulate the militia in such a manner that neither agriculture, industry, commerce, nor the military spirit should suffer. I think Congress could soon complete this organization. What occasion then, would we have for a standing army? That dead weight upon the heart of nations! That disgraceful and wicked instrument in the hands of conscious worthlessness and guilt! High or low—rich or poor—citizen or governor, subject, king or president, the good man's character will ever be his guard—The wicked ought to suffer.

How fluctuating are the dissocial passions of men! These are the cause of the rise and fall of nations and the changes of government. Some time ago, the regal power was sovereign in America—Since, democratical republicanism now nearly anarchy, and without great care, it is not unlikely but we may soon experience a change worse than either. These revolutions are a lesson, to be cautious, of what powers, and for what time, the president of Congress should be appointed—He ought by no means to command the forces of the United States, without leave from Congress—nor to be eligible successively—and never after being twice in office—none of his brothers, uncles, sons, first cousins—nor father ought to fill the same post during his natural life—after governing he ought to be governed, to prevent his despotic principles from making head. The conduct of Dejoces [Deioces], Julius Cæsar, Oliver Cromwell, and what Hannibal might have done, had he returned victorious from Italy to Carthage, and also, how the present empress of Russia ascended the throne,⁶ ought ever to be held in view when the powers of this president are in contemplation.

The above in part, are my objections to the foederal constitution, each of which, is a genus. As I am a warm friend to the union, and to justice among its individuals—I will object no more—My sincere prayer is, that it may be amended, and then adopted—It certainly has a great many excellent qualities, and as many bad ones. The ambiguity of the whole, is its greatest fault. I remember, in a public court yard, to have heard a baptist preacher make three score and sixteen objections to it, and grunt and condemn it from end to end⁷—and within five minutes a practitioner of the law, to defend it most vociferously from end to end.—A blacksmith at my elbow, pitied them both—I really thought then, what I still think, that we all knew very little about it.

If we adopt it without amendments, the seeds of our ruin are sown. If we reject it, disunion, the highest injustice, perhaps anarchy, and thousands of calamities will be the consequence—The people are impatient and will not consider things coolly—In my opinion, the safest

way would be, to adopt it with amendments. When the whole, or nine states have come into the measure—to lay the ratifications and amendments from all the states, before General Washington, and from the whole, for him to select and make what alterations shall appear best—He certainly knows the natural rights of mankind, the general interests of this country; its natural and artificial productions, and upon the scale of nature with other nations to what they may become, and also, this genius of the people, better than any other man. And whether his amendment would agree with speculative reasoning, or not, his name to sanctify the whole.

Well knowing I address men whose souls are expanded, by education, humanity and experience, I am at ease, with respect to the imperfections of this composition, either on account of its sentiments, or its language—I am subject to human frailty; but mean well. As I am not known to some, and but very little indeed to any of you, it is no matter who or what I am—If this address can have the smallest good effect I will be happy. This much however I will observe, that I am a foreigner, and with yourselves may say, of the same ancestors, the same language, the same government, the same religion, and the same spirit we are all branches of the same tree. You towards the trunk, I towards the top: and if the branches towards the top are longer in making their appearance, than those towards the trunk, is their any essential difference in their qualities? Are they not homogeneous? Do they not collectively unite to the utility and beauty of the whole: And do we not conjointly, contribute to the glory of that power who gave us existence, to dwell in peace, harmony, and brotherly affection upon the same land?

There is one thing, particularly, which I beg leave to observe—I hope it will be of more benefit than all I have written. You are now on business of the most awful nature. Upon your wisdom, Virginia rests her future happiness. Let not then, any degree of party-work, nor any kind of fallacious arguments, destroy the patriotic emanations of the soul. It is noble, it is great and glorious to acknowledge mistakes. Be like brothers, and we will be happy. All cannot be right, perhaps not one, throughout the system he may have in view. Gather the best parts of all, together, and throw the rest away. Consider the imperfections of human knowledge, and how often the greatest men have erred. Aristotle and Des Cartes themselves have gone astray in some things. Let social affection shine through all your conduct. Advise like brothers, but do not debate like foes. With reverential awe view your chairman as your father, studying the happiness of his children, and

may he who presides over the councils of good men give you wisdom and unanimity.

Buckingham, May 27th, 1788.

1. See C. W. Everett, ed., *The Letters of Junius* (London, 1927), page 3 ("Dedication to the English Nation"). The dedication was first published in 1772.

2. See James Wilson's 6 October 1787 speech before a Philadelphia public meeting (CC:134).

3. Several times between 1783 and 1787, supporters of debtor-relief measures unsuccessfully attempted to obtain passage of installment laws (RCS:Va., xxvi-xxvii).

4. In January 1788 the legislature enacted an execution bill, to be in force for three years, which stated that, if the property taken to pay a debt did not yield at auction at least three-fourths of its appraised value, the debtor could enter a bond with securities for the debt and not be liable to pay the debt for twelve months, instead of the three months stipulated in an earlier act (Hening, XII, 457-62).

5. In January 1788 the legislature enacted a district court bill designed to reform the court system. For the bill's fate, see RCS:Va., 797-98, note 2.

6. Catherine the Great came to power in 1762, when her lover deposed her husband, Peter III. Soon after, Peter was murdered.

7. The Baptist preacher and the occasion have not been identified, but for a list of objections to the Constitution held by the Reverend John Leland, one of the most prominent Baptist ministers in Virginia, see RCS:Va., 425-26.

A New-Light

Virginia Independent Chronicle, 11 June¹

Mr. DAVIS, *By inserting the following dream, or vision, (I do not know which to call it) you will give your readers an opportunity to ruminate on the great vivacity of our minds, when our bodies are in a measure dead, or the extraordinary method the All-wise creator takes at sometimes to warn us of some impending important event; for it is said in scripture that "he speaks to young men by visions in the night."*²

I was a few evenings past thinking seriously on what might, or might not be the consequence of the thirteen states of America's ratifying, or refusing to ratify, the new constitution; which led me naturally to consider of the general disposition of the citizens of those states, I at first adverted to the year, seventy five, and did not hesitate one moment to determine that such a government proposed to people of the disposition we then possessed would meet with general approbation. But when I revolved through the different changes from that time to this, and took a view of the reigning corruption of the present times, I was at a loss how to determine; whether a good government in motion, or no government at all, would be attended with the most alarming consequences! and was most inclined to suppose that nothing would bring us back to virtue but a severe chastising rod! I felt melancholy under the consideration that the innocent must suffer with the guilty, and in this situation fell insensibly into a slumber, and into the fol-

lowing dream.—I thought I was walking the streets of Richmond about the dusk of evening, when I came to a house where I had frequently been, I walked up the steps and into the outer room, upon entering of which I heard a voice pronounce “We have all full confidence in each other, and therefore may be free in communicating our minds.” I at first was at a loss how to act, whether to turn out of the room or satisfy my curiosity with the approaching conversation. I was well aware they had not discovered me, and also knew the voices of some of them; and finding they were a select company of sworn friends, and conceiving that I might gather something to my advantage (though I felt somewhat ashamed of the determination) concluded that I would seat myself and hear the conference—Upon which I heard one of an insinuating tone of voice say—“There never was nor (perhaps) never will be, so favorable a time to lay a sure foundation for our future glory.” You see, my friends! that I at this day have Virginia in my hand, *as it were*, if we can baffle the designs of those canting foederalists who wish to establish the proposed constitution, anarchy will be the natural consequence; and that we may do so, I conceive very easy. You observe that the greatest advocates for it agree that it has its defects; this is the ground on which we must attack most freely—our friend Gerry has prudently observed that no enlightened people ought ever to receive a government, which they are conscious wants amendments³—this we must urge, at the same time profess ourselves anxious for a good foederal government, and declare nothing would give us equal pleasure—by this means we infatuate the minds of the weak and make them believe we oppose the present form from a consciousness that we shall thereby obtain a better; this at once determines them to oppose it, and we thereby obtain our ends, and as I said before anarchy will be the certain consequence, and when the community gets into complete disorder, who so fit to take rule over them, or so likely to obtain it, as those whom they conceive to be their best guardians?—I will then publish a pompous proclamation as full of dissimulation as my capacious heart can devise, inviting the inhabitants of Virginia to take sanctuary from oppression under the banner of freedom! asserting that no judiciary shall have power to compel them to pay their former debts, especially those of a public nature, or due to British merchants; by these and other infatuating measures we shall secure to ourselves a majority of Virginians, and almost all North-Carolina—By which means we shall establish an independent empire to ourselves. I will be their supreme ruler, and you shall be my counsellors—Your indefatigable industry in poisoning the minds of the ignorant since our last conference on this important business, gives me the highest confidence

in your attachment and fidelity. Art and industry never fails of success—Here it was that I was seized with a tremour which I thought would bring on my dissolution, from which I was in some measure relieved by the great extasy into which the minds of the company were elated—they announced their joy, by three huzzas! which awoke me—And though I am inclined to believe it was a dream, I really think it portends something of consequence, which occasions me to desire you will insert it for the public's perusal.

June 8, 1788.

1. Reprinted: *Pennsylvania Packet*, 18 June; *Maryland Journal*, 20 June; *Virginia Herald*, 26 June; *Massachusetts Gazette*, 4 July.

2. Genesis 46:2.

3. In his 18 October 1787 letter to the Massachusetts legislature, Elbridge Gerry asked: "And should a *free* people adopt a form of Government, under conviction that it wants amendment?" The letter was printed in the *Massachusetts Centinel*, 3 November, and was reprinted forty-four times by 4 January 1788 (CC:227-A). In Virginia, it appeared in the *Virginia Independent Chronicle*, 5 December; *Winchester Virginia Gazette*, 7 December (excerpt); *Virginia Journal*, 13 December; and in two Richmond pamphlet anthologies (RCS:Va., 241-43).

The Impartial Examiner IV

Virginia Independent Chronicle, 11 June (Extraordinary)

Although the *senate* and *house of representatives* are to be established, and it seems to be the spirit of the proposed plan of government, that they should be considered as the grand *deputation* of America—the great aggregate *body*, to whom shall be delegated the important trust of *representing* the whole nation—the august, puissant *assembly*, in whom shall reside the full majesty of the people: yet, it seems too, these alone shall not be sufficient to exercise the powers of legislation. It is ordained, as a necessary expedient in the federal government, that a *president* of the United States (who is to hold the supreme *executive* power) should also concur in passing every law.

In monarchy, where the established maxim is, that the king should be respected as a great and transcendent personage, who knows no equal—who in his royal political capacity can commit no *wrong*—to whom no evil can be ascribed—in whom exists the height of perfection—who is supreme above all, and accountable to no earthly being, it is consistent with such a maxim, that the *prince* should form a constituent branch of the legislature, and that his power of rejecting whatever has been passed by the other branches should be distinct, and co-extensive with that of either of those branches in rejecting what has been proposed and consented to by the other. It is necessary that the fundamental laws of the realm should ascribe to the king those

high and eminent attributes—that he should possess in himself the sovereignty of the nation; and that the regal dignity should distinguish him, as superior to all his subjects, and in his political character endowed with certain inherent qualities, which cannot be supposed to reside in any other individual within the kingdom: otherwise, that constitutional independence, which the laws meant peculiarly to establish in his person, would not be preserved. To this end the king of England is invested with the sole *executive* authority, and a branch of legislative jurisdiction so far as to pass his *negative* on all proceedings of the other two branches, or to confirm them by his *assent*.

This secures to him the intended superiority in the constitution, and gives him the ascendant in government; else his sovereignty would become a shadow—whilst that doctrine, whereby he is declared to be the *head*, the *beginning* and *end* of the great *body politic*, would prove to be nothing more than mere sound. This two-fold jurisdiction established in the British monarch being founded on maxims extremely different from those, which prevail in the American States, the writer hereof is inclined to hope that he will not be thought singular, if he conceives an impropriety in assimilating the component parts of the American government to those of the British: and as the reasons, which to the founders of the British constitution were motives superior to all others to induce them thus to give the *executive* a controul over the *legislative*, are so far from existing in this country, that every principle of that kind is generally, if not universally, exploded; so it should appear that the same *public spirit*, which pervades the nation, would proclaim the doctrine of prerogative and other peculiar properties of the royal character, as incompatible with the view of these states when they are settling the *form of a republican* government. Is it not therefore sufficient that every branch in the proposed system be distinct and independent of each other—that no one branch might receive any accession of power (by taking part of another) which would tend to overturn the balance and thereby endanger the very *being* of the constitution? Whilst the king of England enjoys all the *regalia*, which are annexed to his crown—whilst he exercises a transcendent dominion over his subjects, the existence whereof is coeval with the first rudiments of their constitution—let the free citizens of America, consulting their true national happiness, wish for no innovation, but what is regulated according to the scale of equal liberty, or which may not destroy that liberty by too great a share of power being lodged in any particular hands;—let this collateral jurisdiction, which constitutes the *royal negative*, be held by kings alone, since with kings it first originated:—Let

this remain in its native soil, as most congenial to it; there it will cumber less, and be more productive,—here it will be an exotick, and may poison the *stock*, in which it may be engrafted.

It will be said, perhaps, that the power, granted the president, of *approving* or *disapproving* the proceedings, which have passed the senate and house of representatives, will not be so decisive in its nature as the king's *negative*. True it is, this power of rejecting does not extend so far as primarily to produce an entire overthrow of any law, which has passed those *two houses*: but it may be expected that in many instances this *negative* will amount to a final and conclusive rejection. For as a law, which has been once disapproved by the president, cannot be re-passed without the agreement of *two-thirds* of *both houses*, there can be no doubt, it will frequently happen that this concurrence of *two thirds* cannot be obtained. The law must then fall: and thus the president, although he has not the power of *resolving* originally and *enacting* any laws, independent of those two houses, hath nevertheless in the legislative scale of government a weight almost equal to that of two thirds of the whole Congress. If the system proposed had been calculated to extend his authority a little farther, he would preponderate against all—he alone would possess the sovereignty of America. For if the whole executive authority and an absolute, entire *negative* on the legislature should become united in one person, these must, with regard to *that person*, destroy every idea of a subject. Thus circumstanced he cannot be the object of any laws; he will be above all law: as none can be enacted without his consent—he will be elevated to the height of supremacy.—

How near will the *president* approach to this consummate degree of power! The portion allotted him may, however, be amply sufficient to give him the ascendant in the constitution. He must continually acquire great accessions of weight in every scale of government, as *chief magistrate* and *generalissimo* of the United States—at the same time possessing so great a share in the legislature, as a revision of all *bills* and other proceedings which shall have passed the senate and house of representatives with a discretionary right of rejecting them—united with the senate in making treaties, appointing all public ministers, judges, and a train of other officers, who will be necessary for carrying on the business of government; thus dispensing honor and profit throughout America—whilst copious streams of influence must flow from him, as from a source. Can the different departments be duly balanced when all these high powers concenter in one branch? Is it not rather probable that this branch will destroy the balance, and eventually rise to the fulness of dominion?

When the *spirit* of America becomes such, as to ascribe to their president all those extraordinary qualities, which the subjects of kingly governments ascribe to their princes: then, it is presumed, and not till then, he may consistently be invested with a power similar to theirs.

It is remarkable how the president and senate mutually participate in the exercise of a two-fold jurisdiction. How, then, can it be surprising to any one, if some citizens, truly jealous of their liberties, are alarmed with the apprehensions of *aristocracy*? Those, who seriously reflect on the properties of human nature, and who possess republican principles, will suppose they conceive grounds for such apprehensions: those, who have different sentiments, will not care whether there are grounds for such apprehensions, or not.

Pennsylvania Gazette, 11 June¹

Extract of a letter from Virginia, dated June 4.

“I have just time to inform you, that the convention proceeded this day to business, and Governor Randolph declared himself *decidedly* in favor of the adoption of the proposed constitution under the present situation of the United States, which was essentially different from what it was at the time he represented the state in the foederal Convention. The astonishment of the opposition was greatly excited at the warmth with which he concluded his speech, declaring, that before he would consent to the rejection of the proposed plan (which would necessarily involve in it THE RUIN OF THE UNION,) he would cheerfully agree to lose *that hand* which he then presented.² The prospect is really pleasing, and the above circumstance is almost a certain prelude of the adoption.”

1. This extract of a letter was reprinted in the Winchester *Virginia Gazette*, 25 June, in the June issue of the nationally circulated Philadelphia *American Museum*, and in twenty-eight newspapers by 10 July: Vt. (1), N.H. (1), Mass. (2), R.I. (2), Conn. (6), N.Y. (7), N.J. (1), Pa. (4), Md. (1), S.C. (2), Ga. (1). On 21 and 24 June, respectively, the *Providence Gazette* and *Salem Mercury* (Mfm:Va.) also published accounts based (in whole or in part) upon this item printed by the *Pennsylvania Gazette*. Nathan Dane, a Massachusetts delegate to Congress in New York City, probably referred to this extract when he wrote that: “by the inclosed paper you will see how affairs stood in Virginia relative to the Constitution on the 4 instant—I need only add that the extracts of letters mentioned in this paper, are genuine, and from originals which I saw—and them from men whose information, I suppose, may be relied on” (to Caleb Strong, 15 June, Strong Papers, Forbes Library, Northampton, Mass. Five New York City newspapers reprinted this extract on 13 and 14 June.)

2. See also *Massachusetts Centinel*, 18 June (below).

**John Dawson to Larkin Stanard
Richmond, 12 June (excerpt)¹**

dear Stanard

... It is impossible to say what will be the decision of the Convention—both sides very sanguine—Mr M is here and very active—let me hear from you—Yr. real friend

1. RC, File D, ViHi. Dawson represented Spotsylvania in the state Convention, voting against ratification of the Constitution. Stanard, a Spotsylvania planter, was representing Dawson on a matter of a debt that Dawson owed to James Duncanson. "Mr M" was probably Spotsylvania delegate James Monroe, who delivered a major speech on 10 June (RCS:Va., 1103–15).

**Robert Morris to Horatio Gates
Richmond, 12 June (excerpts)¹**

... Altho I did not Answer Your letter of the 12th of August which came to hand just before I left Philadelphia in November, yet I brought it hither with an intention to reply if I [should?] not see you, for a considerable time I was indulged with the pleasing expectation of meeting you at this place as it was reported that you were Elected to the Convention now sitting & I was much disapointed when this report was Contradicted.² . . .

The Convention here are hard at Work day by day the debates are Supported with Ability & pursued with Ardour on both Sides & the Knowing ones pronounce that the Event is doubtfull, each Side pretend to count a Majority in their own Favour & following the example I am inclined to think that the Constitution will be adopted by Virginia—

1. RC, Emmet Collection, NN. The letter was addressed to Gates at his home "Travellers Rest" in Berkeley County.

2. Several newspapers had reported incorrectly that Gates had been elected a Convention delegate from Berkeley. (See the *Virginia Independent Chronicle*, 26 March, and *Virginia Gazette and Weekly Advertiser*, 27 March, Mfm:Va.) For the Berkeley election, see RCS:Va., 571–73.

**John Blair Smith to James Madison
Hampden Sydney, 12 June (excerpt)**

For this letter, see RCS:Va., 607–8.

**William Bingham to Tench Coxe
New York, 12 June (excerpt)¹**

... The Ratification of Virginia will be an essential Accession of fœderal Force—Without her Cooperation & Assistance the Union would not possess So robust a Constitution, nor be endued with

strength Sufficient to resist the Difficulties it will probably have to encounter. . . .

1. RC, Coxe Papers, Series II, Correspondence and General Papers, PHi. Bingham (1752–1804), a wealthy Philadelphia merchant, was a delegate to Congress, 1786–88.

**Nicholas Gilman to John Sullivan
New York, 12 June (excerpt)¹**

Having this day received the first accounts from Virginia since the meeting of their Convention I do myself the honor to inform your Excellency that from all accounts there is the greatest probability of their acceding to the new System of Government.—A letter from Mr. Madison dated “Richmond July [i.e., June] 4th” contains the following observations—vizt: “Mr Pendleton was put into the Chair without opposition.—yesterday it was unanimously agreed that no general or particular Question should be taken untill the whole had been debated clause by Clause and the debate commenced to day. The Governor has renounced the Idea of previous amendments and will vote with us—He did it in a very handsom speech which has made a very favorable impression” other letters mention that a considerable majority was expected in favor of the question previous to the Governors declaration; which by that occurrence must be enlarged. . . .

1. RC, State Papers Relating to the Revolution, II (1785–89), 167–68, New Hampshire State Archives. Printed: Otis G. Hammond, ed., *Letters and Papers of Major-General John Sullivan, Continental Army* (3 vols., Concord, 1930–1939, Volumes 13–15 of the *Collections of the New Hampshire Historical Society*), III, 587–88. The letter quoted by Gilman was possibly written to Alexander Hamilton since Gilman and Madison were not correspondents. Hamilton, a resident of New York City, was in the city until mid-June when he went to Poughkeepsie to attend the New York Convention.

Virginia Gazette and Weekly Advertiser, 12 June¹

The Convention called by the Legislature to decide on the Constitution submitted from Philadelphia for the United States of America, met at the public buildings and adjourned to the Academy, where they have since had that important subject under daily discussion. We are happy to inform the publick that the utmost moderation and temper has been hitherto preserved among the members, and the best disposition shewn to acquiesce with the opinion of the majority on which side soever it may preponderate, as yet it is impossible to ascertain what will be the decision, but from the great talents, disinterestedness and respectability of the characters that compose it, we have the highest confidence it will be for the benefit of our country.

1. This item was reprinted in the *Norfolk and Portsmouth Journal* and *Virginia Centinel* on 18 June and in eleven other newspapers by 14 July: Mass. (1), N.Y. (3), Pa. (5), S.C. (2).

Virginia Herald, 12 June¹

Extract of a letter from Richmond, dated June 9.

"From the present appearance, the constitution will not be discussed for some time. It was agreed to debate it by paragraphs. They have only got, as yet, to the third paragraph of the second section of the first article. Mr. Henry's objections are numerous.—They have been ably answered, and I should think refuted. The governor has, in my opinion, done himself infinite honor,—he has acted with the most perfect consistency by his speech and explanation to-day, and must stand well in the minds of every person. Mr. Henry was on the floor three hours to-day, making on the whole seven hours upon the same topic.² Great manoeuvring on his side the question without doors, he and Mr. Mason are the only two in the opposition that have spoke yet. Col. Nicholas opened the debate in favor of the plan; he has been supported by Mr. Madison, H. Lee and Corbin. The governor, in a most able and superior stile, advocates our adoption without previous amendments, tho' his objections are the same as ever—eight states having ratified; it is consistent with his public declarations on former occasions. Some think there is a decided majority for this measure; but it is out of my power to decide. Many able speakers on both sides the question are still in reserve."

1. This item was reprinted in the *Virginia Centinel* on 18 June and in fourteen other newspapers by 10 July: Mass. (1), R.I. (1), Conn. (2), N.Y. (2), N.J. (1), Pa. (5), Md. (1), Ga. (1).

2. The *Maryland Journal*, 13 June, and the *Pennsylvania Mercury*, 17 June, printed reports that there had been "warm debating" between Patrick Henry and Governor Edmund Randolph on 9 June. The *Mercury* also stated that a Virginia gentleman had informed it that "Mr. Henry has opened his objections to the plan of Government proposed, and has been answered by Mr. Randolph most fully."

The *Pennsylvania Mercury's* account illustrated the delight that Federalists took in seeing Patrick Henry's arguments refuted. As late as January 1789, "A Federalist" could not resist challenging a statement that Henry made in the state Convention on 5 June (RCS:Va., 967). "A Federalist" said: "Mr. Henry asserted, in the late convention, that the State of Pennsylvania was *tricked* into ratifying the constitution. I am happy to inform you, they have been since *tricked* into electing two Federal Senators, and eight Federal Members to the new Congress; and that six other States have been *tricked* into electing Federal Senators. Strange as it may appear, I am a British Debtor and A FEDERALIST" (*Virginia Herald*, 15 January).

Pennsylvania Packet, 12 June¹

Extract of a letter from Richmond, dated June 4.

"In compliance with your request, I do now, so soon as I could discover in any degree the sentiments of our convention on the pro-

posed plan of government for the United States, forward you my opinion of their sentiments on that subject. We met in very full convention on Monday, the day appointed, when we did little else than appoint necessary officers to the convention. Mr. Pendleton is our President. Yesterday, being the second of our session, brought about little more than a resolution of the convention to this effect, 'That no general question on the proposed federal government should be propounded, until the proposed form of government should be discussed, clause by clause;' and also another resolution, 'That the convention will to-morrow resolve itself into a committee of the whole, to investigate the subject of the constitution proposed for the government of the United States.' (This day being appointed for the bringing on the proposed constitution, agreeable to the resolve of yesterday, the two first sections were read, and some lengthy argumentations followed: among the rest of the speakers our Governor rose, and in the course of his speech declared himself entirely in favor of the constitution under present circumstances—I mean in favor of the adoption of it; for he observed, whatever might have been his wishes heretofore for amendments, he believed it now impracticable by the sitting convention, as he had reason to believe eight states had already adopted the constitution, and would not easily be brought to rescind their opinion.

"I conceive we had reason to expect a decided majority before this declaration of his Excellency's; and now I think, indeed it seems almost the general opinion, there is scarce a doubt but the constitution, as at present proposed, will meet a very considerable majority of friends in the convention, notwithstanding the opposition of Mr. Mason, Mr. Henry, and some other important characters in the state. They seem extremely anxious for amendments—indeed Mr. Mason observes, he would make great concessions, for the sake of some essential amendments, if any gentleman would propose a mode for obtaining them; this, however, I should suppose, must rest with him to find out and propose: but I believe, let the mode proposed be what it may, it will not meet general approbation.")

1. This item was reprinted in the Philadelphia *Independent Gazetteer*, 13 June; *Pennsylvania Journal*, 14 June; and Charleston *Columbian Herald*, 30 June. On 12 June, the *Pennsylvania Mercury* printed the text in angle brackets. The *Mercury's* version was reprinted in the *Providence Gazette*, 21 June, and Charleston *City Gazette*, 28 June. On 13 June, the New York *Daily Advertiser* printed an account similar to that in the *Pennsylvania Packet* under the heading: "Extract of a letter from a Member of the Virginia Convention, now in session, dated the 4th inst. at Richmond" (Mfm:Va.). By 26 June, the *Advertiser's* report was reprinted (in whole or in part) six times: R.I. (1), Conn. (2), N.Y. (3).

Theodorick Bland to Arthur Lee
Richmond, 13 June¹

Dear Arthur,

I was yesterday favored with yours and assure you I am in doubt whether the Pleasure or the pain on the subject of your congratulation affects me at this time most sensibly—On the one hand I see my Country on the point of embarking and launching into a troubled Ocean without Chart or Compass to direct them, one half the Crew hoisting sail for the land of *Energy*—and the other looking with a longing aspect on the Shore of Liberty—I have but one Ray of hope and that arises from an observation that they are yet in perfect good humour with each other—I have as yet sat as a *speechless* spectator—nor shall I be induced to alter that character but as a mediator—and with the view of concentrating the two parties now (after 12 days Session) almost equally divided, each side boasting by turns of a majority of (from three to eight,) on the General question of adoption or rejection, altho. I really at this time think there is a decided majority for anterior amendments that is, who do not think it prudent to mount a fiery high-blooded Steed without a bridle—the amendments which will be proposed, will contain simple propositions, guarding the rights of States and of individuals from the encroachments of Tyrants, and State factions in the General government, and almost literally corresponding with those suggested by Massachusetts, Carolina, and the main points of the committee of Maryland²—Strong, nay the *strongest* efforts are made here to inculcate the absolute necessity of posterior amendments or unconditional Submission for fear of *loosing* as tis called the *government*, and strong dispositions are shewn to precipitate the convention into that measure—but hitherto the fear of miscarrying altogether has restrained the Gent. on the side of the new Constitution—I have no doubt of their bringing forward the division whenever they shall think they are strong enough—on the other hand we have declared pretty openly our advances to them which has had considerable weight with the wavering—and have drawn many doubtfull minds to our side of the Question—we object not against any powers, which shall not be hurtfull—that the government shall want no aids for its own support or execution provided that such restraints shall be imposed upon it, as shall support and ensure the state priviledges, and the liberty of the Individual against oppression—

We have yet proceeded no further in the discussion than the article of direct Taxation, on which point they have collected all their force, and I think have left hitherto the advantage considerably on our Side—

the General and, I may say diffuse discussion may go on probably another week—perhaps not so long—& then it is proposed to argue it paragraph by paragraph—the issue will depend greatly on management on both sides and some fortuitous events—as in all cases where forces are nearly equal—there has been a duel here between (Fountain?) & Macon—on the score of an Election Macon is dangerously Wounded³ *they are neither of them in the Convention*—I mention this to shew you that heats have not yet entered that body, and that they are not yet Ignited altho. Thunders Roll and lightenings flash every day both in the Natural and Political Atmosphere—Our chief Magistrate⁴ has at length taken his partie, and appears to be reprobated by the honest on both sides—but is too precious a morsel to be *spued* out, altho. lukewarm, he has openly declared for anterior amendment or in other words unconditional submission—

I have got a cold am sick—and am obliged to declare to you sooner than I would have done that I am Yr. Friend &c &c &c
[P.S.] Send such usefull intelligence as you can collect with regard to New York—Hampshire &c &c.

1. Copy, Lee Family Papers, ViHi. This letter was sent to Lee in New York City, where he was serving on the three-man Confederation Board of Treasury. Bland (1742–90), a Prince George County planter who practiced medicine before the Revolution, was a Continental Army officer, 1776–79; and a member of Congress, 1780–83, the state House of Delegates, 1786–89, and the U.S. House of Representatives, 1789–90. He voted against ratification in the state Convention.

2. For the action of the Maryland Convention on amendments, see RCS:Va., 1089, note 12.

3. William Fontaine and Thomas Macon were Hanover County planters. Macon was to represent Hanover in the special June session of the state legislature. On 15 June Patrick Henry wrote his daughter that “Poor Tom Macon has a Ball lodged in his Head in a Duel with Wm. Fontaine, who will retire on the Death of Macon if that happens; but the Doctors here say he may probably live some considerable Time (12 or 18 months) but will not recover Health” (to Anne Roane, photograph of autograph letter signed, in Maggs Brothers, *Rare and Interesting Autograph Letters* . . . [Catalogue No. 401, Spring 1921, Item 204, Plate VI]). On 19 June, the *Virginia Herald* noted: “We learn from Richmond, that on the 12th inst. a duel was fought between Col. Wm. Fontain and a Mr. Macon; the latter gentleman received a ball in the eye, and is thought to be dangerous. The dispute was with respect to the election in Hanover.” (The *Virginia Herald* probably refers to the April election for the House of Delegates, at which time Macon won reelection.) For two other accounts of the duel, one of which says that the duel was fought over the state Convention debates, see the Baltimore *Maryland Gazette*, 20 June, and the Charleston *City Gazette*, 9 July (both below).

4. Governor Edmund Randolph.

James Madison to Rufus King Richmond, 13 June¹

I am tolerably well over the bilious indisposition which confined me at the date of my last.² The progress of the Convention is extremely slow; though from the impatience of the members, I think the Session

will not be long. The issue of it is more doubtful than was apprehended when I last wrote. The ostensible points of opposition are direct taxation, the imperfect representation in the H. of Reps.; the equality in the Senate, regulation of Trade by majority—& the Judiciary department. The first & last are dwelt on most. Besides these, the Mississippi, the Indiana claim³ with some other local matters are made a great handle of, particularly out of doors where the chief mischief is effected. My present idea is that the vote of Kentucky will turn the scale, and there is perhaps more to fear than to hope from that quarter. The members arrived generally under an adverse bias produced by a combination of efforts to mislead them. The majority on either side will be small & at present the event is as ticklish as can be conceived. The leaders of the opposition are in correspondence with New York & probably with the Minority of Pennsylva. Oswald was here a day or two on confidential business with them and is returned.⁴ Adieu Yrs. Affely.

1. RC, King Papers, NHi.

2. See 9 June (above).

3. The issue of the navigation of the Mississippi River was debated on 12, 13, and 14 June, while the claims of the Indiana Company were considered on the 11th.

4. For Eleazer Oswald's mission to deliver letters from New York Antifederalists, see RCS:Va., 811-29.

James Madison to George Washington Richmond, 13 June¹

Your favour² of came to hand by the mail of Wednesday. I did not write by several late returns for two reasons; one the improbability of having got back to Mount Vernon; the other a bilious indisposition which confined me for some days. I am again tolerably well recovered.

Appearances at present are less favorable than at the date of my last.³ Our progress is slow and every advantage is taken of the delay, to work on the local prejudices of particular setts of members. British debts, the Indiana claim, and the Mississippi are the principal topics of private discussion & intrigue; as well as of public declamation. The members who have served in Congress have been dragged into communications on the first [i.e., last]⁴ which would not be justifiable on any other occasion if on the present. There is reason to believe that the event may depend on the Kentucky members, who seem to lean more agst. than in favor of the Constitution. The business is in the most ticklish state that can be imagined. The majority will certainly be very small on whatever side it may finally lie, and I dare not encourage much expectation that it will be on the favorable side.

Oswald of Philada. has been here with letters for the antifederal

leaders from N. York and probably Philada. He staid a very short time here during which he was occasionally closeted with H-y Ma-s-n &c. I learn from N. York that the elections have proved adverse to the Constitution. Yours affectly

1. RC, Washington Papers, DLC. In his 23 June reply, Washington counseled Madison on his illness: "I hear with real concern of your indisposition.—At Fredericksburg (on a visit to my aged and infirm mother) I understood that you intended to proceed immediately from Richmond to New York, when the Convention shall have arisen.—Relaxation must have become indispensably necessary for your health, and for that reason I presume to advise you to take a little respite from business and to express a wish that part of the time might be spent under this roof on your journey thither.—Moderate exercise, and books occasionally, with the mind unbent, will be your best restoratives.—With much truth I can assure you that no one will be happier in your company than your sincere & affecte. Servt" (Fitzpatrick, XXX, 6). Madison arrived at Mount Vernon on Friday afternoon, 4 July, and left on Monday, the 7th. Washington was "at home all day with Mr. Madison" on the 5th (*Washington Diaries*, V, 357).

2. See 8 June (above).

3. See 4 June (above).

4. On 12 and 13 June, Madison, William Grayson, James Monroe, and Henry Lee of Westmoreland—members of Congress in either 1786 or 1787—spoke in the state Convention on the Mississippi question.

James Breckinridge to John Breckinridge

Richmond, 13 June¹

Dear Johnny

Your Silence latterly had almost induced me to overlook the present oppy. by Mr. Molloy² But expecting your anxiety to hear something of the proceedings of the present Convention I could not reconcile so great a piece of neglect, tho it would be Justifiable.

I came to this Place, a few days ago for the purpose of attending to the debates of the Convention; which I have found to exceed, if possible my expectations; they have been elaborate, elegant, eloquent, & consequently entertaining and instructive.

When the convention first met, they entered into a resolve that the proposed plan of government should be argued clause by clause; that being thought the most expeditious & proper method of giving it a thorough investigation; But before one or two clauses were di[s]cussed in that way the Antifoe[de]ralist[s] were convinced that their ground was not tenable on that ground, they had recourse to that method which can only render the fate of the constitution doubtful & uncertain. This I fear will greatly procrastinate the business & most certainly is not So fair & candid a mode of investigation as the other; But there is no way to avoid it; attempts have been frequently made but without success.

The only and grand point on which the parties split appears to be whether the amendments which are necessary should be prior or subsequent to adoption; I believe it is given up by all that amendment[s] are wanting or however such might be made as would answer the local interest of Virginia alone; But the grand object is to Convince the Anti's that those amendments can as readily be procured after adoption as before—It appears to be a prevailing notion among the ignorant (who compose the majority) that were we to reject the Constitution & propose at Some subsequent period such amendments as we want that the union would be glad to take us in after granting those amendments—an Idea which ought to be exploded as preposterous and absurd; but it appears to me that the reasoning of a Tacitus or the eloquence of a Demosthenes or a Cicero could not eradicate the notion.

The Kentucky members (upon whom the fate of the constitution seems greatly to depend) are obstinately determined to continue the opinion with which the[y] were impressed before they left their country: they think the adoption of the constitution would have a direct tendency to produce their eternal ruin and destruction; the powers of the federal court in calling them to a distant part of the world for the trial of their land claims: the obtaining the navigation of the river Missis[s]ippi they suppose would be rendered entirely impracticable by the constitution; which they think would occasion a combination of the northern states whose interest it would ever be to deny them the acquisition of that desirable an object; & many other imaginary dangers which are painted to them in the most alarming and terrifying colours by Mr. Henry; whose eloquence and oratory far exceeded my conception: In such an Assembly he must to be sure be better adapted to carry his point & lead the ignorant people astray than any other person upon earth; Madisons plain, ingenious, & elegant reasoning is entirely thrown away and lost among such men.

I would write you more fully but Mr. Molloy whom has heard more of the Debates than I have & is better able to inform you, has promised to call on you and give you every particular—I am also in a great hurry—have not time to revise what [I] have already written which I am sure wants correction

My Compliments to Sister Polly
[P.S.] I wish you would endeavour to find time to write to me som[e]times—

I leave this Sunday next for Wmsburg—

1. RC, Breckinridge Family Papers, DLC.
2. Probably Thomas Molloy, an Albemarle County storekeeper.

William Heth Diary**Curles, Henrico County, 13 June (excerpt)¹**

Went to town early—attended the Convention, which was obligd to adjourn between 1 & 2. OC. on Acct. of a very Heavy storm of Hail, wind & rain, which blew open the Windows, & renderd the House too wet & uncomfortable to proceed. . . .

1. MS, DLC. Colonel Heth (1750–1807), a Henrico County planter, was treasurer of the Virginia Society of the Cincinnati, 1786–1807, and a member of the Council of State, 1787–89. He had recently served as Virginia's commissioner to Congress to settle the state's accounts for its defense of the Northwest during the Revolution. Heth attended the state Convention debates for twenty of the twenty-three days that it was in session. Another diary entry is printed under 25 June (below). See *Mfm:Va.* for other entries.

Gouverneur Morris to Alexander Hamilton**Richmond, 13 June (excerpt)¹**

Dear Hamilton

I am to acknowlege yours of the 19th. of May² which reached me a few Days since. Matters are not going so well in this State as the Friends of America could wish. If indeed the Debates in Convention were alone attended to a contrary Inference would be drawn for altho Mr. Henry is most warm and powerful in Declamation being perfectly Master of "Action Utterance and the Power of Speech to stir Men's Blood[']"³ yet the Weight of Argument is so strong on the Side of Truth as wholly to destroy even on weak Minds the Effects of his Eloquence But there are as you well know certain dark Modes of operating on the Minds of Members which like contagious Diseases are only known by their Effects on the Frame and unfortunately our moral like our phisical Doctors are often mistaken in their Judgment from Diagnostics Be of good Chear. My Religion steps in where my Understanding falters and I feel Faith as I loose Confidence. Things will yet go right but when and how I dare not predicate. So much for this dull Subject. . . .

1. RC, Hamilton Papers, DLC. Printed: Syrett, V, 7–8. The signature was clipped, but the letter is in the handwriting of Gouverneur Morris. Furthermore, Hamilton docketed the letter: "13 June 1788/Govr. Morris."

2. In this letter, Hamilton told Morris that the election of New York Convention delegates went in favor of the Antifederalists. He also said: "Your account of the situation of Virginia was interesting, and the present appearances as represented here justify your conjectures—It does not however appear that the adoption of the constitution can be considered as out of doubt in that state—Its conduct upon the occasion will certainly be of critical importance" (Syrett, IV, 650–51. The Morris letter, to which Hamilton replies, has not been located.).

3. William Shakespeare, *Julius Caesar*, act III, scene 2, lines 224–25: “Action, nor utterance, nor the power of speech/To stir men’s blood; I only speak right on.”

**Charles Yates to James Maury
Fredericksburg, 13 June (excerpt)¹**

... Concerning the Convention of this State now sitting I can only say that it is my hope they will adopt the proposed Government—’tis yet uncertain although the Opposition is supported by few of any weight—amongst these Mr Patrick Henry takes the lead & from his influence amongst the desperate & ignorant is very formidable—Eight States have adopted—

1. RC, Maury Papers, ViU. This letter was sent to Maury, a Liverpool tobacco merchant, via the ship *Venus*. Yates (1728–1809), a native of England, was a Fredericksburg merchant-planter.

**Edmund Pendleton to Richard Henry Lee
Richmond, 14 June¹**

I have to beg yr. Pardon For having so long neglected to acknowledge the Obligations I am under For yr. esteemed Fav. of the 26th. past; to revive a correspondence I always had pleasure in, was not among the smallest of it’s benefits, but the Assistance of yr. Sage Counsels in Forming my Judgment on the great Question which has called us together, was the greatest; especially at a time when the wishes of my old constituents & not my own had called me to the decision, in the decline of mental Powers never very strong, grown rusty in Politics From a Supposition that I had long since taken a final leave of that line,² and retaining little more than a conscious Integrity, & unshaken Attachment to the Peace & happiness of my Countrey. You have been truly informed of my Sentiments being in fav. of Amendments, but against the insisting on their Incorporation previous to, and as a Sine qua Non of Adoption, or of a Convention being previously called to consider them, before the Government was brought into Action to give it a fair Experiment, & secure the great good it contains. The Amendments I wished, rather tended to eradicate the *seeds* of Future *mischiefs*, than to remove dangers immediately eminent in Operation—And considering as I do, that certain ruin must attend on a dissolution of the Union—That Union is only to be preserved by a *Federal Energetic* Government, and that the Articles of Confederation Possess not an Atom of such a Government,—I confess the evils I wish to remove Vanish, even if they remain in the Plan upon this Comparison on wch. side danger lies; and the rather when I consider that

perfection would have been a Vain expectation, & that I esteem the great *Barriers* of liberty not *violated* in the Plan, tho' I may not think them sufficiently *Secured*. Prevs. Amendments either as a Sine qua Non, or to be the Subject of Consideration in a Future Convention of the States, impress on my mind a *Fatal* tendency to *rejection*, & it's consequent *evils*, & therefore I feel unconquerable repugnance to that *risque*—But viewing the Prospect of Success in Our *hopes* of Amendment, I think they are strongly Fortified by the mode of making them accompany *Ratification*, rather than to precede it. 8 states have already *Ratified*, some with, & some without Amendments proposed;³ to *those* at least, & *others* who may so adopt, we shall appear wth. *Hostile* Countenances, unfavorable to a cordial reception—they will cons[ide]r Our Proposals as coming From Men, refusing to make a Common Stock with them of Interests, under the direction of the General Government, And therefore as *dictating* the admission of local *Interests*; Circumstances all unfavorable to *Patient* hearing & *candid* investigation. but say Gentn. Virga. is too *important* in the Union, to *risque* her *Separation* by refusing her *reasonable* propositions. Alas Sir, with *Irritated* minds, reason has small force, and if those 8 states should make the Supposition of that ground's having produced our Conduct, it will add that of *Insult* to the other causes of *Resentment*, And will any Gentn. say that Virginia, Respectable as she is, is able to *sustain* the Conflict? does any wish to see the experiment even put in *risque*? No Sir, that circumstance of Importance it appears to me, will have it's due weight, when those states shall behold Virginia coming Forth as a United friend, with proposed Alterations For Common good, & will secure at least a *Candid* & *Full* examination, if not in some degree an influential decision. And thus, Sir, you have the grounds of my Judgmt. upon this All-important question of Previous or Subseqt. Amendments.

As to the Amendments themselves, I feel the Fullest Conviction of the Importance of those great rights, so favourable to Liberty, the trial by *Jury*, the Liberty of the *Press*—the *Freejdom* & *Frequency* of *Elections*, & that *responsibility* of the Representative to his Constituents, by *residing* amongst, & *sharing* with them in all *benefits* & *Injuries*. I am unfortunate enough to differ From you in Opinion as to the best means of Securing them, being that of a *Bill of Rights*. my Objection to that is founded not on it's *strength*, but my Fear of it's *weakness* & *Danger*, and the *impropriety* of it's *Principle*. The *Magna Charta* of England wch. our Ancestors so much valued themselves upon, had it's merits; it unfettered them From some of those shackles which the dictated Will of a Conq[ue]r had in the Formation of their Government imposed upon them:⁴ It was all they could do, the struggle was *noble* & the

Acquisition valuable; but supposing it Recur'd to as a model For a *free* people in *Forming* a Governmt. For themselves, it appears in Principle, *humiliating & unsafe*. the former in accepting From any *Agent* of their *Power* a Charter of their rights, which they *Possess*, & derive From a *higher* Source. *Unsafe* because it *admits* a Power in the *Donor* to *take* away; a mischief which produced the Subsequent Struggles about the Great Charter, to be found in it's numerous Ratifications.⁵ The *Petition* of Rights there, was a further Progress in wch. the humiliating Part of the principle was kept up; the *Bill* of Rights indeed, was a further step in wch. that principle was dropt, and a *Protest* made agt. Violations of Right, still *opposed* to a Ruler in Possessn. of *Dangerous* Powers. Whether that has produced the Apparent Repose of that nation, and the Safety, as some Gentn. Suppose, of their liberty; or whether the first of those effects, if it exists at all, has not been produced by a cause by Far more dangerous to, and annihilating the other, the change of the Instrument For Power From *vain Coertion*, to *effectual Bribery & corruption*, is at least *Problematical*: I fear that a review there would Find the Power of the Crown in it's greatest *Altitude*. However if they are happy 'tis well, & I wish not to disturb their *repose*.

But after this view is it not Safer to trust the two first rights to the Broad & Sure ground of this Principle—that the people being Established in the Grant itself as the *Fountain* of Power, *retain* every thing which is not granted? Is not the Principle true & Sound? does the Landlord in a grant For a term, reserve his own right? does the donor in grants For life or intail, reserve his Inheritance? no—when what is granted is at an end, his Original right Occurs—the Case of Escheat is still stronger—when ever an Absolute Fee Simple Estate ceases to Operate, by there being no legal, or Appointed Successor, the Original Source of the Grant comes Forth with it's Indisputable claim. In all these the Principle [retains?] it's Force, & will, I believe be Found to have in every investigation of Grants, or Delegations of Power. Again is there not danger in the Enumeration of Rights? may we not in the progress of things, discover *some* great & important, which we don't now think of? there the principle may be turned upon Us, & what is not reserved, said to be granted: If therefore Gentn. think something should be done, it would seem to me more proper to do as Massachussets proposes—Declare the *Principle*—as more Safe than the *Enumeration*.⁶ or after all if Gentn. think a Bill of Rights best, I am satisfied; approving the *End*, I will not divide with them about the *means*, unless I saw more danger than in this.

In Delegation of Powers we must be Explicit & guarded; and tho' all *efficient* Powers, may be *abused*, we must not From thence draw a

conclusion that none such are to be granted. it will & ought to Suggest Caution in Us, to grant no *unnecessary* Power, & to guard those wch. are so, as far as we can, wth.out rendring it useless. Here then I take my ground upon the Support of two great Principles "That the Object of Government is the Safety & happiness of the People" And that "the People are the Fountain of Power". To effect the first a strong & firm Govt. of wholesome laws, well executed, to protect the honest Peaceable Citizen From *Oppression, Licentiousness, Rapine & violence*, appear to me indispensibly necessary., and impress'd with the latter, In all Delegations of Power we ought to preserve in the Agent the *Representative* Character in it's purity of *Free Election, short term, & Responsibility*, where I see these *Agents*, I behold the *People* and Find safety, as far as human guards can extend: Deviations of *design*, will be *corrected* by *change*, those of *mistake* or Inattention, by review & better reflection.

It will be Obvious that I mean these guards to extend only to those Agents who are intrusted with the *sword & purse*—The Judiciary having nothing to do wth. either, are not dangs.; & From the Nature of their Office, must be Independent, if you expect Impartial decisions.

Impress'd with these Principles I view the proposed Plan. & 1st. the great Deposit of all, the House of Representatives—the Electors put on the best ground—that of the states whose reg[ulation]ns as to the right of Suffrage, are unalterable by any other power, but may be changed by themselves as convenience may Suggest.

The term of Election short—The number thought to be too small, but considering that the Subjects of Legislation are our great National Concerns as Connected with other States & Foreigners, I think 12 Gentn. may be found in the State at all times, able to give the Fullest Information of those, tho' not equal to that of all our small local Affairs⁷—the number is fix'd by relation to Numbers of Inhabts.—it gives Us our full share in the Collective body, and being Founded on the same Ratio as that of taxation, there will be no danger of an Inclination to change it. a few are indeed, more easily bribed; but if our Suspicions are so keen, that we can't trust our Representatives, going in conseq[ue]nce of our confidence, & to return amongst us, & Account For their Conduct, at the end of two years, what are we to do? must we have no Govt. Til Angels From Heavn. shall supply Us wth. Agents? Tho' we trust them wth. the Purse, 'tis For purposes defined as far as such things can be, & without it, all purposes of Government may be defeated. I see no propriety in making requisitions necessary From one body of our Rep[resentativ]es to another, & we have seen the Fatal effects of such a measure. The wisdom of 2 branches in the Legislature, is proven from reason & Sanctified by our

own State System—as the term of duration of the Senate is, tho' it is shorter than ours by Comparison wth. that of the other, by the diff. proportions between 1 & 4, & 2 & 6.⁸—The whole time is not dangerously long, & that diminished by the Bienial Rotations to & From it. Our unequal representn. there, seems to me a reasonable guard to the small States—It was the effect of *Accommodation* there, & answers another in being the representation of States, as chosen by the Legislature, & will give the State Governmts. their proper weight. Here again perceiving the Representative Character preserved, I think this body properly Organized as such: Other Powers are aft[erwar]ds improperly thrown on them, in which I see great confusion derangement, impropriety & the *Seeds* of a dangerous Aristocracy; I mean their being made, as a body, the standing Executive Council. To these, one of my Amendmts. would apply, but I have said before that I do not consid. them as of such quick or Inveterate growth, as to justify putting the Union in Risque, or that they may not be trusted to the Success of Future Amendments. The President is produced still in the Representa[tive] Character, since what the man I elect For the purpose does, is done by me; his term is Short, & going into Office wth. the Confidence of America in his *Integrity*, can't be reasonably supposed in the course of 4 years to loose that Character, & Form dangerous Systems. his Eligibility, or perpetual Ineligibility, are what I am not well Satisfied in determining either way, I discover Argt. on both sides, perhaps Safety may lie in the latter. His powers are defined, & not left to latent Prerogatives—they none of them appear too large unless it be those of Pardoning Treason *before* Conviction, & the Final power of giving *Force* to Treaties—which I think should be confined to truces, Prov[isiona]l Articles, and the making the terms of *lasting* Treaties, but wch. should receive their ratification From the Legislature, as I believe is done in all or most Republics.

In the Judiciary, I perceive a Plan wch. may in the Legal Organization of the Courts, produce Oppression & great Inconveniency to the distant Citizens; but wch. may also be so Arranged, consistent wth. the Constitution, as to produce the necessary good & none of the Evil. On this view I feel a Security that the good part will be chosen, in the Circumstance of the situation of a Majority of the States, being equally or more remote From the Seat of Governmt. than we are, & whose Representatives will join with ours, in Securing their Citizens From this Injury. whether it be best to state the amendmts. necessary to give that turn to the laws, or wait to see if they don't take it, I have some doubt. Those of Massachussets are proper as Far as they go, but are greatly short of what I wish on the Subject.⁹ I am inclined to think

however that the restraints had better be in the *laws* than in the *Constitution*, thereby admitting of being varied more easily as experience shall require, Secured as we are by the Circumstance abovementioned.

This Subject is not exhausted, but my Crampt Fingers are tired, and I fear yr. patience wearied out—you have my naked undisguised Sentiments on the Principles or great ground of the Plan, to your Judgment I commit them, & cordially join with you in imploring a diffusion of divine Wisdom in our Counsels, that decision may produce Peace, Safety & happiness to all concern'd, and that you may enjoy every Felicity. I thought I had in the beginning made My Appology For not having sooner paid you my respects—It is to be Found in a close Attention to the Presidial duty I am hond. with,¹⁰ From wch. I begd excuse on this day From it's extream dampness, & that of the House we sit in made thoroughly wet by a Hail Storm yesterday.

1. RC, Emmet Collection, NN. The name of the addressee does not appear, but Pendleton answers Richard Henry Lee's 26 May letter (RCS:Va., 878–82).

2. Since he became President of the High Court of Chancery in 1778, Pendleton had not held elective office.

3. Of the eight conventions that had ratified the Constitution, only those of Massachusetts and South Carolina had recommended amendments.

4. Pendleton refers to William the Conqueror, the first Norman king of England (1066 to 1087). William introduced the legal theory that all land in the last resort was held of the king. He confiscated the lands of Anglo-Saxon rebels and gave the lands to his followers. He also restored lands to the great Anglo-Saxon landowners, so that they now held the lands from him. Since all public and political rights were intimately related to rights in land, all such rights were also derived from him. William established this feudal structure without the passage of any laws.

5. The Magna Carta (1215), which reaffirmed the feudal rights and privileges of the barons, was reissued with changes in 1216, 1217, and 1225, and it was confirmed more than forty times by 1422, the end of the reign of Henry V.

6. The first proposed Massachusetts amendment provided "That it be explicitly declared, that all powers, not expressly delegated by the aforesaid constitution, are reserved to the several states, to be by them exercised" (CC:508).

7. In the first federal Congress, Virginia was allotted ten representatives and two senators.

8. Members of the Virginia House of Delegates served one year, senators four years. U.S. representatives served two years, senators six.

9. For the text of the Massachusetts amendments, see CC:508.

10. Pendleton was president of the state Convention.

Gouverneur Morris: Extempore at the Convention in Virginia Richmond, c. 14 June¹

Extempore at the Convention in Virga

The State's determined Resolution
Was to discuss the Constitution

For this the Members come together

Melting with Zeal and sultry Weather
 And here to their eternal Praise
 To find it's Hist'ry spend three Days
 The next three Days they nobly roam
 Thro ev'ry Region far from Home
 Call in the Grecian Swiss Italian
 The Roman [Russian?] Dutch Rapscaillion
 Fellows who Freedom never knew
 To tell us what we ought to do
 The next three Days they kindly dip yee
 Deep in the River Mississippi
 Nine Days thus spent eer they begin
 Let us suppose them fairly in
 And then resolve me gentle Friend
 How many Months before they End

1. MS, John Marshall Papers, ViW. This undated poem, in Gouverneur Morris' handwriting, appears on the verso of a dinner invitation that Morris received from John Marshall. The poem has been dated circa 14 June because Morris referred to nine days of debate, three each on the "Hist'ry" of the Constitution, the history of confederations, and the Mississippi River. If the Convention's first two days (2 and 3 June), concerned largely with procedural matters, are eliminated, nine days of debate take the Convention through Friday, the 13th of June. However, the Mississippi debate, which began on 12 June, did not end until the 14th.

Samuel A. Otis to Theodore Sedgwick
New York, 15 June¹

Mr Maddison who you know with the endowments of a great Statesman & a fine Scholar, in the Study of men & books, possesses a cool, deliberate, cautious judgment, writes his friends in Congress in terms very encouraging & amongst other Letters printed the following extract² is more recent than the papers

[“]Richmond Friday June 6th

symptomatic vote this day in favor of the question was taken; Nothing decisive however has taken place. Mr H made a great effort yesterday & having spun his harangue until a late hour, an answer was prevented;³ His party were much revived—, but I think they are less so this morning. The Governour is become active in favor of the adoption”.

Referring you to the papers for other news I have the honor to be your most Huml. Sert

1. RC, Sedgwick Papers, MHi. Sedgwick (1746–1813), a lawyer and speaker of the Massachusetts House of Representatives, voted to ratify the Constitution in the Massachusetts Convention in February 1788.

2. This letter, the original of which has not been located, is possibly James Madison's 6 June letter to Virginia congressman Edward Carrington, to which Carrington refers in his 17 June letter to Madison (below). Carrington told Madison that he had communicated the contents of Madison's 6 June letter to "the Friends of Federalism." Nathan Dane, Otis' fellow Massachusetts delegate to Congress, wrote this about Madison's letter: "I yesterday saw a letter from a member of that Convention dated the 6th. instant in which he States that the prospect of adopting the Constitution increases—but adds that nothing can be said with certainty" (to Caleb Strong, 15 June, Strong Papers, Forbes Library, Northampton, Mass.).

3. For Edmund Randolph's comment that it was "too late" in the day to answer Patrick Henry, see RCS:Va., 968. According to William Heth, the usual hour for adjournment was 4:00 P.M. (Diary, 19 June, Mfm:Va.).

James Madison to Alexander Hamilton Richmond, 16 June¹

Yours of the 8th.² is just come to hand. I mentioned in my last that Oswald had been here in consultation with the Antifedl. leaders.³ The contents of your letter confirm the idea that a negociation for delay is [on] foot between the opposition here & with you. We have conjectured for some days that the policy is to spin out the Session in order to receive overtures from your Convention; or if that cannot be to weary the members into a[n] adjournment without taking any decision. It presumed at the same time that they do not despair of carrying the point of previous amendments which is preferable game. The parties continue to be nicely balanced. If we have a majority at all it does not exceed three or four. If we lose it Kentucke will be the cause; they are generally if not unanimously against us.

I have been partially recovered since my last but to day have a [bit?] of relapse. My health is not good, and the business is wearisome beyond expression. I wish you every happiness &

1. RC, Hamilton Papers, DLC. Madison's letter appears on the first page of a folded sheet; at the bottom of this page he wrote "turn over." On the second and third pages, Henry Lee of Westmoreland also wrote Hamilton an undated letter (probably 16 June) (immediately below); the fourth page is the address page which contains the postmark, Richmond, 17 June.

2. In this letter, Hamilton told Madison that Antifederalists had won a two-thirds majority in the New York Convention, and he expressed the hope that Virginia would ratify the Constitution because such an action would "have a vast influence" on New York. Hamilton reminded Madison of his earlier request that Madison send an express to New York as soon as Virginia ratified (Syrett, V, 2–4).

3. Madison's last letter to Hamilton, dated 13 June, has not been located. For Eleazer Oswald's trip to Virginia to deliver letters from New York Antifederalists, see RCS:Va., 811–29; and Madison to Hamilton, 9 June, and Madison to Rufus King, 13 June (both above).

Henry Lee to Alexander Hamilton
Richmond, 16 June (excerpt)¹

... Our Convention is in full debate on the Great business of Federal constitution—We possess as yet in defiance of great exertions a majority, but very small indeed

A correspondence has certainly been opened thro a Mr. O. of Philada. from the Malcontents of P. & N.Y. to us²—it has its operation, but I beleive we are still safe, unless the question of adjournment should be introduced, & love of home may induce some of our friends to abandon their principles—

1. RC, Hamilton Papers, DLC. Printed: Syrett, V, 9–10. This undated letter begins on the verso of Madison's 16 June letter to Hamilton (immediately above).

2. For Eleazer Oswald's trip to Virginia to deliver letters from New York Antifederalists, see RCS:Va., 811–29.

John Vaughan to John Langdon
Philadelphia, 16 June¹

(Mr Mason has written to a friend of his of 7. June from whom I have it that he thinks it will be carried against him in Convention, by "Means of arts the most despicable, from persons worthy the highest Contempt"² You will not wonder that disappointment should draw from him such expressions)—What he alluded to was, a handbill which was sent from Baltimore advising the Charleston ratification [— —] [— —]³ Henry (& I think Mr Mason) treated [it] as a forgery made for the occasion—(Henry spoke against the Constitution) & brought forward his objections, (he was ably answered by Mr. Randolph—Mr. Zef. Jackson a man of great influence in the back-Counties & esteemed Antifederal, has warmly joined the fœderal party⁴—The Sanguine promise a handSome Majority, the prudent are Satisfied it will be carried The Antifœderals confess their hopes desert them)—The Moment anything Certain is know[n] you will hear from me, Mean time I hope you will be So active & your State So determind as to have decided in favor of the Constitution [without?] waiting another example—You will oblige me if you will not neglect advising me every post of the State of the Business with you, or as you will be more usefully occupied than to gratify impatience however laudable, please to request some friend of yours to indulge me & add a line when leisure permits
[P.S.] my last enclosed the first Resolves of the Convention of Virginia⁵—

1. RC, Langdon/Elwyn Papers, New Hampshire Historical Society. The text in angle brackets appeared in the New York *Daily Advertiser*, 19 June, under the heading, "Extract

of a letter from a Gentleman at Philadelphia, dated 16th June, 1788" (Mfm:Va.). It was reprinted six times by 3 July: Mass. (1), R.I. (1), N.Y. (3), Pa. (1). It was possibly inserted in the *Advertiser* by a New Hampshire delegate to Congress, who opened Vaughan's letter (addressed to Langdon) and then sent it to Langdon in New Hampshire. For a criticism of this extract, see *New York Journal*, 20 June (below).

2. George Mason's 7 June letter has not been located.

3. At this point, the manuscript is torn. Vaughan probably refers to a broadside headed "Ratification./Charleston,/May 26, 1788" that contains the South Carolina Form of Ratification, but does not include the convention's proposed amendments to the Constitution (Evans 45364).

4. On 17 June the *Pennsylvania Mercury* reported: "Mr. Zeph. Jackson, a gentleman of great influence in the western part of the state [Virginia], has declared himself as the decided advocate of the Constitution. From this person, a different conduct had been expected by the enemies of a Federal Union." This was reprinted in the *New York Daily Advertiser*, 19 June; *Virginia Herald*, 26 June; *Massachusetts Centinel*, 28 June; and *New Hampshire Spy*, 1 July. For another report about "a Mr. Jackson," see *Massachusetts Centinel*, 28 June (Appendix I, below).

There was no delegate in the state Convention named Zephaniah Jackson. The above reports probably refer to Zachariah Johnston of Augusta who voted to ratify the Constitution.

5. For these enclosures, see Vaughan to Langdon, 11 June, note 1 (above).

John Campbell to Levi Hollingsworth Yorktown, 17 June (excerpt)¹

. . . Our State Convention is now Deliberating on the New Plan of Government as offered by the Grand Convention held in Philadelphia. the Debates on both Side Seam obstinate.—I hope a few days will Determin in its favour though I think there will not be a Majority in its favour of more Then Ten or Twelve, as I have been informed by a Gentleman, who is Considered a Judge If we can gain it, I will be Happy, for I think we cannot long exist under the old Government as a Nation Perhaps I am speaking of an unpleasent matter to you. How[ev]er you wont think the worse off me; for not Disguising my sentaments wish withall my Hart Our State may follow the Laudable Step of your & other States who have Recd it with Open Arms nothing else can save us from Destruction in my weak opinion. . . .

1. RC, Hollingsworth Papers, PHI. Campbell was the collector for the District of Yorktown and apparently a flour merchant.

George Washington to Henry Knox Mount Vernon, 17 June¹

I received your letter of the 25th. of May, just when I was on the eve of departure for Fredericksburgh to pay a visit to my mother from whence I returned only last evening.²—

The information of the accession of South Carolina to the New Government, since your letter, gives us a new subject for mutual felicitations.—It was to be hoped this auspicious event would have had considerable influence upon the proceedings of the Convention of Virginia; but I do not find that to have been the case.—Affairs in the Convention, for some time past, have not worn so good an aspect as we could have wished: and, indeed, the acceptance of the Constitution has become more doubtful than it was thought to be at their first meeting

The purport of the intelligence, I received from my private letters by the last nights mail, is, that every species of address & artifice has been put in practice by the Antifederalists to create Jealousies & excite alarms.—Much appears to depend upon the final part which the Kentucke members will take; into many of whose minds apprehensions of unreal danger, respecting the navigation of the Mississip[p]i & their organization into a separate state, have been industriously infused.—Each side seems to think, at present, that it has a small majority, from whence it may be augged that the majority, however it shall turn, will be very inconsiderable.—Though, for my own part, I cannot but imagine, if any decision is had, it will be in favor of the adoption.—My apprehension is rather that a strenuous—possibly—successful effort may be made for an adjournment; under an idea of opening a correspondence with those who are opposed to the Constitution in other States.—Colo. Oswald has been at Richmond, it is said with letters from Antifederalists in New-York & Pensylvania to their Co-adjutors in this State.³—

The Resolution, which came from the Antefederalists (much to the astonishment of the other party) that no question should be taken until the whole Plan should have been discussed paragraph by paragraph; and the remarkable tardiness in their proceedings (for the Convention have been able as yet only to get through the 2d. or 3d Section), are thought by some to have been designed to protract the business until the time when the Assembly is to convene, that is the 23d. instant, in order to have a mere colorable pretext for an adjournment.—But notwithstanding the Resolution, there has been much desultory debating & the opposers of the Constitution are reported to have gone generally into the merits of the question.—I know not how the matter may be, but a few days will now determine

I am sorry to find not only from your intimations, but also from many of the returns in the late Papers, that there should be so great a majority against the Constitution in the Convention of New York.—And yet I can hardly conceive, from motives of policy & prudence,

they will reject it absolutely, if either this State or New-Hampshire should make the 9th. in adopting it—as that measure which gives efficacy to the system, must place any State that shall actually have refused its assent to the New-Union in a very awkward & disagreeable predicament

By a letter which I have just recd. from a young Gentleman who lives with me, but who is now at home in New-Hampshire, I am advised that there is every prospect that the Convention of that State will adopt the Constitution almost immediately upon the meeting of it.⁴—I cannot but hope then, that the States which may be disposed to make a secession will think often and seriously on the consequence.—

Colo. Humphreys⁵ who is still here, occupied with literary pursuits, desires to be remembered in terms of the sincerest friendship to you & yours.—Mrs. Washington & the family offer, with me, their best Compliments to Mrs. Knox & the little ones—

1. RC, Knox Papers, MHi.

2. In his 25 May letter, Knox predicted South Carolina's ratification and he said that "Much will depend on Virginia—Her conduct will have a powerful influence" on New York and North Carolina (Washington Papers, DLC). Washington left for Fredericksburg on Tuesday, 10 June, and returned to Mount Vernon on Monday, the 16th (*Washington Diaries*, V, 339–40, 343).

3. For Eleazer Oswald's activities, see RCS:Va., 811–29.

4. Washington refers to a 2 June letter that he had received from his secretary Tobias Lear (Washington Papers, DLC).

5. David Humphreys of Connecticut, one of Washington's former aides-de-camp, had been living at Mount Vernon since November 1787.

James McHenry to James Madison Baltimore, 17 June¹

To-nights post has brought me intelligence from your convention which induces me to send you the inclosed authentic information respecting the present state of the opposition to the constitution in Pennsylvania.² I find the same misrepresentations have been played upon the uninformed with you which was practised with us. You are at liberty to make them as public as you please. The letter is from the chief Justice and the certificate from the clerk of the General Assembly.³ You will return them, and I hope, (tho' I am full of fears) with them the desirable news of your State having adopted the constitution. God be with you. Adieu

1. RC, Madison Papers, DLC.

2. McHenry was trying to counteract rumors that the opposition in Pennsylvania to the Constitution was still strong. Eleazer Oswald, the Antifederalist printer of the Philadelphia *Independent Gazetteer* who had just been in Richmond, was possibly one of the sources of such rumors. (For Oswald's mission to deliver letters from New York Anti-

federalists, see RCS:Va., 811–29.) Tench Coxe had written Madison on 11 June that the opposition in Pennsylvania was finished (above).

3. The enclosures have neither been identified nor located.

Edward Carrington to James Madison
New York, 17 June¹

I had the pleasure to receive your favor of the 6th of June²—it gives great satisfaction not only to myself, but all the Friends of Federalism to whom I have had an opportunity to communicate its contents. you very prudently hazard no decided opinions as to the event, but it appears to me that we may calculate with certainty upon a considerable Majority from the facts you communicate.—it is impossible that the present critical state of the business, & the consequent responsibility of Virginia to humanity, for her conduct under such circumstances, should not have enclined most of the opposition, who can discern the hazards of persevering, to follow Governor Randolph in taking the other side.

The President has just shewn me your letter to him mentioning your indisposition—I regret it much, but hope you have before this perfectly recovered, so as to resume your Station in the House.³

The Convention of New York is now assembling at Poughkepsi—the Antifederalists, who are indeed the Majority, have received a Shock from the Accounts from Virga.⁴ but it seems they are so fixed in their principles that they will probably at least adjourn without adopting the Constitution.

Present to our Friends Innes & Marshall and believe me to be my dear Sir

1. RC, Madison Papers, DLC.

2. This was probably the letter that Samuel A. Otis quoted in his 15 June letter to Theodore Sedgwick (above).

3. Madison's letter to Cyrus Griffin, President of Congress, has not been located. On 18 June Griffin replied to Madison, stating that "we are all extremely uneasy at your Indisposition—how much to be regretted indeed! and particularly when such important matters are under deliberation—but I hope that kind Heaven has restored you before this day, to be a farther blessing and honor to your Country!

"we are not very sanguine upon the event of the proposed constitution in Virginia—'tho your kind letters give us some degree of spirits. above all things take charge of your health" (Rutland, *Madison*, XI, 153. For Madison's illness, see his 9 June letters to Alexander Hamilton and Rufus King and his 13 June letter to Washington, all above.).

4. For such an account, see the *Pennsylvania Gazette*, 11 June (above), which was reprinted in five New York City newspapers on the 13th and 14th.

Hudson Weekly Gazette, 17 June¹

We have received information from a person of undoubted veracity, that governor Randolph, immediately after the choice of a president, rose and addressed the convention of Virginia in a very eloquent

speech of four hours, in which he strongly inculcated the necessity of adopting the proposed constitution for the United-States, and candidly acknowledged that altho at first he had opposed it, from mistaken principles, he was now convinced that its adoption was necessary, if we wished to be a great and a happy people. This speech of the governor's was received with just applause. Our informant further adds, that at least two thirds of the house are decidedly federal.

1. This item was reprinted in the Lansingburgh, N.Y., *Federal Herald*, 23 June. It cannot be determined which Edmund Randolph speech the *Hudson Weekly Gazette* is describing. The Convention elected a president on 2 June, and Randolph made major speeches on the 4th and 6th. Based upon David Robertson's report of the debates and other sources, only the 6 June speech could have run as long as four hours. (For Randolph's speeches, see RCS:Va., 931-36, 971-89; and for the length of his 6 June speech, see Bushrod Washington to George Washington, 7 June, and note 2 thereto, above.)

William Grayson to Nathan Dane
Richmond, 18 June¹

I refer you to my letter to Mr. Huger of this date for general information:² our affairs in this quarter are in the most ticklish situation: We have got ten out of 13. of the Kentucki members, but we wanted the whole: & I dont know that we have got one yet of the four upper counties:³ this is an important point, & which both sides are contending for by every means in their power:—I believe it is absolutely certain that we have got 80 Votes on our side which are inflexible, and that eight persons are still fluctuating & undecided.—The news today from New York is a little reviving & perhaps may be productive of consequences:⁴—Tomorrow the Judiciary comes on when we shall exert our whole force.—It is expected we shall get two Votes if the point is conducted in an able & masterly manner.—I think we got a Vote today by debating the powers of the President.—This you will observe is confidential:—When the question, is taken, which I expect will be about Wednesday next I will write: or indeed if any thing material should happen before that time I will give you information From yr. Affet. frd & hbble servt.

[P.S.] It is suspected here that the affairs of Kentucki, were not brought on at this time for nothing.⁵

1. RC, Dane Papers, DLC.

2. Grayson's letter to Daniel Huger, a South Carolina delegate to Congress, has not been located.

3. Grayson possibly refers to Ohio, Monongalia, Harrison, and Randolph counties, seven of whose eight Convention delegates voted to ratify the Constitution.

4. "The news . . . from New York" was probably the report that the Antifederalists had won an overwhelming majority of seats in the New York Convention.

5. Probably a reference to Congress' consideration of Kentucky statehood. See John Brown's 5 June letter to an unknown recipient, note 3 (above).

James Madison to Rufus King
Richmond, 18 June¹

No question has yet been taken by which real strength of parties in our Convention can be measured. There is not a majority of more than three or four on either side. Both sides claim it. I think however it rather lies as yet in favor of the Constitution. But it is so small as to justify apprehensions from accidents as well as change of opinion. An unwillingness to risk a positive decision on so small a superiority of numbers may also operate on some of the cautious & moderate friends of the Constitution. The other party evidently wish to procrastinate. They may hear from the Convention of N. York, they may work on some of the least decided friends of the Constitution; they may weary out the patience of the House, and prepare it for an adjournment rather than remain longer at this season from home and at a place extremely disagreeable for sundry reasons at this time; these reasons enforced by a distrust of their number, will account for the policy of delay. Previous amendments will either be tried or give place to an effort to adjourn, as circumstances may point out to the leaders in opposition.—I have been much indisposed & continue so in a degree which barely [i.e., barely] allows me to co-operate in the business. This will be an apology for not being more full in my communications; and will account for any unpunctuality in those already made, or which may follow. Adieu Yrs. Affectly.

1. RC, King Papers, NHi. According to an endorsement, this letter was opened by Christopher Gore at Boston and then forwarded by him on 1 July to Rufus King in Newburyport. On 18 June Madison also wrote Tench Coxe that "No question has been yet taken by which the strength of parties can be ascertained. Each hopes for victory. There will not probably be half a dozen for a majority on either side. I hope & think that if no accident happens the Constitution will carry the point. But when the balance is so extremely nice, it is improper not to mingle doubts with our expectations. A few days will probably decide the matter" (Rutland, *Madison*, XI, 151).

James Madison to George Washington
Richmond, 18 June¹

No question direct or indirect has yet been taken, by which the state of parties could be determined. Of course each is left to enjoy the hopes resulting from its own partial calculations. It is probable the majority on either side will not exceed more than 3, 4, 5 or 6. I indulge a belief that at this time the friends of the Constitution have the

advantage in point of number. Great moderation as yet marks our proceedings. Whether it be the effect of temper, or of the equality of forces & the uncertainty of victory, will be seen by the event. We are at present on the Executive Department. Mr. H—y has not made a very² opposition to it though it was looked for. He may however still mean to make one; or he may lay by for an exertion agst. the Judiciary. I find myself not yet restored & extremely feeble.³ With my affet. regards I remain Yrs.

1. RC, Washington Papers, DLC.

2. Madison omitted a word at this point, probably "strong" or a similar adjective.

3. For Madison's illness, see his 9 June letters to Alexander Hamilton and Rufus King, and his 13 June letter to Washington (all above).

Many

Virginia Independent Chronicle, 18 June¹

MR. DAVIS, The public is under great obligations to you, for the fund of entertainment and instruction, your paper has afforded since the publication of the proposed fœderal constitution: the most illiterate may now discern the usefulness of the press in a free state. It gives all the people an opportunity to learn and be wise, to choose or refuse, in an important affair: indeed it is the noblest exhibition, the new world has yet witnessed. Let us therefore seek after truth, no matter where, or from whom.

We see our way now more clearly than at first outset; several of our objections have been ably answered. But so attached are we to old forms, or from some other cause, we are not yet satisfied, with the want of what is called a BILL of RIGHTS.—What, if the expression was varied, and it should be termed *incontrovertable truths*, or *fundamental laws*—Why might not the new constitution be prefaced by such an instrument of writing? The use we would wish to see made of it, is a resort, or recurrence, a test, to try all the acts of the national legislature by.—It is known that the bulk of the people do not understand abstruse, or lengthy political disquisitions. The fundamental laws of a nation, might be expressed in a few articles, and those in a few words, yet plain, and pithy, to which the people would pay a similar deference, as to the decalogue.

The explanations we have seen respecting the trial by jury, the freedom of the press, election of representatives, rotation in office, and responsibility to constituents are plausible, but not altogether satisfactory.

But how will the FREEHOLDER,² or any other candid writer, take to convince us, that it is right that *treaties* should be made the *supreme*

law of the land. We have hitherto been taught that all laws binding on the community, ought to be made with the consent of the people, or by that of their representatives, in their legislative capacity. But under the new constitution, Congress is to enact some laws, others to be enacted by a part of Congress, or one branch of the legislature, and these to be made *supreme*.³ We apprehend the Freeholder, or even Cassius,⁴ will see some impropriety in this. PUBLIUS, the oracle of the fœderalists, in his paper no 15—says that treaties even among civilized nations, “scarcely are formed, before they are broken, giving an instructive, but afflicting lesson to mankind, how little dependance is to be placed on treaties, which have no other sanctions, but the obligations of good faith; and which oppose general considerations of peace, and justice, to the impulse of any immediate interest or passion.”⁵ The whole of the paper is worth the reader’s attentive perusal. Would a sensible and free people, covet to have the supreme laws of their land, impressed with such “*lovely features*.”

Since the year 1776, the United States, by commissioners acting under their authority, have made a variety of treaties, with different nations of Savages; some of them if considered as law, will destroy the private rights of individuals without an hearing; infringe the sovereignty of States, are contradictory one with another; and in not a few instances manifestly unjust. Can the Indians give us constitutional security for the observation of stipulations on their part? What embarrassments must the Judges of the fœderal courts be under, when they come to pronounce, what is *the supreme law of the land*.⁶ They are either to be accessaries to a multiplicity of wrongs, or endure the imputation of trifling with the obligations of a solemn oath. Such generally are the consequences of *expost facto* regulations.

Treaties, no doubt, are engagements of a solemn nature, and it is interesting to humanity that they be faithfully observed, provided the sanctions to oblige the parties to do so, are reciprocal. At all events, if PUBLIUS’s account of them are true, they are improper matter, to make part of a code of laws, for the local administration of the national affairs.

In a serious hour, and in the presence of the Governor of the Universe, what reasonable excuse can then be made, for permitting, and that constitutionally, depredations on a distant and inoffensive people, for the term of twenty-one years.⁷—Seemingly in the same spirit, and with the same narrow policy, is the clause expressed ambiguously for the admission of NEW STATES into the Union. Art. 11 of the confederation is expressed in a different style.⁸

There are many good things, excellent regulations, set forth in the

new plan, that will long be respected by a grateful, and enlightened people. But when we turn our eyes to the dark side of the picture, a sigh, a tear, a lamentation, may be excited, for the imperfections that beset the best of men, and that attends the wisest institutions, whilst we are destined to act on the present theatre of human affairs.

Such are the sentiments of MANY.

May 13, 1788.

1. This essay was reprinted in the Philadelphia *Independent Gazetteer* on 2 October. "Many" was Arthur Campbell, who sent a draft of the essay to Augustine Davis, the printer of the *Virginia Independent Chronicle*, with this postscript: "My friend Mr. Davis will be so good as critically to examine and correct the above. Time will not permit to revise and copy it." Either Davis or someone else drastically revised Campbell's draft, although the essence of Campbell's objections to the Constitution was retained. For the draft, see Mfm:Va.

2. See "A Freeholder," *Virginia Independent Chronicle*, 9 April (Extraordinary) (RCS:Va., 720-21).

3. In the draft, "Many" argued that treaties should be ratified by nine of the thirteen states, "like all other important acts made under the Confederation."

4. See "Cassius" I, *Virginia Independent Chronicle*, 2 April (RCS:Va., 644-45).

5. *The Federalist* 15 was printed in the New York *Independent Journal* on 1 December (CC:312).

6. Both the Confederation Congress and the U.S. Congress considered treaties with Indians to have the force of law, but it was not until 1832, in the case of *Worcester v. Georgia*, that the U.S. Supreme Court accepted Indian treaties as the law of the land. In the 1780s, the Confederation Congress and several of the states, especially Georgia, North Carolina, and New York, disputed the control of Indian affairs. The U.S. Congress took control of Indian relations and exercised its authority through the provisions of the Constitution that allowed it to declare war and to regulate commerce with the Indian tribes, and the provision that allowed the Senate to make treaties.

7. "Many" refers to Article I, section 9, clause 1, of the Constitution which states that Congress could not prohibit the foreign slave trade before 1808.

8. Article IV, section 3, clause 1, of the Constitution states: "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." Article XI of the Articles of Confederation states: "Canada acceding to this confederation, and joining in the measures of the united states, shall be admitted into, and entitled to all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states." In 1784-85 Campbell, a resident of Washington County, was a leader of the movement to transfer southwestern Virginia to the State of Franklin.

A Delegate Who Has Caught Cold Virginia Independent Chronicle, 18 June¹

To the HONORABLE the CHAIRMAN of the COMMITTEE in CONVENTION at RICHMOND.

In resuming at this interessant period all that has been written and said on the new constitution, and removing what passion and particular interest has suggested, it is naturally to be concluded,

1st. That our actual confederation is defective from a want of energy, which excludes unanimity, regularity, and celerity in its interior and exterior regulations, and consequently cannot preserve, either our tranquility, or our liberty, and exposes us to the invasions, or to the contempt of foreign nations, which foresaw, with reason, our divisions and our next annihilation.

2d. That a new government is indispensable for remedying the defects of this, which if it be well organized, will encourage agriculture, and consequently raise the value of our lands, encrease our trade, and consequently augment our riches and our credit; re-establish the order and the exactness, and consequently, the confidence and reputation, and will people this continent with foreign emigrants, who to enjoy the advantages of our government, will bring in with them, arts, manufactures and industry.

3d. That the proposed constitution which has already been accepted by several states, has many of the qualities essential to our prosperity; but in remedying the weakness and defects of the old, it is not itself entirely free from them; those defects are of a very alarming nature, since they expose the sovereignty of the state and the liberty of the individual, and may reduce us to the debased situation of European republics.

4th. In any human performance imperfections are inevitable, and more essentially in the difficult task of forming a plan for to govern a people without endangering their liberties; and we must confess, my dear countrymen, that we planters who form the body of the people, though so essentially interested in this plan, we cannot be competent judges of its theory, when we find the learned and well skilled in this business differ so widely from one another; we must not set out in pursuit of ideal perfection, for we would find that we had been in search of an imaginary or an unattainable object; we can only in our capacity, judge of the effects and results of it by experience; but in making it, we should solely and essentially bend all our attention to the preservation of the inestimable right of having in our power at all times to new model our government according to circumstances, and to vary its course at certain periods; since it is really in this power that the sovereignty of the people consists.

Upon the above principles, which prove the necessity of the adoption of this plan, the impossibility in which we are, of discovering its imperfections, otherwise than by experience, and in fine the dangers to which our rights and liberties will be exposed by its adoption; our situation is plainly a very critical one.

Amendments are proposed; but if we were to make any, the other

states have certainly the same right, and we are not to suppose that these amendments would be totally devoid of all partial views towards local interests, which have been conciliated as much as possible, in the general convention, in the presence of all the parties concerned.

Those amendments should be prematured, contradictory, they should carry discussions and slowness dangerous in this circumstance, and even being unanimously agreed, they could not preserve us, from the imperceptible usurpations of power and of the unexpected defects, forgetfulness and mistakes, than the experience alone can demonstrate; those palliative should prove only, the weakness and defects of our government, who since the moment of its formation, is subject to particular amendments, and of a model who ought to be short and intelligible at every body, it should be a difficult and complicated work, subject to commentaries and interpretations in all senses; in fine, a true labyrinth whom the lawyers alone should know the way. But let me ask any one of these proposers of amendments, if he were to make what alterations and corrections he thought proper in this plan, whether it would then be free from all the defects and inconveniencies it is now reproached with, or if after such alterations, he could guarantee to the people of America, a government by which their liberty, and happiness, would be secured to them. Let them for a moment lay aside their vanity and consult only their honor and conscience, and then answer in the affirmative.—I will put the same question, in the name of the people, to those who recommend the adoption of this plan without amendment! can any of them under this plan guarantee to us our privileges and liberties—if either of these parties were alone to be answerable for the event they engaged for, they would hesitate without doubt, in entering into such a guarantee.

In that painful situation, and obliged to take a resolution, I put myself above all apprehensions of being accused of presumption in giving you my opinion; I deliver it with zeal and confidence, because it appears to conciliate the interests of these two opposite parties. I propose the adoption of the new constitution without amendment for a limited term, at the end of that period, let it be revised and corrected, and this without affecting the 5th art. of the constitution, which provides reforms whenever found necessary.

That mode appears such as would be agreed to by Congress, since it maintains the union for a term of 5, 8, or 10 years, and it would probably be approved of by the other states, since the minority in their convention required amendments and the majority wished for them, and all they accepted it in its present form, only from an apprehension of the mischiefs, which a disunion would necessarily occasion; they will

be with pleasure a period fixed and convenient for correcting the faults it is now reproached with, as well as those which may hereafter be discovered.

This precaution for revision will awake our attention and oblige us to invigorate our government at that stated period; it not only enables us to operate the corrections wished now; but all the other foreseen and unexpected, before they be rooted and naturalized with our government; that enables us to enjoy directly the benefits of that new constitution, without apprehending the inconveniency of the actual particular and partial amendments; for to leave that reform undecided and for an unlimited time, as it is indicated by the 5th art. of the constitution, it may be delayed, or drawn back by the very powers granted by the people, or will take place only, when abuses kept up by leaders, will be too much rooted and cause a revolution! besides a reform becoming indispensable by the defects and vices of the constitution, should not subject to more dangers, if it were suddenly to take place, than if it were to be generally expected and supposed to be nothing more, than a customary revision; such an institution would resemble that of the censors of Pennsylvania, who take place every seven years,² which distinguishes the constitution of this state and cannot be too much commended: and farther the time being fixed for that revision it would make our rulers more careful and circumspect, than an uncertain epoch.

If our present confederation which is visibly defective, has found so many defenders, and give such trouble for exchanging it against one certainly better, what difficulty and dangers shall we meet with, in amending the new, if a term for such reform is not pointed out.

If all the nations of Europe the more civilized, were in possession of such a regulation, they should not lament certainly under ridiculous and barbarous laws, institutions and customs, which are in contradiction with their actual morals and their learning.

[To be concluded in our next]

1. The remainder of this essay was printed in the *Chronicle* on 25 June (below).

2. Under the Pennsylvania constitution of 1776, the voters elected a Council of Censors every seven years. The Council, which was to sit for a year, could propose amendments to the constitution. The amendments had to be published six months before the election of a constitutional convention which could be called by a two-thirds majority vote of the Council (Thorpe, V, 3091-92).

Virginia Independent Chronicle, 18 June¹

Extract of a letter from a gentleman in Philadelphia to his friend in this city, dated June 9, 1788.

"A few days since a gentleman arrived here from Spain, who is on

his way to Kentucky at this time for the purpose of procuring 13 or 14,000 hogsheads of tobacco, which he has contracted with the Spanish government to supply, and to be delivered at New Orleans. He brings information that Spain is willing to cede to us the navigation of the Mississippi so soon as we shall have established a permanent government to form a treaty with them."

1. This item was reprinted in the Winchester *Virginia Gazette* and *Virginia Centinel*, 2 July, the June issue of the nationally circulated *Philadelphia American Museum*, and six other newspapers between 24 June and 30 August: N.H. (1), Mass. (1), Md. (3), Ga. (1).

A Well-Wisher to Good Government Virginia Independent Chronicle, 18 June

A well-wisher to good Government, with all due deference to the Honorable and very respectable Assembly now convened at Richmond, begs leave to submit the following amendment to the new Constitution as worthy of their attention.

For maintaining and preserving this Constitution inviolate—there shall be established one Supreme Censorial Court, which shall be called the Court of Ariopagus,¹ which Court shall be composed of the Chief Justice or other Senior Judge of the Supreme Fœderal Court to be appointed by the Congress, and the Senior Judge of each State Court that now is or hereafter may be—all of whom shall be the Senior Judges for the time being, and ex officio be Judges of the said Court of Ariopagus at the time when the same shall be convened.

And in any time hereafter if any state party to this Constitution, shall be of opinion that the Congress shall have enacted any law contrary to this Constitution, or that the Judiciary of Congress shall have exercised Jurisdiction in Cases not authorised by this Constitution—and the said state shall by vote of the Legislature thereof declare any such Law or Judiciary proceeding to be contrary to this Constitution, the said Legislature shall enter such upon their journals with their reasons for the same—and transmit the same to the President of Congress for the time being, who shall lay the same before the Legislature of the said Congress at their then next meeting, in order that the said Legislature may by law remove the grounds of the complaint of the said state. But if the Legislature of the Congress shall refuse or neglect so to do at their next session—and the State Legislature shall persevere in their opinion—In all such cases the said President of Congress shall, upon the address of such State Legislature, convene as soon as may be the said Court of Ariopagus, to be composed of the Senior Judges as aforementioned, if their health will admit of their attendance, but

if not, then of the next Senior Judge who can attend, to be nominated by the President and the Executives of the several States respectively—which Court shall meet at the residence of Congress, and at such time as the President shall appoint—and after having taken an oath, or made affirmation, that they will faithfully and impartially decide upon the several points to them to be submitted as aforesaid, which oath shall be administered by the President or Vice President of Congress, and by him certified and entered upon the register of the said Court of Ariopagus—the said Court, or three fourths of the members thereof, who shall attend, shall have full power and authority to decide upon all such Acts of Congress and proceedings of the Judiciary of the United States, as shall have been submitted to their consideration in manner afore described, and confirm or annul the same as in their judgment shall seem right; and in all such cases where the same shall be annulled, full restitution shall forthwith be made to the State or States, party or parties, who have been aggrieved by the said Act of Congress, or Judiciary thereof.—Provided always, that a majority of the whole number of the Judges of the said Court of Ariopagus, shall concur in opinion before any such Law or Judiciary proceeding shall be annulled or reversed.—And the Judges of the said Court of Ariopagus shall receive for their services in attendance at the said Court, _____ pounds per diem, and also the further sum of _____ shillings per mile, for travelling to the said Court, with the like sum for returning, and no more.—And the said Court shall be dissolved so soon as the business before them, and to them submitted, as afore mentioned, shall be determined.

1. The ancient Greek Council or Court of Areopagus could declare as null any laws in violation of the constitution.

The Impartial Examiner V

Virginia Independent Chronicle, 18 June (Extraordinary)¹

When a change, so momentous in it's nature, as that of new modeling a *plan* of government, becomes the object of any people's meditation, every citizen, whose mind is duly impressed with a regard for the welfare of his country, will consider himself under an indispensable obligation to make some such enquiries, as the following.—Whence flows the necessity of a change?—Does it proceed from certain *vicious properties*, which reside in the old system and form the essential parts of it?—Or will such a measure become eligible, because *evils* have arisen from the feeble texture of the plan, or a loose exercise of government,

which could not well be avoided?—What are the *evils* complained of? and what will be their correspondent remedies?—Are the evils *radical*, and not to be removed but by a *general* reform throughout the constitution?—Or do they result from a defect in some particular branch only? and may an adequate remedy be effected by introducing a new regulation merely as to *that* branch?

If investigations like these are seriously and dispassionately pursued, and it should be found that the present confederation of the American states contains *vicious properties*, which are inherent, fundamental, and tending to produce a general corruption, the *necessity of a change* must then be manifest. This discovery will lead to another enquiry; and that is—Do such properties pervade the whole system and contaminate all the parts of it? If so—then a *thorough change* will appear to be expedient, and it may be necessary to new model the system.

If, on the other hand, *evils* are found existing, which proceed, not so much from any internal corrupt *qualities*, as from the *feeble texture* of any parts of the system, or a *laxity* in the exercise of it's powers, it should seem adviseable to make alterations so far as to add a due degree of strength to the *weak parts*, and thereby insure *efficacy* in the government.

Should it appear, after a proper enquiry into the nature of the evils, that they are *radical*, and strike at the *vital principles* of the constitution—then to apply a *correspondent remedy*, an institution, which would produce a *general reform*, might with great propriety be deemed requisite.

If the defects are of a trivial nature, and subsist merely in some particular department or branch of the system—then amendments in the *defective branch*, tending to give energy where it had hitherto been wanting, would be amply sufficient for removing the *evils* and forming a competent remedy.

In order to discover how far the present system is vicious, or inadequate to the purposes of *this* great confederated society, for which it was established, a retrospect of the *original design* of the confederacy *itself* may afford no small degree of assistance.—Let it be recollected, then, that the *primary* object was to *form a perfect union*. This is manifested by the very “*stile of the confederacy*.”—That it was intended to promote *justice* equally between all the states cannot be doubted; because it is an institution, calculated to unite a number of *independent republics* under a *firm league* of amity, and to provide that contributions of every kind, which had been, or might be, necessary towards supporting their *general* government, should be furnished in due pro-

portions—whilst it was stipulated that a *mutual intercourse* and *reciprocal privileges* and *immunities* should subsist between the citizens of *all* the several states. Again, to *ensure domestic tranquility* must have been another important object with the framers of this confederation: for union, harmony and justice cannot fail to promote tranquility; and whenever a contract is formed for the purpose of procuring the *three first*, it follows, as a regular consequence, that the *other* should partake of the intention.—This great association is expressly declared to be entered into between the states “for their common defence, 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 pretence whatever.”²

The objects herein recited do certainly form the chief design of the present confederation; and the same are declared to be the great *ends* of the *proposed* plan of government. So far then do they agree. A subject of much contention, however, and with which the minds of different citizens are variously agitated, has arose.

It has been said that some of *these advantages*, and of high import too, cannot be obtained under the present system. It is the opinion of some citizens that the constitution proposed to us will secure all *these objects* and form a complete remedy for every *evil* now subsisting; whilst it is asserted by others that amendments might be introduced in the former, which would be competent to every *good* purpose, and promote *some* of very great consequence, that might be endangered by an adoption of the latter. Thus it is inferred that *this* system extends too far—and, like many human institutions, flits by a rapid progress from *one* extreme to *another*.

Those, who cannot approve of this plan, have very strong objections to it, because they apprehend that no *security for their liberties* will remain after it's adoption: and although some of the *ends* proposed might be obtained thereby; yet they think the sacrifice will be too great for the benefit to be received. To enjoy a competent degree of *liberty* they consider as the greatest of human blessings—for the loss of which no acquisitions whatsoever can compensate. They esteem this (and deservedly too) as the *soul* of *all* political happiness.

It seems to be agreed on all sides that in the present system of union the Congress are not invested with sufficient powers for *regulating commerce*, and procuring the *requisite contributions* for all expences, that may be incurred for the *common defence* or *general welfare*. Hence arise the *principal* defects;—and it is presumed that the *evils* resulting from

these weak branches in the foederal government might be adequately remedied by making due amendmets merely *therein*.

It is thought by some that the powers of making and enforcing the observance of treaties are not ample enough at present. If so—cannot these be enlarged so as to answer every desirable purpose of *that branch* in the foederal institution? Thus, while many citizens cannot think that the confederation is *fundamentally vicious*, but that all the *evils* now complained of do rather proceed from a weakness in some of its parts, they apprehend no necessity for an innovation further than strengthening *those parts*. If such measures were effectually established, they conceive that all the great ends of the *general* government might be promoted.—No contention, therefore, subsists about supporting a *union*, but only concerning the *mode*; and as well those, who disapprove of the proposed plan, as those, who approve of it, consider the existence of a *union* as essential to their happiness.

May 31, 1788.

P. P.³

1. This item was reprinted in the Philadelphia *Independent Gazetteer* on 7 July.

2. This paragraph is an amalgam of phrases from the Preamble to the U.S. Constitution and Articles III and IV of the Articles of Confederation.

3. The third installment of "The Impartial Examiner" I, 5 March, also concluded with these initials (RCS:Va., 466). "The Impartial Examiner," II, 28 May (RCS:Va., 885–89); and "The Impartial Examiner" III–IV, 4, 11 June (both above) were not so concluded.

Massachusetts Centinel, 18 June¹

AUTHENTICK INFORMATION.

Extract of a letter, dated New York, Thursday evening, June 12, 1788.

"Letters have been received this day from several gentlemen of distinction at Richmond, dated the 4th inst. stating, that about 140 of the Convention, out of 170, had assembled and elected Judge *Pendleton* President—That they had agreed, without a division to debate the Constitution by paragraphs, and not to take any question until the final one.

"That Gov. *Randolph* had in a very handsome speech declared his conviction of the propriety of adopting the Constitution previously to proposing amendmets.—That a contrary conduct would dissever the Union, and rather than consent to any thing that would have such a tendency, he would suffer his right hand to be cut off: That the majority was considerable in favour of the Constitution, and that Mr. *Henry* and Mr. *Mason* disagreed as to the objections awkwardly enough."

1. This item was reprinted in the Boston *American Herald*, 19 June, and *New Hampshire Gazette*, 26 June. On 24 June the *Salem Mercury* (Mfm:Va.) published an item that was partially based upon this one.

Massachusetts Centinel, 18 June¹*FEDERAL CONSTITUTION.*

*Extract from a letter received last night, dated
Richmond, June 4th, 1788.*

“Our State Convention met on Monday, and proceeded to the choice of the Hon. EDMUND PENDELTON, Esq. as President by a great majority. Mr. Pendelton is a decided federalist, and a very worthy man.—Gov. *Randolph* has expressed his intention of voting for the ratification—and Mr. *Mason* has declared that as so many States have adopted, and are likely to adopt the Constitution, opposition to it, will be opposition to the *general sentiment*—he should therefore cease a line of conduct which must be inconsistent with republican sentiments. In short, although the Convention is just begun, I am confident I shall have it in my power in a few days to announce to you that the ancient dominion of Virginia has had the pleasing satisfaction of forming the CORNER STONE of the great Federal Edifice.”

1. This item was reprinted on 19 and 21 June in the *Boston American Herald* and *New Hampshire Spy* (excerpt), respectively; and on 26 June in the *New Hampshire Gazette*, *Providence United States Chronicle*, and *Portland, Me., Cumberland Gazette*. On 24 June, the *Salem Mercury* printed a report which combined parts of this item, the item printed immediately above, and parts of another printed in the *Pennsylvania Gazette* on 11 June (above). For the *Mercury's* report, see Mfm:Va.

New York Daily Advertiser, 18 June¹

Extract of a letter from Richmond, dated June 9.

“Our Convention have been sitting these eight days, and we flatter ourselves that the New Constitution will be adopted by a considerable majority. Mr. Patrick Henry is the principal speaker against the system, and makes use of every effort to move the passions of the ignorant. On the contrary, our Governor, Mr. Maddison, George Nicolas and Col. Henry Lee, use every argument to clear up all doubts, and to support the credit and honor of the state.”

1. This item was reprinted in the *Lansingburgh, N.Y., Federal Herald* and *Albany Journal* on 23 June; and in the *Poughkeepsie Country Journal*, 24 June, *Massachusetts Gazette*, 27 June, and *Vermont Gazette*, 7 July.

Pennsylvania Gazette, 18 June¹

Extract of a letter from Richmond, dated June 9.

“I have taken the liberty to trouble you with a few lines, not doubting but you will be willing to pay postage for the information I am about

to give you, as it must be pleasing to every friend to his country, and every good man.

“Our Convention has been sitting seven days, and from the best authority I am warranted in saying, that the Constitution for the United States will be adopted by this state. It has many powerful enemies, and much has and will be said against it. Mr. —, who is the most violent against it of any man in this state (and I may say in the United States) is endeavouring to make it appear, that this state can stand by itself, and should the United States attempt at any time to lay them under restrictions, that, with the unexhausted produce of this country, they could bring a sufficient number into the field to over-power all the force that could be brought against them. Another observation of Mr. —’s is, that Virginia, under the many advantages she has over the other states, can do much better without the Union than with it. Mr. — also objects to the Constitution for this reason, the state of Virginia, said he, is as large as England, which has for its safeguard five hundred members in the House of Commons, while Virginia, the all-important state of Virginia, has but ten.²—Such are the objections of one of the Greatest Men in our state, so called by many. This day’s debate has fully convinced me that I may with the utmost safety declare the constitution out of danger.

“The observation made by Mr. —, respecting the members in the House of Commons in England, and the propriety of Virginia’s demanding the same number, because the extent of her dominions are as great, notwithstanding England contains eight million of souls, and Virginia about two hundred and fifty thousand,³ will shew you that Mr. —, who on many occasions has shewn *powerful reasons* to support his opinion, is in the present case weak. But he is not the only man that wishes to destroy the government, &c.”

1. This item also appeared in the *Pennsylvania Packet* on 18 June. It was reprinted, in whole or in part, twelve times by 3 July: Mass. (3), R.I. (1), Conn. (2), N.Y. (4), Pa. (2).

2. Patrick Henry made these comments about the British House of Commons on 5 June (RCS:Va., 967–68).

3. The Constitutional Convention of 1787 estimated that the non-slave population of Virginia was 252,000; while the federal census of 1790 counted close to 455,000 (CDR, 300; and RCS:Va., 555–57).

Pennsylvania Gazette, 18 June¹

Extract of a letter from Richmond, June 11.

“The Convention have been sitting near ten days, and from the irregularity of debate which has hitherto been pursued, it is probable

they may continue ten weeks longer. *Patrick Henry*, on whom the burthen of the opposition chiefly rests, seems anxious to reserve his strong hold till he can decoy *Maddison* and *Randolph* to declare all they have to say. As yet there has been no argument made use of by the opposers to the system;—it has been altogether declamation and invective. They are losing ground every day.”

1. This item also appeared in the *Pennsylvania Packet* on 18 June. It was reprinted fourteen times by 3 July: N.H. (1), Mass. (3), R.I. (1), Conn. (3), N.Y. (3), Pa. (2), Md. (1).

Archibald Stuart to John Breckinridge
Richmond, 19 June¹

My Dr. friend Breckinridge

Why have you not attended ye Convention During their Deliberations? you have lost what is not in my Power to supply & cannot otherwise be supplied unless ye Shorthand writer shall be able with accuracy to retail the Debates—Madison came boldly forward & supported the constitution with the soundest reason & most manly Eloquence I ever heard from Man, he understands his subject well & his whole soul is engaged in its success & it appeared to me he would have flas[h]ed co[n]viction into every Mind—Henry has Clamoured eloquently in favor of Republicanism & against slavery & he & his party have left no stone unturned to defeat the Constitution—We have 82 members immoveably fixed for it 12 Doubtfull & ye ballance against us as immoveable, in ye Doubtfull list a P Carrington W Ronald Fleming of Bott. Robt. Breckinridge H Marshall Rice Bullock &cc² Any three of Whom will give us a Majority Ye fate of Virga. is thus suspended upon a Single Hare—if we loose the question I fear the fate of the Constitution notwithstanding eight States have adopted it—

The whole core of opponents to ye Paymt. of British Debts are against us—

I do not wish to speak as freely on paper as I intend to speak to yourself on my Way home for Rely upon it I will Call & retail to you freely my Opinion of Men and measures—

N.B. Yr Brother Jas has been here from College³ is well and a Flaming foederalist.

1. RC, Breckinridge Family Papers, DLC. This letter was delivered to Breckinridge by a Captain Harris. Stuart represented Augusta in the state Convention and voted to ratify the Constitution.

2. Paul Carrington, William Ronald, William Fleming, Robert Breckinridge, Humphrey Marshall, and Rice Bullock all voted to ratify the Constitution. In 1806 Humphrey Marshall was accused of voting to ratify the Constitution contrary to the instructions of

his Fayette County constituents. (Marshall's fellow delegate had cast his ballot against ratification.) In a published reply, Marshall denied the charge and explained that by supporting ratification he had voted "the United States from anarchy to order, from despair to hope, from bankruptcy to credit, from poverty to affluence, from impotence to power, to public security, and to private happiness." Marshall said that he had favored amendments to the Constitution, but he "became perfectly convinced that *previous amendments*" were unattainable. Therefore, he voted for ratification and recommendatory amendments. (See "Humphrey Marshall Defends His Vote to Ratify the Constitution," 4 September–13 October 1806, Mfm:Va.)

3. James Breckinridge, a student at the College of William and Mary, wrote his brother from Richmond on 13 June, stating that he planned to return to college on the 15th (above).

Henry Knox to Rufus King New York, 19 June¹

Yes anxious enough I dare say—But I cannot relieve it The post of to day brings letters from Virginia to the 11th nothing decisive then. Maddison was sick on the 9th whether he was out on the 11th I do not know—I fear that overwhelming torrent Patrick Henry. I would it were well over and the parchment lodged in the secretarys office

The majority of the Antis is so great at PougKepsie, that I ask no questions—some person compelled me to hear that Gov Clinton was chosen President on tuesday 57 members present—

My apprehensions about Virginia are that they will adjourn and the legislature being to meet on the 23d will be the pretext—The best hint at present from that quarter is that Mason is angry²

1. RC, King Papers, NHi.

2. For Mason's anger, see John Vaughan to John Langdon, 16 June (above), an extract of which appeared in the New York *Daily Advertiser* on 19 June (Mfm:Va.).

Petersburg Virginia Gazette, 19 June¹

Since the 5th instant, nothing decisive has transpired in the Convention. The debates have been principally on those parts of the Constitution which relates to representatives—direct taxes—the powers of the senate—the manner of holding elections for senators and representatives—the several powers contained in the eighth, ninth, and tenth sections of the first article, and the first section of the second article:²—though in the course of the debates, other parts of the Constitution have been commented on, but not so fully as they may probably be, when they come regularly before the Convention. The arguments which have been urged for and against the proposed plan of Government, are exceedingly lengthy, but such as do honour to the gentlemen who have spoken on the occasion.—The members, feeling themselves

in duty bound to investigate the subject in a clear and comprehensive point of view, so as to form a decided opinion,—every matter relating to our embarrassed situation, the nature of the present confederation, and the probable benefit to be derived from a change of that system, have been attended to in the most cool and deliberate manner. The principal speakers in support of the new plan of Government, are Mr. Pendleton, President of the Convention; Governor Randolph, Mr. Maddison, Mr. George Nicholas, Mr. Lee, Mr. Marshall, Mr. Innes,³ Mr. Corbin, &c.—Those against it, are, Mr. Henry, Mr. George Mason, Mr. Monroe, Mr. Grayson, &c.

The Governor appears decidedly of opinion, that the proposed plan of government ought to be adopted, because eight states having come into the measure, he wishes to cling to the union, and has therefore declared himself in favour of it; however, acknowledging he has exceptions to the Constitution, such as are pointed out in his letter to the Legislature of this state; but these he is willing to rest on the probability of their being attended to in the manner pointed out in the Constitution, by adding amendments after adopting; rather than risk the refusing to accept the Constitution as it now stands.

Mr. Henry's arguments are applied against the Constitution altogether, as he conceives it dangerous to the preservation of those rights which, he says, are secured to us under the present confederation.—He declares himself a firm friend to the union, as being necessary to our political existence; and urges the propriety of granting to Congress sufficient power for that purpose—but conceives the proposed plan of Government by no means calculated to preserve the tranquility of the states. He observed, that the powers given to the general Government by that Constitution were more than could be necessary for that purpose, and that no instance could be adduced, where power was given, which from experience was found to be oppressive, that could ever be taken from the rulers, but by a revolution.

Amendments are preparing by the opposers of the Constitution—and the question now appears to be, whether the Constitution shall be accepted on certain amendments being previously concluded on—Or whether the Constitution shall be first adopted, and then subsequent amendments to be proposed and urged in a similar manner to the plans entered into by some of the other states.

1. This report was first reprinted under a Petersburg, 19 June, dateline in the *Pennsylvania Mercury*, 1 July, from which it has been transcribed. It was probably first published in the no longer extant Petersburg *Virginia Gazette*, 19 June. The report was also reprinted (in whole or in part) in the *Pennsylvania Journal* and Philadelphia *Freeman's Journal*, 2 July; *Massachusetts Centinel*, 9 July; and *New Hampshire Spy*, 12 July. The *Centinel*

and *Spy* prefaced their reprintings: "*The following information from Virginia, though posterior to the happy event of ratification by that State, we deem well worth insertion.*"

2. The Convention debated the first section of Article II late in the afternoon of Tuesday, 17 June, and concluded on the morning of the 18th—the day before this report was published (RCS:Va., 1365–78).

3. The record of debates published by David Robertson reveals that James Innes, the Williamsburg delegate and the state attorney general, did not speak on the Constitution until 25 June. Innes explained that he had not spoken earlier because he was concerned with state prosecutions before the Court of Oyer and Terminer (Convention Debates, 25 June, 1519).

Petersburg Virginia Gazette, 19 June¹

On Thursday last, the navigation of the Mississippi was agitated in Convention. The gentlemen, who are members of Congress, and now in the Convention, were called upon to give such information as might be satisfactory on that subject: It appeared from those gentlemen's observations to the Convention, that Congress had empowered their Minister in Europe to conclude a treaty with the Court of Spain; that the Court of Spain, instead of proceeding on that business in Europe, thought proper to send a Minister to negotiate a treaty in America; that propositions were made to Congress to relinquish their claim to the navigation of the Mississippi for 25 years, on condition of the Court of Spain granting certain indulgences to American vessels in their European ports—However, this proposition was never acceded to by Congress; nor have Congress ever shewn the least disposition to relinquish their right to the navigation of the Mississippi. The Spaniards still keep possession of the navigation of that river, and Congress, from not having sufficient power to enforce their just claim, have thought proper to let it rest, for the present, as the growing wealth of the western country will, in time, render it necessary that the Court of Spain should be more reasonable in their negotiations on that subject.²

It is generally expected, that the grand question respecting the Constitution, will come on in Convention on Friday or Saturday next; and that on one of those days that honorable body will be dissolved.

1. Like the report printed immediately above, this item was reprinted under a Petersburg, 19 June, dateline in the *Pennsylvania Mercury*, 1 July, from which it has been transcribed. By 26 July the first paragraph was also reprinted in fifteen other newspapers: Vt. (1), Mass. (3), R.I. (3), Conn. (3), N.Y. (3), Pa. (1), S.C. (1).

2. The debate over the Mississippi River began on Thursday, 12 June, consumed the entire day on the 13th, and concluded on the morning of the 14th. William Grayson, Henry Lee of Westmoreland, James Madison, and James Monroe were the Convention delegates who had been members of Congress when the question of the Mississippi was considered in 1786 and 1787. Each spoke on the question in the Convention.

Independent**Petersburg Virginia Gazette, 19 June¹***To the HONORABLE CONVENTION, at RICHMOND.*

GENTLEMEN, You are now assembled on the most important occasion, and vested with the greatest power that perhaps any body of men have ever been from the foundation of the world to the present hour.—On your decision of the federal question, the *glorious situation*, or *direful fate*, of the present generation, and millions of millions yet unborn, both of the United States of America, and other inhabitants of the globe, will depend.—But in commiseration to your own descendants in particular, let me entreat you to make a pause.—I find that you are nearly divided upon the great point—Should you adopt the proposed Constitution, there will be about an equal proportion of joy and sorrow among your own members. But what does this avail, when a more alarming truth appears? namely—that a great majority of this Commonwealth is in the opposition, and must from portending causes be consigned to those bitter reflections which are the certain harbingers of misery and despair. What can you promise to yourselves from precipitating your country into a *step* that at present can answer no valuable purposes, but may, on the other hand, be attended with the deprivation of that darling liberty, in support of which such a host of heroes have *bled* and died? O! could they discover that the assignees of so great a blessing are at this moment stretching forth their hands in order at one throw to *gambol away* such a privilege, they would instantly break through the mansions of felicity, and resent the ingratitude!

Is it the grand conventional prophecy, “that we could not exist six months longer without adopting the new Constitution” that has made you sore afraid? Happy for us, the period has some time ago elapsed, and previous to any transatlantic commotions; this at one view demonstrates, that amidst *all their wisdom*, the spirit of prophecy was not *there*;—And I will venture to predict, that six months longer, and six to that, will pass on before we shall be undone, agreeably to the prophecy aforesaid;—so that I presume our safety (if there were no other cause) will be guaranteed by those implements of death, that are dreadfully wielded by the Emperor of Germany and Empress of Russia, against the Turks, which, in all probability, will be productive of a general war throughout Europe.

I shall now conclude by asking a plain question, viz. Can that mode of government be good, which so much divides the free and independent citizens of this Republic?—that sets at variance those who were

bound by the closest ties of consanguinity—as brother against brother, and father against the son, &c—in consideration therefore, that this is the *awful crisis of danger*, I conjure you to withhold your hand from signing this horrible act, and let those nine states which, in the madness of their folly shall have executed the inglorious deed, have opportunity of repentance—Let them accede to, and admit such amendments as are generally agreed to, even by moderate federalists themselves, and then we will unite in one consolidated cause, and like friends and brothers strive to promote the happiness of all.—I have the happiness to be, what I hope ever to continue—INDEPENDENT.

June 18, 1788.

1. This essay was reprinted under the dateline, “From the Virginia Gazette, &c.,” in the Philadelphia *Independent Gazetteer*, 30 June, from which it has been transcribed. It was probably first printed in the Petersburg *Virginia Gazette*, 19 June, which has not been located.

Virginia Gazette and Weekly Advertiser, 19 June¹

The hail which fell on Friday last injured the corn and wheat very considerably in many parts of Henrico county; it was so large as to break a great number of pains of glass in several houses contiguous to this city. A gentleman from Fluvannah informs, that it was so large in that county as to kill a number of cattle, beat off the bark of large trees, and totally destroyed the wheat and most parts of the corn, in the direction which it went.

The Honourable the Convention are yet engaged in the discussion of the important subject submitted to their consideration; the accurate investigation they have been under the necessity of giving every, the minutest part, has perhaps employed them longer than was expected, but their constituents and posterity will applaud the assiduity and attention they have shewn to this interesting subject. They have now arrived to the article respecting the Executive.² It is yet impossible to determine on which side the majority will be.

1. The second paragraph was reprinted 12 times between 24 June and 10 July: R.I. (2), Conn. (1), N.Y. (4), Pa. (4), Md. (1). For the effect of the hailstorm on the Convention, see Convention Debates, 13 June (RCS:Va., 1256).

2. The Convention began its consideration of Article II on the afternoon of 17 June (RCS:Va., 1365).

James Madison to Alexander Hamilton Richmond, 20 June¹

Our debates have advanced as far as the Judiciary Department against which a great effort is making.² The appellate conuzance [i.e., conuzance] of fact, and an extension of the power to causes between

Citizens of different States, with some lesser objections are the topics chiefly dwelt on. The retrospection to cases antecedent to the Constitution, such as British debts, and an apprehended revival of the Fairfax-Indiana Vandalia &c. claims are also brought into view in all the terrific colours which imagination can give them.³ A few days more will probably produce a decision; though it is surmised that something is expected from your Convention in consequence of the Mission formerly suggested to you.⁴ Delay & an adjournment will be tried if the adverse party find their numbers inferior, and can prevail on themselves to remain here till the other side can be wearied into that mode of relieving themselves. At present It is calculated that we still retain a majority of 3 or 4; and if we can weather the storm agst. the part under consideration I shall hold the danger to be pretty well over. There is nevertheless a very disagreeable uncertainty in the case; and the more so as there is a possibility that our present strength may be miscalculated. Yrs. affectly.

1. RC, Hamilton Papers, DLC. This letter was addressed to Hamilton in New York City. For his reply, written from Poughkeepsie around 2 July, see Syrett, V, 140–41.

2. The debate on the judiciary, Article III of the Constitution, began on 19 June (RCS:Va., 1398).

3. For the Fairfax and Indiana Company claims, see Convention Debates, 19 June (RCS:Va., 1407–8, 1408).

4. Madison refers to Eleazer Oswald's mission to deliver letters from New York Antifederalists to Virginia Antifederalists (RCS:Va., 811–29). He had first informed Hamilton of the mission in his letter of 9 June (above).

James Madison to James Madison, Sr.

Richmond, 20 June¹

No question has been yet taken by which the strength of parties can be determined. The calculations on different sides do not accord; each making them under the bias of their particular wishes. I think however the friends of the Constitution are most confident of superiority; and am inclined myself to think they have at this time the advantage of 3 or 4 or possibly more in point of number. The final question will probably decide the contest in a few days more. We are now on the Judiciary Department, against which the last efforts of the Adversaries seem to be made. How far they will be able to make an impression, I can not say. It is not probable that many proselytes will be made on either side. As this will be handed to you at Court you can make its contents known to Majr. Moore,² and other friends to whom I have not time separately to write.

1. RC, Madison Papers, DLC.

2. William Moore was sheriff of Orange County and a close friend of the Madisons.

New York Journal, 20 June¹

The *consols* or anti-republicans, who have assumed to themselves the appellation of *federalists*, observes a correspondent, still continue to display their mean weapons of falsehood, deception and detraction, in order farther to cajole and betray the honest yeomanry of our country into the horrid fangs of the new leviathan of power. For this purpose, paragraphs and extracts of letters, having no foundation on facts, are constantly formed, fabricated, and published in the various newspapers, stiled *federal*. Of this description we shall consider the extract in the Daily Advertiser of yesterday, from a *gentleman* in Philadelphia to his friend in this city, dated the 16th inst.² It is there asserted, that Mr. Mason wrote to a friend of his in Philadelphia on the 7th of June, declaring, "that he thinks it will be carried against him in convention, &c." But as our correspondent has great reason to doubt the truth of his declaration, it behoves the Philadelphia letter writer to procure and publish a full, fair, and candid extract from Mr. Mason's letter, if he has written any on that day, otherwise it will be deemed as his own, not Mr. Mason's declaration.

Among other things, it is also asserted by the Philadelphia letter writer, that "*the sanguine, promise a handsome majority,*" and plumes himself much on the acquisition of "Mr. *Zeph. Jackson*, an esteemed anti-federalist from the back counties, to the federal party."³ The cause of despotism must be desperate indeed in that quarter, if it rests on no better support than that of *traitors* and *turn-coats*.

The state of public affairs at Richmond, will be found, continues our correspondent, to be nearly as follows:

Mr. Mason and Mr. Henry take the lead of the anti-federalists—Mr. Maddison and Mr. Nicholas appear in the same point of view among the federalists—Both parties, even the most *sanguine*, declare it exceedingly difficult to determine which side the balance will incline. Some of the anti-federalists say, they have made a list of those on whom they can depend, and, after throwing six or eight doubtful characters into the other scale, have a majority of two in their favor—while some of their opponents report, that they have a majority of five or six. At any rate, neither party can boast of a "*handsome majority.*"⁴ But all parties seem to allow, that amendments to the new constitution are necessary and ought to be made. The great question or point in dispute will therefore be, in the convention of Virginia, whether those amendments shall be ingrafted into the constitution *previous* or *subsequent* to adoption?

Nothing decidedly, our correspondent assures us, has hitherto been

done in the convention, at Richmond, except agreeing to dissect the new monster, section by section; and the speakers have not yet departed from the generals either in the defence or the attack. The heroes, Maddison and Nicholas, on the part of the federalists, being indisposed, on the 9th of June, were unable to attend the house. On that day, Mr. Patrick Henry, in a most masterly and eloquent manner, pointed out the defects and snares of the new scheme, obviated the mighty *bugbears* raised to frighten and intimidate the weak and wavering into a speedy and implicit adoption, called in question the threats of the house of Bourbon, and the United Netherlands, now actually groaning under the tyranny and thralldom of a Stadtholder or Dutch *president general*, to make reprisals, and enforce the payment of their respective demands; and declared he would withhold his assent until all the poison and pollution were fully and satisfactorily extracted and cleansed from the proposed constitution, which he considered as a slavish system of arbitrary power, calculated to crush the spirit of freedom and destroy those inestimable privileges acquired by our glorious struggle with Great-Britain. To sign, seal and deliver that instrument (pointing to the new constitution) he observed, was in fact to surrender, *in toto*, the liberties of the people and the dearest rights of humanity, into the hands of a few designing, aristocratical despots; and to subscribe to it without *previous* amendments, would be like a man's voluntarily suffering himself to be bound in fetters and chains and thrown into a dreary, offensive dungeon, and then seeking for relief and redress from the lordly and elective tyrants who would have the entire command and controul of the federal locks, keys and bolts. He arrested the serious attention of the house the greatest part of the day, having been upwards of three hours on the floor.⁵

Col. Henry Lee replied, but did not follow him through so extensive and general a view of the subject.⁶ Governor Randolph, whose treachery and dissimulation, on this occasion, is pretty generally reprobated by the people at large, next rose to answer some *collateral* reflections which he supposed was cast on him by Mr. Henry. But exhibiting in the face of that truly respectable assembly, strong and evident marks of embarrassment and perturbation of mind, he could only entreat that the next morning (Tuesday) might be assigned to him for his exculpation. In the course of his short, and incoherent reply, he said he was perfectly satisfied "*to let their former friendships fall, like LUCIFER's, never to rise again,*" and should be content hereafter, "*to move in the humble sphere of a representative.*"⁷

As the general court is to convene at Richmond on the 23d instant, and many of its members being also in convention, an adjournment

in all probability will take place, at least until the rising of the legislature; so that from this view, there is every reason to believe, the important and interesting question relative to the constitution will not immediately be brought on in that convention.

Let the wretched *office-hunters*, and friends to tyranny, in some of our cities and towns along the sea coast, therefore, suspend their preparations for another parade and procession of *Federal-ships*,⁸ constructed on *refugee* and *foreign* bottoms. They may rest assured, the free and independent farmers of this great continent, are not to be influenced or led away by such idle, giddy *puppet-shews* and *pantomine* entertainments.

1. This item was reprinted in the Philadelphia *Independent Gazetteer*, 24 June, and Philadelphia *Freeman's Journal*, 25 June (excerpt).

2. For this extract, written by John Vaughan of Philadelphia and printed in the New York *Daily Advertiser* on 19 June, see the text in angle brackets in Vaughan to John Langdon, 16 June (above).

3. John Vaughan, the letter writer, probably meant Zachariah Johnston of Augusta. (See Vaughan to Langdon, 16 June, note 4, above.)

4. Quoted from Vaughan to Langdon, 16 June (above).

5. For Patrick Henry's speech, see RCS:Va., 1050-72, and note 2, page 1088.

6. For Henry Lee of Westmoreland's speech, see RCS:Va., 1072-81.

7. For Governor Edmund Randolph's speech, see RCS:Va., 1081-87. The reference to Lucifer is found at the top of page 1082. It was probably taken from William Shakespeare, *King Henry VIII*, act III, scene 2: "And when he falls, he falls like Lucifer,/ Never to hope again."

8. Several ratification processions included a federal ship, the most celebrated of which was Baltimore's *Ship Federalist*. A few weeks after the 1 May procession, this vessel was presented to George Washington by Baltimore's merchants.

Pennsylvania Packet, 20 June¹

*Extract of a letter from a member of the convention of Virginia,
dated June 13*

"This day has been wholly occupied in endeavouring to gain over the members from the Kentucky district, who are alarmed with an idea, that the power of making treaties, which shall be the supreme law of the land, vested as it is in the president and senate, will be exercised, in some fatal moment, to the prejudice of their right to the navigation of the Mississippi. Both parties have been exerting their utmost efforts. Under the ill-founded apprehension that these men hold the scale between them—I say *ill founded*, because my calculations, leaving them in opposition to us, give us a majority of nine or ten. However, I believe they are divided—and, after all, we have more to hope than to fear from their change of sentiment."

1. By 25 June this item was reprinted five times: N.Y. (2), N.J. (1), Pa. (2). According to William Jackson of Philadelphia, a letter from Francis Corbin dated 13 June was received in Philadelphia, in which Corbin stated that "supposing the Deputies from Kentucky to be in opposition (though he thinks otherwise himself) there will, nevertheless, be a clear majority of nine or ten in favor of the system" (to John Langdon, 20 June, Mfm:Va.). Corbin's letter was possibly addressed to Benjamin Rush of Philadelphia. (See Thomas Willing to William Bingham, 24 June, below.)

Baltimore Maryland Gazette, 20 June¹

Extract of a letter from Richmond, dated the 16th inst.

"The Convention upon the new Government is now sitting here; many judicious observations have been made upon both sides [of] the question—what the result, however, will be, is not yet known; but if I may be allowed any judgment upon the occasion, it is, that it cannot be adopted by this State in its present form.

"A couple of gentlemen in this place differing amongst other matters in their politics, concluded two or three days ago to settle the business in a genteel way, when one of them received a ball in his head, which brought him to the ground, but who, however, it is thought, will recover."

1. This item was reprinted in the *Pennsylvania Packet*, 26 June. For more on the duel between Thomas Macon and William Fontaine, see Theodorick Bland to Arthur Lee, 13 June (above).

Robert Yates to George Mason

Poughkeepsie, 21 June (excerpts)

Robert Yates, the chairman of the Antifederalist committee of correspondence of the New York Convention, responds to the amendments to the Constitution proposed by Virginia Antifederalists that had been forwarded by George Mason to John Lamb on 9 June. For Yates's letter, see RCS:Va., 825.

John Brown to James Breckinridge

New York, 21 June¹

I this day recd your favor of the 13th. Instant & am not a little alarmed to hear that the New Constitution still rests upon uncertain & precarious ground.² Untill this Post we were flatterd with accounts that there was a decided Majority on the federal Side but the Accounts this day recd leave the Event in a very doubtful situation in our estimation as I find it is in yours—I have written some time since to Mr. Allen & Mr Walton also to Mr Fowler to whom I pointedly gave it as my Opinion that it ought to be adopted without hesitation as the only Means left to prevent Anarchy & Confusion & to ensure Safety &

importance to the United States.³ I also inclosed a Pamphlet written in this place in which the Banefull Consequences of a rejection were painted in Just & lively Colours⁴—after this & the letters which I had written to the District I did [not] suppose that the Delegates from that Country could be at any loss with respect to my Sen[timents which?] have been uniform upon that Subject since my arrival here. Before I left Richmond I view'd the Plan as they do but my appointment⁵ has placed me in a Situation from whence I have been enabled to take a more extended view of American Politics & as I have frequently mentiond to you I have discover'd a total change so far as respects the Western Country especially with regard to the Mississipi—The Advocates for the proposed Treaty with Spain now plainly discover that the Cession of the Navigation of that River would not answer the end which formerly they had in View & many of them who were most disposed to sacrifice the Western Country are now by purchase of Lands & appointments to Offices become personally interested in supporting its natural Rights against Arbitrary incroachments. I am well assured that a similar attempt will never be made even by the eastern States whose Interest will be most affected by the prosperity of that Country & most sincerely hope that the impression thereby made upon the Minds of our Western Members in Convention will not induce them to reject the proposed Plan of Govt. upon the Adoption of which it is candidly my Opinion that the Happiness Dignity & Glory of the United States depend

I have very little prospect of obtaining the Assent of Congress to the present application of Kentucky to be admitted a [State in?] the Union. I expect you have seen the Resolution of Congress appointing a Commtee. to draw up an Ordinance for that purpose.⁶ The Comtee. have determined that there is no power for that purpose given by Articles of Confederation I presume Kentucky will proceed to establish her independence as tho she had been admitted & will apply or not to the new Govt. as her Interest may dictate—If unanimity prevails in the District perhaps the present disappointment may be productive of good Consequences to that Country. But be this as it will I flatter myself that they would wish to see a good Govt. established in the United States even though they should be thrown out of the Union & therefore conclude that their Delegates will not decide against the proposed plan a measure which I fear would involve the Atlantic States in Confusion. . . .

P.S. In Convention of this State there are two thirds Antifederal but will be gov'd. by decision of Virga.—

1. RC, Breckinridge Family Papers, ViU.
2. Breckinridge's 13 June letter has not been located, but he wrote a letter to his brother John on the same day (above).
3. For the letter that Brown wrote to one of these three Convention delegates from Kentucky, see From John Brown, 5 June (above).
4. Brown probably refers to *An Address to the People of the State of New-York . . .*, by "A Citizen of New-York" (John Jay) which was first offered for sale in New York City on 15 April (CC:683).
5. Brown was appointed a delegate to Congress on 23 October 1787.
6. See From John Brown, 5 June, note 3 (above).

New York Daily Advertiser, 21 June¹

Extract of a letter, by last post, from a Gentleman in Virginia to a respectable character in this city, dated June 13.

"The Convention of our State being now sitting, and as on their determination the ultimate fate of the proposed Constitution may be said, in a great measure, to depend; to judge of the feelings of the friends to it in the distant parts of the Union by our own, when the same question was under a discussion in two other States, we may conclude they are at this time under the greatest anxiety which suspense can give rise to. Desirous of removing all doubts and apprehensions, and at the same time of guarding against the machinations of the faction opposed to the measure, which is over active, and no way scrupulous about the means to attain their end, the principal characters of this place have requested me to forward a genuine state of the business, as it stands by the latest intelligence handed to us, and which comes from gentlemen of the most distinguished probity, and may be fully relied on.

"At an early period after the meeting, Governor Randolph, altho' he refused to subscribe to the Constitution as a member of the Grand Convention, did, in the most explicit terms, declare himself for the adoption of it without any condition or amendment. The Delegates from the district of Kentucky, consisting of seven counties, appeared at the first of the meeting to be generally averse to the Constitution; they are now greatly divided, and it is expected that a great majority from that quarter will be in favor of it; however, be that as it may, by the latest accounts there appears to be a majority in favor of the Constitution, of at least twenty members. Could there be any doubt of the truth of this fact, which we have from gentlemen of acknowledged honor, and who would not condescend to propagate an untruth, tho' certain thereby to attain the end at which they aim, the conduct of the opposition itself gives a degree of credit to the information, which must remove every suspicion of the truth of it.—Upon the motion of the members in the opposition, the Constitution is to be de-

bated by paragraphs before any question is put upon any part; and as the rejection is what the opposition aims at, if the majority had been on their side, it is hardly to be presumed that the small number of men of abilities they have to support them, would have subjected themselves to such a share of fatigue and trouble, as a full investigation of the business must bring upon them; when they might have avoided it by making general observations upon it, and then calling for the question. Another fact which proves that the opposition consider themselves as weakest in point of members is, that some on that side have already dropped hints of proposing an adjournment, until the result of the other Conventions, which are shortly to meet, can be known; if the majority lay with the opposition, would they neglect the opportunity of deciding the question immediately—when by so doing they have so fair a prospect of procuring determinations in the other Conventions favorable to their wishes? They also regret much that the weight of abilities and fair character lay on the side of the Constitution.”

1. By 30 June this item was reprinted (in whole or in part) six times: Mass. (2), Conn. (2), N.Y. (1), Pa. (1).

Pennsylvania Packet, 21 June¹

*Extract of a letter from a member of the Convention of Virginia,
dated June 13*

“The federal constitution now absorbs the whole attention of all ranks and degrees of people. The minds of men seem to be universally agitated; but the issue of it will be, without a doubt, favorable to our wishes, and those of the discerning patriots of America.

“The opposition here seem to be afraid to meet the question upon its merits; from whence we infer their doubts and fears, and even despair of success.

“The first resolution we passed in the convention was, that the constitution should be debated clause by clause, for the better information of such as might be supposed to want it. In consequence of this we have now spent nine days in debating, and the first clause is not gone through. Speeches of two and three hours long are supported every day, for no other purpose, I believe, than to delay and procrastinate the business, till the determination of some other state be known, or until the members are tired out—in hopes that an adjournment may take place.”

1. This item was reprinted in the *Pennsylvania Mercury*, 24 June; *New York Daily Advertiser*, 26 June; *New York Packet*, 27 June; and *New York Impartial Gazetteer*, 28 June.

James Madison to Alexander Hamilton**Richmond, 22 June¹**

The Judiciary Department has been on the anvil for several days; and I presume will still be a further subject of disquisition. The attacks on it have apparently made less impression than was feared. But they may be secretly felt by particular interests that would not make the acknowledgment, and wd. chuse to ground their vote agst. the Constitution on other motives. In the course of this week we hope for a close of the business in some form or other. The opponents will probably bring forward a bill of rights with sundry other amendments as conditions of ratification. Should these fail or be despaired of, an adjournment will I think be attempted. And in case of disappointment here also, some predict a secession. I do not myself concur in the last apprehension;² though I have thought it prudent to withhold, by a studied fairness in every step on the side of the Constitution, every pretext for rash experiments.³ The plan meditated by the friends [of] the Constitution is to preface the ratification with some plain & general truths that can not affect the validity of the Act: & to subjoin a recommendation which may hold up amendments as objects to be pursued in the constitutional mode. These expedients are rendered prudent by the nice balance of numbers, and the scruples entertained by some who are in general well affected.⁴ Whether they will secure us a majority, I dare not positively to declare. Our calculations promise us success by 3 or 4: or possibly 5 or 6 votes. But were there no possibility of mistaking the opinions of some, in reviewing those of so many, the smallness of the majority suggests the danger from ordinary casualties which may vary the result. It unluckily happens that our legislature which meets at this place tomorrow, consists of a considerable majority of antifederal members. This is another circumstance that ought to check our confidence. As individuals they may have some influence, and as coming immediately from the people at large they can give any colour they please to the popular sentiments at this moment, and may in that mode throw a bias on the representatives of the people in Convention. Yrs. affectly

1. RC, Hamilton Papers, DLC. For a similar letter that Madison wrote to Rufus King on the same day, see Rutland, *Madison*, XI, 167. See also notes 2–4 (below) for significant differences between the two letters.

2. In his 22 June letter to Rufus King, Madison said that “there are too many moderate and respectable characters” among the Antifederalists “to admit such a supposition” (*ibid.*).

3. At this point in his 22 June letter to King, Madison added: “(and even in some points to give way to unreasonable pretensions)” (*ibid.*).

4. In his 22 June letter to King, Madison referred to those delegates who “have

certain scruples drawn from their own reflexions, or from the temper of their Constituents" (*ibid.*).

**George Washington to John Lathrop
Mount Vernon, 22 June (excerpt)¹**

Reverend & respected Sir,

. . . I am happy to find that the proposed general government meets with your approbation²—as indeed it does with *that* of most disinterested and discerning men.—(The Convention of this State is now in Session, and I cannot but hope that the Constitution will be adopted by it—though not without considerable opposition.)³—I trust, however, that the commendable example exhibited by the minority in your State⁴ will not be without its salutary influence in this.—In truth it appears to me that (should the proposed government be generally & harmoniously adopted) it will be a new phænomenon in the political & moral world; and an astonishing victory gained by enlightened reason over brutal force.—

1. RC, Sol Feinstone Collection of the American Revolution, American Philosophical Society Library. Printed: Fitzpatrick, XXX, 4–5. Earlier in the year Lathrop (1740–1816), pastor of the Second (Congregational) Church of Boston, 1768–1816, sent Washington three of his pamphlets. (See Washington to Lathrop, 22 February, *ibid.*, XXIX, 422.)

2. On 16 May, Lathrop wrote Washington that the Constitution, "with all its imperfections, has more to recommend it, than any Consti[tution] formed heretofore, by the wisdom of man" (Washington Papers, DLC).

3. The text in angle brackets was printed in the *Massachusetts Gazette*, 4 July, as an "Extract of a letter from His Excellency GEORGE WASHINGTON, received last night, dated Mount Vernon, June 22."

4. For a Washington letter praising the Massachusetts minority that appeared (in excerpted form) in the *Massachusetts Centinel* on 22 March, see RCS:Va., 427–28.

**Samuel Smith to Tench Coxe
Baltimore, 22 June¹**

A Letter of the 18th from Govr. Randolph to me states the situation of the Virg. Convention thus²—

—“(The Voting Members will Consist of 168. The determin’d Adversaries 76, the determin’d friends 82. as far as we have Grounds for Calculation. before any Question has been taken; the remaining Ten have not spoken Explicitly; but we have the best Assurances of one half being with us: Since the scruples of some have been quieted by a peculiar form of Ratification which will be offer’d)—But after all, It will be unfortunate to decide such a question by So Small a majority: And I am restrain’d from pressing previous Amendments by the Con-

viction that It will hazard the Union, and are unattainable—The Numbers on each side Are So respectable that they Command equal respect & deference[']]

from this statement as well as other Letters I have from Richmond I am Incln'd to think Virga. will give your City an oppy. to display a Grand Procession.

Pray Can you give me any Information on which to found an Opinion respectg. Ginseng

1. RC, Coxe Papers, Series II, Correspondence and General Papers, PHi. Smith (1752–1839), a former lieutenant colonel in the Continental Army, was a Baltimore merchant.

2. Smith's extract of Randolph's 18 June letter was also quoted imprecisely in Thomas Willing to William Bingham, 24 June (below). The text of Randolph's letter in angle brackets was printed in the *Pennsylvania Gazette* and *Pennsylvania Journal* on 25 June. By 5 July this excerpt was reprinted ten times: R.I. (2), Conn. (3), N.Y. (4), Pa. (1). A summary of Randolph's letter was printed in the *Pennsylvania Mercury*, 26 June, and then was reprinted in the *New Hampshire Spy*, 5 July. The *New York Packet*, 27 June, published a summary of a 19 June letter from Virginia which was similar to Randolph's letter. It is possible that Randolph wrote someone in New York, or perhaps Bingham turned Willing's letter over to the *Packet's* printer. By 4 July the *Packet's* summary was reprinted six times: Mass. (1), Conn. (1), N.Y. (3), N.J. (1).

John Brown to John Steele New York, 22 June (excerpt)¹

... We wait with great impatience to hear the determination of Virga. upon the new Constitution. It is supposed that its fate depends upon her Vote. We are told that the Kentucky Members are opposed—I flatter myself not generally. Those objections which respect the navigation of the Mississippi are not well founded. Nothing is to be apprehended in that quarter. I hope it will be adopted, as in my opinion the Safety & peace of the United States depend upon it.

The Separation of Kentucky will not be granted under the present application—Congress have determined that it is reasonable, and appointed a Committee to bring in an act for their admission into the Union—But the Committee are of opinion that there is no power delegated to Congress for that purpose by the present Confederation²—In short it is I fear impracticable to remove the objections suggested by the contracted policy of the Eastern States, who had rather risque the Union than lose what the[y] call the Ballce. of Power—We must act for ourselves—Assume our independance—frame our Constitution, & apply to the new Govt. for admission into the Union as our interest & Circumstances may dictate. If we are una[ni]mous and prudent, we have nothing to fear—Perhaps a rejection of our present application may be advantageous to the District.

Her importance will in a short time enable her to prescribe her own terms of admission.³ . . .

1. Copy, Orlando Brown Papers, Filson Club, Louisville, Ky. Steele (c. 1755–1817) represented the Kentucky county of Nelson in the Convention and voted against ratification of the Constitution. He was a member of the Virginia Council of State, 1790–97, secretary of the Mississippi Territory, 1798–1802, and acting governor of that territory, 1801.

This copy of John Brown's letter to Steele was made for Brown in 1808 by J. Speed, Jr. (perhaps James Speed, a Natchez, Miss., physician). Speed prefaced the copy with this note to Brown on 31 December 1808: "Shortly after my arrival here I called on Col. Steele, & presented your Respects. Speaking of the Burr business he took occasion to shew me a letter you had written to him from N. York, whilst a Member of Congress there—Said he had often designed sending you a Copy, but from what causes, I do not now remember, had omitted. . . ." (The "Burr business" was the 1807 treason trial of Aaron Burr.)

2. See From John Brown, 5 June, note 3 (above).

3. At the end of the copy of Brown's letter, Speed noted: "Col. Steele & myself both recollect perfectly well that such were, at that time, the universal sentiments of the *Whigs* of Kentucky—and that the avowal of contrary sentiments would have damned any political character in the District."

Francis Corbin to Benjamin Rush Richmond, 23 June¹

Tomorrow is the Day fixed on for the final question—and I am still happy to have it in my power to inform you that no change to the prejudice of the Constitution has taken place since I wrote to you last—The first question will be put upon *previous* amendments—this will be rejected by a Majority of four or five—then the question will be put upon the Ratification & this will be carried by a Majority of 20 or 30. Such are the opinions at present—As soon as it is decided you shall hear again from Dr. Sir your Mo: Obt. & Mo: Hbl. Svt.

1. RC, Coxe Papers, Series II, Correspondence and General Papers, PHI. According to Thomas Willing of Philadelphia, Rush received this letter on 28 June (to William Bingham, 29 June, below).

James Madison to George Washington Richmond, 23 June¹

We got through the Constitution by paragraphs today. Tomorrow some proposition for closing the business will be made. On our side a ratification involving a few declaratory truths not affecting its validity will be tendered. The opposition will urge previous amendments. Their conversation to day seemed to betray despair. Col. Mason in particular talked in a style which no other sentiment could have produced. He held out the idea of civil convulsions as the effects of obtruding the Government on the people.² He was answered by several and con-

cluded with declaring his determination for himself to acquiesce in the event whatever it might be. Mr H—y endeavoured to gloss what had fallen from his friend, declared his aversion to the Constitution to be such that he could not take the oath; but that he would remain in peaceable submission to the result.³ We calculate on a majority, but a bare one. It is possible nevertheless that some adverse circumstance may happen. I am Dr Sir in haste Yrs. entirely

1. RC, Washington Papers, DLC. This letter was dated "June Tuesday 25." Tuesday was the 24th, but the contents of the letter reveal that it was written on the 23rd. The state Convention concluded the clause-by-clause discussion of the Constitution on 23 June. (See also note 2, below.)

2. On 23 June George Mason noted that "The adoption of a system so replete with defects . . . could not but be productive of the most alarming consequences. He dreaded popular resistance to its operation." He feared "dreadful effects" and "awful consequences," if the people resisted (RCS:Va., 1471).

3. Patrick Henry's speech defending Mason was not recorded in the public debates for 23 June. Stenographer David Robertson was absent on the 23rd so that the printer of the debates (William Prentiss of Petersburg) was forced to take notes of the debates in longhand. The printer admitted that the speeches for the 23rd were in an "incomplete and inaccurate state." (See Convention Debates, 23 June, note 1, above.)

Thomas Tudor Tucker to St. George Tucker New York, 23 June (excerpt)¹

. . . We have a Report this Day that your Convention had taken the Question for Adjournment, which had pass'd in the Negative by a Majority of Eight, & that the final Question on the Constitution was to have been put on the 21st. Inst.—that the Question for Adjournment had been moved by the Opposers of the Constitution. If this Account is true,² I presume that there is no Doubt of the Decision in favour of the new System. . . .

1. RC, Tucker-Coleman Papers, ViW. This letter was dated "June 23d. 1788.—/In Congress." Thomas Tudor Tucker (1745–1828), a physician and brother of St. George Tucker, was a South Carolina delegate to Congress, 1787–88, and a member of the U.S. House of Representatives, 1789–93.

2. This account probably came from Philadelphia, where such rumors were circulating. For example, on 21 June Antifederalist Edward Pole of Philadelphia wrote John Lamb of New York City that the vote on ratification was to take place on that day. Pole also said that two votes had already been taken in the Virginia Convention: "One for an adjournment, carried by the Federalist[s] by a Majority of 10. The other for the taking of the Grand Question this day [21 June] carried by a Majority of 9" (Lamb Papers, NH). See also New York *Daily Advertiser*, 24 June (below).

James Madison to Ambrose Madison Richmond, 24 June¹

Yesterday carried us through the discussion of the Constitution by paragraphs. To day will probably carry forward some proposition and debates relative to the final step to be taken. The opposing party will

contend for previous amendments. On the other side a conciliatory declaration of certain fundamental principles in favor of liberty, in a form not affecting the validity & plenitude of the ratification, will be proposed. The final question is likely to be decided by a very small majority. I do not know that either party despairs absolutely. The friends of the Government seem to be in the best Spirits; and I hope have the best reason to be so. At the same time it is not impossible they may miscalculate their number; and that accidents may reduce it below the requisite amount. Two members on that side, who went away with a purpose of returning are still absent, it is said: and a third is so ill as to render his vote somewhat precarious.² It may well be questioned whether on every estimate this loss if it shd. continue may not endanger the result.

1. RC, Madison Collection, NN. This letter was carried to Ambrose Madison in Orange "By Majr. Burnley's Anthony." Anthony was probably a slave belonging to Hardin Burnley, a member of the House of Delegates from Orange who was in Richmond to attend the special session of the legislature.

2. It is uncertain who the three absent Federalist delegates were. Notley Conn of Bourbon, probably an Antifederalist, and Thomas Pierce of Isle of Wight, probably a Federalist, were the only delegates who did not vote on ratification (see From James Madison, 25 June, note 2, below).

Thomas Willing to William Bingham Philadelphia, 24 June (excerpt)¹

Altho: I am not fond of writing on political Subjects, yet when I see the Spirits of my friend flag & despond, & as I think, without any substantial Cause; I can't help administering a little Comfort, now it is in my power—Other members of the Virginia Convention whose letter's you have seen, may be less sanguine than yr. frd. Corbin; but it don't follow, that he has judg'd amiss in expressing his belief & hope's—I hate your luke warm patriots—he wrote as he thot. & what is more, as he wished too—I honor him for it, & for the trouble he give's himself to comfort the friends of the New Constitution here by his frequent letters to you & to Dr. Rush on the Subject²—

I believe you'l find yt. he has not been greatly wrong with respect to the final Issue of the business—I have just seen a letter from Mr. Madison wh. give's me hopes, & warm well founded One's too, yt. all will go right. it's dated on the 18th³—another from Mr. S. Smith of Baltimore⁴ with an extract from Govr. Randolph's letter of the 18th to him—in this the Govr. say's—"the number of the voting members is 168—of wh. 76 are decided Antifederalists—82 as firm for the adoption⁵—Ten who have never yet declared themselves, but yt. he

had the best assurances that One half were with Us; since the Scruples of some have been quieted by a peculiar form of Ratification, which will be offer'd—but after all, it will be unfortunate to decide such a question by so small a Majority—And I am restrained from pressing previous Amendments, by the Conviction that it will hazard the Union & are unattainable; the Number's on each side are so respectable, yt. they Command equal respect & deference"

Since writg. the above from Memory, I have got a Copy of the above letter, & send it you herewith. I dare say you'l sleep the better for it—I have some reason to believe yt. the Kentucky Member's will not Vote on the Question—they expect to become a seperate State, & therefore by standg. aloof may hereafter make better Terms—at least they believe so—I had wrote thus far when I got an Extract of Mr. Madison's letter wh. you have No. 2—Adieu! I have been interrupted 40 times since I began this Scrawl. . . .

1. RC, Miscellaneous Manuscripts, DLC. Willing (1731–1821), a partner in the Philadelphia mercantile firm of Willing, [Robert] Morris, & [John] Swanwick, was a member of Congress, 1775–76, and president of the Bank of North America, 1781–91. He voted against independence in Congress in 1776. This letter is undated, but it is probably the letter that Willing described in his 25 June letter to Bingham: "I wrote you last Night, & my letter was deliver'd to a Mr. Herman of N York, who went in the Stage at 3 this Mornig. & promised to deliver the letter to you this Eveng. but least he shou'd not, I now inclose you again the Extract of Govr. Randolphs & of Mr. Madison's letters the first address'd to Mr. S. Smith of Baltimore the latter to T. Coxe of this City—

"These letters have raised our Spirits here; & as you seem to want a Cordial drop to heighthen your's It is with pleasure I send these Accounts." In the margin, Willing wrote: "don't put either of these letters in the papers" (L. W. Smith Collection, Morristown National Historical Park, Morristown, N.J.). For James Madison's and Edmund Randolph's letters, see notes 3 and 4 below.

2. See, for example, Francis Corbin to Benjamin Rush, 23 June (above), and Corbin to Rush, 2 July (below). For another letter, possibly written by Corbin, see *Pennsylvania Packet*, 20 June (above).

3. On 18 June James Madison wrote Tench Coxe that "No question has been yet taken by which the strength of parties can be ascertained. Each hopes for victory. There will not probably be half a dozen for a majority on either side. I hope & think that if no accident happens the Constitution will carry the point. But when the balance is so extremely nice, it is improper not to mingle doubts with our expectations. A few days will probably decide the matter" (Rutland, *Madison*, XI, 151).

4. See Samuel Smith to Tench Coxe, 22 June (above) which quotes from Edmund Randolph's 18 June letter to Smith.

5. On the facing page, immediately opposite this statement, Willing wrote: "this is the state as far as we have grounds for Calculation before any Question has been taken." The vote is taken from Edmund Randolph's 18 June letter to Samuel Smith. (See note 4, above.)

New York Daily Advertiser, 24 June¹

By a gentleman who arrived from Philadelphia on Saturday evening, we are informed, that the Antifederal party in the Convention of Virginia had moved for an adjournment, suggesting as a reason, that it

would be impracticable to discuss the Constitution sufficiently, previous to the time appointed for the meeting of the Legislature. This was opposed by the Federalists, who moved, as an amendment, that the final question should be taken on Saturday the 21st inst. which was carried.

1. By 7 July this account was reprinted six times: Vt. (1), N.H. (2), Mass. (2), N.Y. (1).

Pennsylvania Packet, 24 June¹

Extract of a Letter from Richmond, June 13.

“Our convention began the 2d instant, and after three days debating on different points, they resolved to go through the articles of the federal convention, clause by clause, in rotation, until the whole was properly examined, after which the great question was put—However the Antis soon departed from this rule, and skipped from the first article to the middle and last, &c. &c. and so they have been going on ever since, without finishing a single article; though, from the repeated requests of the federal members, the house have agreed that to morrow they will agree to a certain day, in some time next week, when the grand question shall be laid before the house, for the vote of the house to be taken upon. In accomplishing this decision they had to call for the yeas and nays; when it was found there was a majority of 8 only, all of whom are federal²—This shews the division in favor is but small.

“Indeed we are apprehensive that if the Antis find they cannot gain their point, they will keep the house disputing until the 23d when they will be obliged to break up to go into the assembly, who are ordered to meet on that day. The speakers in favor are, Madison, Randolph, Nicholas, Marshall, Pendleton (the judge of the high court of chancery) Corbin—Against it, Henry, Mason, Grayson.”

1. This item was reprinted in the *Pennsylvania Journal*, 25 June; *Connecticut Courant*, 30 June; *Norwich Packet*, 3 July; and *Newport Herald*, 10 July.

2. There is no record in the *Journal* or the published debates that such a vote was ever taken.

The Federalist Express System between the New Hampshire, New York, and Virginia Conventions, 24–26 June

Seven states adopted the Constitution by the end of April 1788. The South Carolina Convention was scheduled to meet on 12 May and the Virginia, New York, and New Hampshire conventions on 2, 17, and 18 June, respectively. South Carolina and New Hampshire were expected to ratify and bring the total to nine, the number of states required for ratification. Federalists held a slight edge in the Virginia Convention,

although enough delegates were uncommitted to make the outcome uncertain. On the other hand, Antifederalists had a substantial majority of 46 to 19 in the New York Convention.

Federalists and Antifederalists in both Virginia and New York followed the proceedings of one another's convention. Because New York Federalists were badly outnumbered, they hoped for favorable news from other states that might encourage Antifederalists to alter their position. Ratification by South Carolina, New Hampshire, and Virginia might force New York to adopt the Constitution lest it be isolated from the other states that had ratified. Consequently, Federalist leaders in the New York Convention developed a strategy of delay so that they could determine what courses the other conventions were taking. To ensure the rapid spread of news, Federalists in New York, Virginia, and New Hampshire hired express riders to carry favorable news from one convention in these states to another.

The idea for establishing an express system apparently originated with Alexander Hamilton, a New York Convention delegate. On 19 May, Hamilton wrote Madison that "We think here that the situation of your state is critical—Let me know what you now think of it—I believe you meet nearly at the time we do—It will be of vast importance that an exact communication should be kept up between us at that period; and the moment *any decisive* question is taken, if favourable, I request you to dispatch an express to me with pointed orders to make all possible diligence, by changing horses &c. All expences shall be thankfully and liberally paid" (Syrett, IV, 649–50. See also Hamilton to Madison, 8 June, Syrett, V, 2–4.). On 4 and 10 June, Rufus King, then in Boston, made provision with New Hampshire Convention delegate John Langdon to forward the news of his state's ratification from Concord to Hamilton in Poughkeepsie, the site of the New York Convention. Langdon was asked to dispatch an express rider to William Smith, a merchant from Springfield, Mass., who would send another rider to Poughkeepsie (King Papers, NHi).

The New Hampshire Convention ratified the Constitution at 1:00 p.m. on 21 June, at which time Langdon wrote Hamilton. The letter, sent via Springfield, arrived in Poughkeepsie 71 hours later at noon on 24 June. (See John Sullivan to Henry Knox, 21 June, Knox Papers, MHi; Tobias Lear to George Washington, 22 June, Washington Papers, DLC; and Philip Schuyler to Stephen Van Rensselaer, 24 June, Stan V. Henkels, Auction Sale Catalog No. 1125 [23 January 1915], p. 16, item no. 108. For the text of Langdon's letter, see note 1, below.)

On 25 June, at 2:00 a.m., fourteen hours after the news of New Hampshire's ratification had been received, an express rider left Poughkeepsie for New York City. He carried a letter from Philip Schuyler to James Madison, dated 24 June (below), on the verso of which was a copy of Langdon's 21 June letter. (Schuyler, Hamilton's father-in-law, was attending the New York Convention as a spectator.) The rider arrived in New York City around noon. At 12:30 p.m., Langdon's letter was read in Congress and, at the same time, Virginia's three delegates (Edward Carrington, John Brown, and Cyrus Griffin) sent the Schuyler and Langdon letters to Madison. Because of "the critical State of the subject" in Virginia, the delegates "thought it best to dispatch it by express, rather

than depend on the progress of the post" (*New York Journal*, 26 June, below; and Rutland, *Madison*, XI, 180). Griffin turned the Schuyler and Langdon letters over to Colonel David Henley.

Colonel Henley left New York City for Virginia at 1:00 P.M. on Wednesday, 25 June. He reached Philadelphia the next day. On Friday morning, 27 June, he was in Baltimore. (See *New York Journal*, 26 June, below; and *Pennsylvania Packet* and *Maryland Journal*, 27 June.) Before dawn on 28 June, Henley arrived in Alexandria, where he met an express rider from Richmond bound for New York. Instead of riding to Richmond himself, Henley sent the news of New Hampshire's ratification to Madison, who received it on 29 June, two days after the Virginia Convention adjourned. It had taken eight days to get the news from Concord to Richmond. (See David Stuart to Harry Innes, 29 June, below; and George Washington to Charles Cotesworth Pinckney, 28 June; James Madison to Alexander Hamilton, 29 June; *New York Journal*, 3 July; and *Massachusetts Centinel*, 5 July, all in VI, below.)

On 29 June Colonel Henley started back for New York. He reached Philadelphia on 30 June, between 6:00 and 7:00 P.M., and arrived in New York City on 2 July, between 2:00 and 3:00 A.M. Soon after Henley's arrival, Colonel William Smith Livingston left for Poughkeepsie which he reached on the same day between 12:30 and 1:00 P.M. He went directly to the New York Convention chamber and informed the delegates that Virginia had ratified. (See George Washington to Tobias Lear, 29 June; Philip Schuyler to Stephen Van Rensselaer, 2 July; *New York Independent Journal*, 2 July; *New York Journal*, 3 July; and *Poughkeepsie Country Journal*, 8 July, all in VI, below. See also Henry Knox to Jeremiah Wadsworth, 2 July; and Samuel Blachley Webb to Catherine Hogeboom, 2 July, both in Mfm:Va.)

Philip Schuyler to James Madison
*Poughkeepsie, 24 June*¹

This moment an express is arrived from New Hampshire, conveying the happy intelligence contained in a letter, of which you have a copy at bottom of this. Colonel Hamilton is in convention, and has requested me to forward this advice to you—

Unless the adoption by New Hampshire should alarm the fears of those in opposition in the convention here, they will I apprehend persevere in the intention which they have decide[d]ly evinced of adoption conditioned predicated on previous Amendments, and those such as would render the new Government very little, If any more energetic than the present.—

If the convention should rise, before the Stage, which is now here, leaves this, Colo. Hamilton will probably write you by that Conveyance; Your letter of the 13th Arrived last Evening.²—

*New York Journal, 26 June*³

By EXPRESS.

Yesterday, at 12 h. noon, Mr. Kelsey⁴ arrived in this city in *ten hours* from Poughkeepsie, with the important intelligence of the RATIFICATION of the CONSTITUTION, by the state of NEW-HAMPSHIRE.

This entelligence was received at Poughkeepsie, by express, under the signature of his excellency *John Langdon*, president of the state of New-Hampshire, and purports, that the convention, of that state RATIFIED the CONSTITUTION on the 21st instant, by a majority of ELEVEN, yeas 57, nays 46.

At half after twelve this letter was read in Congress. At one o'clock Col. Henley sat off, *express*, for Virginia, with the *joyful tidings*.

At 2 h. the bells in this city were set a ringing, which incessantly rang until 7 in the evening.

Many citizens were rejoiced on this occasion; to testify which bottles of choice *nectar* were *quaffed—and, at that hour, the guns fired*.

1. RC, Madison Papers, DLC. Schuyler (1733–1804), an Albany merchant and landowner and a former Continental Army major general, served in Congress, 1775, 1777, 1779–80, and the New York Senate, 1780–84, 1786–90. On the verso of his letter is a copy of John Langdon's 21 June letter to Alexander Hamilton which reads: "By the Desire of our Mutual Friend Rufus King Esqr. I have the great pleasure and satisfaction of informing you, that this State, has this day Adopted the federal Constitution this alimportant Question, was Carried by a Majority of Eleven 57 Yeas 46 Nays Excuse hast[e] and Believe me, with the greatest Respect.

"P: S: this letter goes to Springfield by an express which Ive sent for this purpose to the Care of William Smith Esqr. of that place who is to forward it to you."

2. Madison's 13 June letter has not been located. Evidently, he was not optimistic because on 25 June Hamilton replied: "I am very sorry to find by your letter of the 13th that your prospects are so critical" (Syrett, V, 80).

3. This item was reprinted, in whole or in part, thirteen times by 8 July: N.H. (3), Mass. (5), Conn. (3), N.Y. (1), N.J. (1). A similar account, also widely circulated, appeared in the *New York Packet* on 27 June.

4. Possibly Jonas Kelsey of Poughkeepsie, who seems to have been a horse trader.

From James Madison Richmond, 25 June¹

On the final question the Constitution was this day ratified by 89 ays agst. 79 noes. The majority is small but the proceeding has been free from every flaw & pretext of it; and the Convention as full as could be demanded, two members only being absent and those known to be divided on the subject.² Recommendatory amendments will accompany the act of ratification.—They are still [to] be settled and will employ us a few days longer. Yrs. respectfully

1. RC, Paul Mellon Collection, Upperville, Va. The address page has been detached from the rest of the letter so that the addressee is unknown. The editors of *The Papers of James Madison* believe that this letter was written to Alexander Hamilton, whom Madison wrote regularly during the state Convention. Furthermore, Madison would have notified Hamilton as soon as the Constitution was ratified because on two occasions Hamilton had asked that the news of Virginia ratification be sent to him (Rutland, *Madison*, XI, 177–78).

2. Notley Conn of Bourbon County and Thomas Pierce of Isle of Wight County did not vote. Conn, who represented a Kentucky county, probably was the delegate who opposed ratification; most of his fellow Kentucky delegates (including Henry Lee of Bourbon) voted against ratification. Isle of Wight County, which Thomas Pierce represented, was in the heavily Federalist southeastern corner of state.

James Madison to Rufus King
Richmond, 25 June¹

The final question in our Convention has just been decided in the affirmative by 89 ays 79 noes. Recommendatory amendments will attend the act of ratification; but are yet to be settled. The business was closed with due decorum & solemnity; and an acquiescence of the minority can not be in the least doubted. Some of the leaders as might be imagined have however a keen feeling of their disappointment. In haste Yrs. affely.

1. RC, King Papers, NHi.

James Madison to George Washington
Richmond, 25 June¹

On the question today for *previous* amendments, the votes stood 80 ays—88 noes—On the final question the ratification passed 89 ays—79 noes. Subsequent amendments will attend the act; but are yet to be settled. The temper of the minority will be better known tomorrow. The proceedings have been without flaw or pretext for it; and there is no doubt that acquiescence if not cordiality will be manifested by the unsuccessful party. *Two* of the leaders however betray the effect of the disappointment, so far as it is marked in their countenances²—In haste Yours

1. RC, Manuscripts Department, Lilly Library, Indiana University.

2. Francis Preston, a member of the House of Delegates from Montgomery, referred to “the poor Conquered Anti’s whose Countenances are Gloomy & dejected as if Louring beneath the terrors of Death & Despair” (to James Breckinridge, 26 June, Mfm:Va.).

Stephen Austin to Jeremiah Wadsworth
Richmond, 25 June (excerpt)¹

It is with the highest pleasure that I announce to you the Ratification of the new Constitution by this State, which was at half past two oClock this day carried by a Majority of Ten, there was 79 of the Minority &

89 of the Majority. The opposition has been for three weeks very powerfull & Violent, the Leaders of which was Colo. Maison Patrick Henry Govr. Harrison Colo. Bland Colo. Grason Colo. Tyler, & Mr. Munroe

The Minority have not as yet Manifested any Sentiments Similar to those of Massachusetts and South Carolina.² it is very much to be wished: that before they depart, they will shew some disposition to acquiesc in what they have so fairly lost;

Govenr. Randolph has given the friends to Government the highest Satisfaction in the part he has taken on this ocaion as he has been one amongst the principal advocates for the adoption of it.

A Long list of previous amendments was handed in & powerfully urged which was the Question put for (& Lost) preeceeding the Ratification.

A Committee is appointed to bring in some subsequent amendments which will close this important Business . . .

1. RC, Wadsworth Papers, Connecticut Historical Society. Stephen Austin (b. 1747) was a Philadelphia merchant who, according to the last paragraph of this letter, had been in North Carolina collecting debts due his firm. He was probably visiting his brother Moses who operated the Richmond branch of Stephen's Philadelphia firm.

2. Austin refers to statements by the minorities of the Massachusetts and South Carolina conventions, acquiescing in the decisions of their conventions and promising to support the Constitution.

William Heth Diary

Curles, Henrico County, 25 June (excerpt)¹

Wednesday, 25th June. The Doctor conceiving that the final question, would be put off some days, & growing impatient to get home, took his leave this morning, soon after I went to Richmond; attended Council, an hour & then repaired to the convention—where about 2. OC. the question for adopting the constitution with subsequent amendments was put, & carryd in the affirmative 89. agt. 79—. It was a most important question, and the scene was truly awful & solemn. . . .

1. MS, DLC.

John Brown to Archibald Stuart

New York, 25 June¹

We wait with fear & trembling to hear the determination of Virginia respecting the new Constitution. Both Federalists & Antifederalists agree in Opinion that its fate depends upon her decision—Accounts recd. by last Post leave us in great uncertainty with respect to the

event. In Convention in this State there are at least two thirds Anti-federal or such as will insist upon previous Amendments should Virginia do the same—We have no certain information from N Hampshire but the general Opinion is that she will adopt it without previous amendments. If it should not be adopted I fear the Consequences will prove ruinous to the Union—

I do not expect that Congress will assent to the Independence of Kentucky agreeably to the Acts of Seperation passed by Virginia A Resolution has passed appointing a Committee to bring in an Ordinance for the Admission of Kentucky into the Union in a Mode conformable to the Articles of Confederation—The Committee are of Opinion that there is no power vested in Congress for that purpose & that nothing further can be done under the present application than to report an Additional Article granting such powers to be refered to the different States for their ratification—This will not answer our purpose as the Compact between the District & Virga. will cease on the 4th. of July if not ratified by Congress—The Eastern States are opposed to the measure least another Vote should be added to the Southern States—Others are opposed least it shd. embarrass the New Govt.—Kentucky must & WILL be independent—

I have not heard from my relations in Rockbridge since I left Richmond Pray Write to me fully

PS. We this moment are informd that N Hampshire has adopted the N. Con[s]titution

Good News

1. RC, Stuart Collection, ViHi.

Comte de Moustier to Comte de Montmorin
New York, 25 June (excerpt)¹

My Lord,

The grand object that holds the attention of the United States today acquired a new degree of interest from the difficulty that accompanies the formation of the new Government, at the moment when its partisans believe its success to be most assured. Today three States are assembled in convention to make a decision on the new Constitution; New Hampshire is hardly noticed; her vote would in truth be sufficient to complete the nine that are needed to bring about the alteration of the federal Government, but it is not probable that it would have any influence on the decision of the State of Virginia nor on that of New-york. The Antifederalists seemed to win some ground in the former and they have a recognized majority in the latter. The Leaders of this

party come out in the open there [New York]. There is animosity on both sides in Virginia. I limit myself to mentioning by name only one leader of the party in that State, Mr. Patrick Henri, because he deserves to be distinguished from all the others by his talents, his ambition and his influence on the people. His plan would be to detach his State from the confederation. If he carries the votes of the people from the interior and if he joins them with those of North Carolina, which is the last state to meet in Convention, he would be able to form a body strong enough to sustain itself against the efforts of the party opposed to his plan.

In this State [New York] the opinion of the Antifederalists is positively in favor of separation. They are claiming that it is advisable for them to form a separate Government and not involve themselves for a long time to come in the affairs of Europe, with whom they ought to have even fewer commercial ties, which only furnish them with luxuries that they must do without to live in the simplicity that befits a newborn State. . . .

P.S. It is learned at this moment Newhampshire has agreed to the new Constitution. Congress can now discuss if it also wants to adopt it. It is probable that it will agree to it, but without Virginia and Newyork the new Government will exist more in name than in fact. The great issue remains which course those two will take. The implementation [of the new government] will come afterwards.—Another difficulty.—

1. RC (Tr), Correspondance Politique, États-Unis, Vol. 33, ff. 214–18, Archives du Ministère des Affaires Étrangères, Paris. Printed: *American Historical Review*, VIII (1903), 730–33. This letter, number 15, was endorsed as received on 26 September.

Virginia Centinel, 25 June¹

Extract of a letter from Richmond, dated June 16.

“The Convention is still sitting, and as yet no question has been put, so as to lead to a discovery which side is the strongest; my opinion is, that there is, AT PRESENT, a majority of six, perhaps ten, in favor of the proposed Constitution; but it is utterly impossible to say what changes may take place during the investigation of a subject so extremely important. The Governor has acted (as I always expected he would) the part of a warm advocate for supporting the Union; his first wish was to get previous amendments, but finding that eight states had adopted the Constitution without attempting it, he considered the time for procuring them as past, and has joined most heartily the friends to the adoption without amendments. His speeches and public declarations do him the highest honor, and has fully confirmed me in the opinion that he is both a great and a good man.”²

1. On this day, the *Norfolk and Portsmouth Journal* reported that "The latest accounts from Richmond say, that the Union will be adopted by Virginia, but by a very small majority." See also the *Winchester Virginia Gazette*, 25 June (immediately below).

2. The phrase, "a great and a good man," was most often used to describe George Washington. (See John P. Kaminski and Jill Adair McCaughan, eds., *A Great and Good Man: George Washington in the Eyes of His Contemporaries* [Madison, Wis., 1989].)

Winchester Virginia Gazette, 25 June

By the latest accounts from Richmond, it was supposed that the Convention would not get through the consideration of the Constitution, until the last of this week. All the speeches are taken down in short hand by a master of that art, and are to be published. So much eloquence, it is thought, has never been displayed in any one assembly in America, and will do great honor to the federal cause, whatever may be the event.

The friends to the federal government are well convinced, that there is a very respectable majority in favour of the Constitution in the Convention at Richmond. Those in the opposition are said to be making every exertion to prevail on a majority for bringing in a set of amendments, to be submitted to the people, and to adjourn the final question to a future day. This appears to be their last hope.

Great preparations are said to be making in Philadelphia, in order to form a most elegant Procession, in honor to the *ninth* State which shall adopt the federal Constitution.¹ *May Virginia, by the deliberations and decision of her present Convention, be honored with this merited laurel, by the adoption of that plan of government which they have now under consideration, and which must establish us a free, happy, and respectable people.*

1. The *Gazette* refers to the preparations being made for the huge Fourth of July celebration that took place in Philadelphia.

Virginia Independent Chronicle, 25 June¹

The Committee of the whole Convention got through the new plan of government on Monday last, and the debates have been since on the mode on which they should conclude this important business. Two plans are now before the Committee, one for ratifying the proposed plan of government, and annexing to the ratification certain reservations and declarations which ought not to be exercised by the Fœderal Government, the other in the form of a conditional ratification, which is, that previous to receiving the plan, amendments be recommended to the eight states who have already adopted the government, for their further consideration: These are principally a Bill

of Rights and certain amendments relative to the proposed plan—(The calm, cool, and deliberate manner in which this important subject has been investigated, will be a lasting monument of national gratitude to those venerable statesmen, who have so eminently distinguished themselves in forming this new plan of government—Posterity will, with gratitude view the services of this Convention—and with extacy and admiration they will contemplate, in the records of time, the magnanimity and disinterested patriotism which has been so eminently distinguished on this occasion.—A crowded audience have viewed with an awful reverence the distinguished order which has been observed during the debate—and whatever may be the ultimate decision of this Grand Assembly, we have no doubt but the minority will accede to it, with their usual love for their country—that harmony and good-will, will pervade the state—and the virtues of the majority will be echoed with applause throughout succeeding generations.)

1. This item was reprinted eight times by 14 July: Mass. (1), N.Y. (3), Pa. (4). The text in angle brackets was also reprinted in the *Virginia Centinel* and *Winchester Virginia Gazette*, 2 July, and *Boston Independent Chronicle*, 10 July.

A Delegate Who Has Caught Cold **Virginia Independent Chronicle, 25 June¹**

To the Honorable the CHAIRMAN of the COMMITTEE of the CONVENTION at RICHMOND.

(Concluded from our last.)

SIR, As republican governments admits of few abuses in their state of original purity! but when they do exist, they are more striking, and visible by their contrasts, and the government then possesses more energy to effect a correction; as societies encrease, grow old, and acquire perfection in appearance by their population, commerce, arts, riches and luxury, then abuses and vices multiply, subdivide and are insensibly confounded with one another, each of them in detail becomes less striking but by their union, their pernicious effects, are discovered and removed with more difficulty, because, the government at best has only retained its first situation, and has not held the same progressive tenor with the society; hence springs the shocks and revolutions by which, either the people overturn the government, or the government oppresses the people: it is then necessary to vary its regim[e] at periodical epochs: all things in nature is subdued by periodical order, heavens and earth have their precise revolutions, and ourselves are subdued for our wants at that general law, we follow it in all our actions and business to maintain the good order, thus, we ought to observe it in that great and important transaction.

It is an incontestible fact that all governments, how perfect soever their organization, have been at last destroyed; even that of the Jews, which they boast to have held immediately from God himself, have obeyed this general law and has not preserved that people from dispersion, &c. &c.

Some authors after having rapidly glanced over all the governments which have existed to this day, have imagined that the political bodies resembled the human body in these circumstances, of infancy, growth, decline, and dissolution; there are others who have considered this comparison as rather ingenious than pertinent, because the political bodies being composed of individuals continually succeeding each others, in the same order, may be always youthful and last as long as the world, were it not deranged by great and untoward events! but without examining the truth or falsehood of these reasonings, we may be easily convinced, that though it be out of the reach of human prudence to guard a government against these untoward events, it may at last by renewing and giving it a fresh spring at stated periods, prevent or retard these interior causes, which may prey upon its vitals, and cause its natural death: Probably this mean of reforming themselves and of recovering their pristine vigor, might have brought down to our days, those nations that have now disappeared; we have now in our hands this happy remedy, we apply it at this crisis, and our principal endeavors should tend to preserve to us the use of it.

It is very lamentable to view the inconstancy and contradiction of our several legislatures, not only against one another, but with Congress, not only in the forms, but in the principles of their regulations, every year brings on reforms and amendments which require the same thing the following year; this continual change of system in administration, destroys that very confidence, which it ought to promote, and far from improving them, it augments the disorder of public affairs, as well in commerce as in finances. Another inconveniency not less considerable attends those legislatures which cannot, or will not, either through prejudices and systems, or by haughtiness and presumption, be reformed, but with difficulty, at very distant periods, and as it were by a shock; both these extremes are dangerous, we shew the example of the one, the Europeans of the other: the resolution that we shall take by our new constitution, in investing the Congress with powers necessary for the great object of general administration, is a great step towards perfection, for to have good and uniform laws, and the clause that we shall add for its duration, for to revise it to a fixed period, is a prudent precaution, for to have those laws always suitable to our

circumstances, and will prevent us from falling into either of those extremes.

As we may propose and recommend amendments to Congress, and to avoid the reproach of making them either partial, or numerous and contradictory, let us be satisfied with presenting a bill of rights of the people of America, in such general terms; so expressive, so clear, and at the same time so short, as never to require either comment or interpretations. Nothing that has been yet laid before the public is satisfactory; may it be written by men conscious of its necessity and of the dignity of their subject, that it may be an honorable introduction to the constitution of the United States of America.

Our rights as a free people, were fixed and fully expressed at the head of our different constitutions. Why then should they not be placed also at the head of this general fœderation, which may supercede these? Some states, it is true, have no bill of rights, but it is an additional reason for inserting one in the fœderal; since as Americans their rights are the same, and making a greater concession of those rights to the fœderal body, that precaution is at present indispensable: it is not possible now to be ignorant of our rights, and to contest them, being so near of the glorious epoch of their acquisition; but it will be attempted in the future time and the history of all ages announce that they will no more be spared, than those of all the people who have preceded us, if we have no more care for their preservation.

In considering all peoples existing on the earth and the nations who have preceded them, it is not possible to sustain, that they have been reduced in that state of servitude with their full consent and by the free concession of their rights! but in contrary it is certain, that they have lost them imperceptibly and have been subjugated by gradation, or by a violent revolution occasioned by anarchy; if they had well known, established and maintained their prerogatives and their government, they should have prevented those two extremes, who have constrained them to creep under a chief, and becoming conqueror, or conquered people.

Those rights characterise the man, essentially the true republican, the citizen of this continent; their enumeration, in head of the new constitution, can inspire and conserve the affection for the native country, they will be the first lesson of the young citizens becoming men, to sustain the dignity of their being; in fine the publication of those prerogatives has drawn us the envy and the admiration of all Europe, and being the preamble of our fœderal constitution, they may be the means of a considerable emigration to this continent.

We shall consider the new modelled Congress, as the general arsenal

in which we deposit our arms and our ammunitions, our bill of rights, if accepted, will be the authenticated act of deposit, and the limited time for revision, will serve to verify, whether they have been kept in good order and whether the trust has not been abused.

Under a firm persuasion and conviction of the necessity of an energetic, uniform and regular government, to which we must necessarily yield up a part of our states sovereignties, I cannot discover, with my feeble understanding, any other means, that [i.e., than] this sacred palladium that can effectually secure us and our posterity from the odious tyranny of an aristocratic government, nor any thing less, than the adopting this new constitution to save us from anarchy and annihilation.

1. The first part of this essay appeared in the *Virginia Independent Chronicle* on 18 June (above).

Massachusetts Centinel, 25 June¹

Of VIRGINIA CONVENTION.

Extract of a letter from a gentleman of the first information, dated Petersburg, June 9, 1788, received per a vessel in 5 days from Norfolk.

"I have been attending the debates of our Convention these seven days. Much eloquence has hitherto been displayed on both sides on the important question—But I may venture to assure you, there will be a MAJORITY—a small one—in favour of the Constitution."

By this vessel we further learn—That the Convention, on the 9th inst. were debating the Constitution by paragraphs—That Mr. Maddison, Col. Lee, and Gov. Randolph, in favour of the Constitution, spoke the three first days, and that on the fourth Mr. Mason began on the opposition, and spoke a short time, after which Mr. Patrick Henry rose, and spoke all that day (Thursday) all Friday, Saturday, Monday, Tuesday, and Wednesday, and was still speaking on Thursday, the date of our information—That there are many shining characters in the Convention—Rutledge,² Blair, Jones, Lee, Henry, Wythe, and

"Maddison among the rest,
Pouring from his narrow chest,
More than Greek or Roman sense,
Boundless tides of eloquence." &c. &c.

and that the Convention would set about three weeks.

1. By 4 July this item was reprinted in whole or in part eight times: N.H. (3), Mass. (2), R.I. (2), Conn. (1).

2. The *Centinel* and the four reprintings that included this passage mistakenly printed Rutledge instead of Randolph. No one named Rutledge sat in the Virginia Convention.

Pennsylvania Packet, 25 June¹

Extract of a letter from Richmond, dated June 18.

“Our Convention is yet sitting, nor is it expected they will get through the whole of the articles this week, although the Assembly are to meet on Monday next. It is thought the Assembly will have to adjourn a few days, till the convention gets through the whole of the articles. There has been a deal of manœuvring to know who is strongest, and as yet it cannot be found out. Bets are offered there will not be more than 5 to 8 of a majority on either side. We think it will be in favor of the Constitution.”

1. This item was reprinted in the *New York Daily Advertiser*, 27 June, and *Providence Gazette*, 5 July.

**Charles Mortimer to John Mortimer
Fredericksburg, 26 June (excerpt)¹**

... Give my respects to Mr. Barclay, tell him our convention has been violent in Argument on both sides, owing to the designing declamatory Scoundrals, who have debts, foreign and domestic to pay, a vanity to gratify, which they never could accomplish in the Govt.—

But rejoice, this moment I had a letter by post, the grand question was put yesterday and carried by a majority of ten, that satisfies me—

I trust in god we shall have more Justice, when the principles of good Government are taken out of the power of ignorant wicked men—

1. FC, Minor Family Papers, Commonplace Book of Mary Anne Fauntleroy (Mortimer) Randolph of “The Grove,” ViHi.

**Henry Knox to Jeremiah Wadsworth
New York, 26 June (excerpt)¹**

... The constitution in Virginia is still critical—The last intelligence of the 17th. Govr Randolph states the parties 82 decidedly for it—76 as decidedly opposed, and 10 neutrals—he supposes the last to be divided which will give the federals a majority of 6²—Grayson says each side has 80 certain—and that there [are] 8 neutrals—On the whole I beleive it will be adopted by a very small majority, which however may be increased if the news from New Hampshire should reach [them²] before they rise—which is probable as an express was off from this yesterday at 1 oClock³

I sincerely congratulate you on the adoption by New Hampshire.

1. RC, Wadsworth Papers, Connecticut Historical Society. Wadsworth received this letter on the morning of 29 June and responded the same day: “Virginia must adopt

the Constitution[.] I cant bear to think they will not[.] pray write me in Your next that they have done so" (Knox Papers, MHi).

2. This information was possibly obtained from congressman William Bingham who obtained it from Thomas Willing's 24 June letter to him (above).

3. David Henley was the express rider who left New York City on 25 June, at 1:00 P.M., bound for Richmond. See "The Federalist Express System between the New Hampshire, New York, and Virginia Conventions," 24-26 June (above).

Jeremiah Wadsworth to Henry Knox Hartford, 26 June (excerpt)¹

. . . I congratulate You on the New Hampshire adoption. is it possible the Antient Dominion can reject it. if they do who can think of a Curse that is equal to their Crime—Grayson and Monroe—how unaccountable their conduct—are you not convinced their is a Hell—is any other punishment but everlasting, unquenchable fire equal to the Crime of destroying the fairest Hopes of a World—Adam & Eve did nothing when they fell—Grayson & Monroe—have a claim to the first place in the regions of Perdition—but it can not be Virginia must & will—I am persuaded they have adopted the Constin.

Your last letter reached me too late for an Answer by that Post—besides I was Sick with a Soar throat—Which is yet bad enough & the worse for the Curses I constantly utter against—the Antifedl Virginians.² . . .

1. RC, Knox Papers, MHi. In his reply of 29 June, Knox told Wadsworth that he received his letter on the evening of the 28th (Wadsworth Papers, Connecticut Historical Society).

2. On 29 June Knox replied: "I admire your curses—but you have no occasion to use them—The Antis will have the occasion." Earlier in his letter, Knox referred to information he had received in a letter written by James Madison on 19 June: "Virginia will accept without doubt with a small majority" (*ibid.*).

Petersburg Virginia Gazette, 26 June¹

Yesterday about three o'clock, in Committee of the whole House of the Honourable Convention of this state, came on the question, whether amendments previous to the ratification of the proposed plan of government should take place, when the Committee divided, and the motion was lost by a majority of seven. And then the all important question was put, Will this Convention ratify the new plan of government? when it was carried by a majority of ten. For the ratification, 89; against it, 79. After which a Committee was appointed to draw up amendments, to be taken into consideration to-day, which are to be recommended to the first Congress under the new government.

1. Because the Petersburg *Virginia Gazette*, 26 June, has not been located, this item has been transcribed from the North Carolina *Wilmington Centinel*, 9 July. The *Centinel*

prefaced the item with this statement: "We have the pleasure to communicate to our readers, the following IMPORTANT INTELLIGENCE, which we have extracted from the Virginia Gazette, of the 26th ult." The item was also reprinted in the *Gazette of the State of Georgia*, 24 July, and *Georgia State Gazette*, 2 August. For a similar item, see *Charleston City Gazette*, 13 July (VI below).

Virginia Gazette and Weekly Advertiser, 26 June¹

Yesterday the grand question came on before the Honourable the Convention of this State for the ratification of the Fœderal Constitution, when the ayes and noes being taken, there appeared for the ratification 89 votes, and against it 79. The form of the ratification with a list of the names of the voters on both sides, will be published in our next.² After the vote of ratification a committee of 17 or 18 members was appointed to prepare such subsequent amendments as it may be thought necessary to recommend for future adoption.³

1. This item was reprinted, in whole or in part, in the *Philadelphia Independent Gazetteer*, 2 July; *Pennsylvania Mercury*, 3 July; *Annapolis Maryland Gazette*, 3 July; and *New York Journal*, 8 July.

2. On 3 July the *Virginia Gazette and Weekly Advertiser* printed virtually the entire minutes for 25 June, which included the roll-call vote on ratification and the Form of Ratification.

3. The Convention appointed a committee of twenty (eleven Federalists and nine Antifederalists) to prepare recommendatory amendments.

Virginia Herald, 26 June

We learn from Richmond, that the discussion of the constitution, clause by clause, had at length been effected on Monday last, and that it was expected the question would be called for on Tuesday. The first, it is supposed, would respect previous or subsequent amendments;—if that should be lost, the second would be for an adjournment for further deliberation. This is a measure, we are told, that is pleasing even to the Federalists, from the doubts they entertain whether they have a majority, and the importance of the subject.

Pennsylvania Mercury, 26 June¹

Extract of a letter from Richmond, June 18.

"Our Convention have nearly gone through the Constitution by clauses.—The important question, we expect, will come on some time this week, when the well-wishers to federal measures may flatter themselves, that the ninth pillar will be entered in the Temple of American Liberty. Politics run very high—the division very nice—the utmost we expect is a majority of six or eight, and of this we are pretty certain,

notwithstanding Mr. Henry's declamatory powers—they being vastly overpowered by the deep reasoning of our glorious little Madison. The Governor, on the first day of the debate, declared himself explicitly for the adoption and subsequent amendments; the remainder of the opposition are for making previous amendments a condition of the adoption. The Governor's declaration we here consider as the clinching nail—He has since spoken largely on the subject many times, and is a powerful champion for adoption."

1. This item was reprinted in the *New York Daily Advertiser*, 30 June, and *New Hampshire Spy*, 5 July.

James Madison to Alexander Hamilton

Richmond, 27 June¹

This day put an end to the existence of our Convention. The inclosed is a copy of the Act of Ratification. It has been followed by a number of recomendatory alterations; many of them highly objectionable. One of the most so is an article prohibiting direct taxes where effectual laws shall be passed by the States for the purpose. It was impossible to prevent this error. The minority will sign an address to the people. The genesis of it is unknown to me. It is announced as an exhortation to acquiescence in the result of the Convention.² Notwithstanding the fair professions made by some, I am so uncharitable as to suspect that the ill-will to the Constitution will produce [in them?] every peaceable effort to disgrace & destroy it. Mr. H—y declared previous to the final question that although he should submit as a quiet citizen, he should wait with impatience for the favorable moment of regaining in a *constitutional way*, the lost liberties of his country.³ My conjecture is that exertions will be made to engage $\frac{2}{3}$ sds of the Legislures in the task of regularly undermining the government. This hint may not be unworthy of your attention. Yrs. affectly.

1. RC, Hamilton Papers, DLC.

2. See "Meeting of Antifederalist Convention Delegates," 27 June (RCS:Va., 1560–62). The minority of the state Convention never signed any address.

3. See Patrick Henry's speech on 25 June (RCS:Va., 1537).

James Madison to George Washington

Richmond, 27 June¹

The Convention came to a final adjournment to day. The inclosed is a copy of their act of ratification with the yeas & nays. A variety of amendments have been since recommended; several of them highly objectionable; but which could not be parried. The Minority are to

sign an address this evening which is announced to be of a peace-making complexion. Having not seen it I can give no opinion of my own. I wish it may not have a further object. Mr. H—y declared previous to the final question that altho' he should submit as a quiet citizen, he should seize the first moment that offered for shaking off the yoke in a *Constitutional way*. I suspect the plan will be to engage $\frac{2}{3}$ of the Legislatures in the task of undoing the work; or to get a Congress appointed in the first instance that will commit suicide on their own Authority. Yrs. most Affetly. & respectfy

1. RC, Washington Papers, DLC.

**Richard Henry Lee to John Lamb
Chantilly, 27 June**

In this letter, Antifederalist Richard Henry Lee replied to an 18 May letter that he had received from New York Antifederalist John Lamb, writing on behalf of the New York Federal Republican Committee. New York Antifederalists wanted to cooperate with Antifederalists in Virginia and other states in proposing amendments before the Constitution was ratified. At the time that Lee wrote this letter from his Potomac River estate, he was unaware that the Virginia Convention had ratified the Constitution with recommendatory amendments. For Lamb's and Lee's letters, see RCS:Va., 814–15, 825–26.

**Martin Oster to Comte de la Luzerne
Richmond, 28 June¹**

My Lord,

I have the honor to inform you that on the 25th of this month, the new federal Government was adopted by Virginia, by a majority of 89 votes to 79, on the condition that the next day it would be hampered by amendments to be recommended to Congress. You will find attached a Copy of the agreed-upon Amendments.

After long debates the issue came down to this: The Antifederalists demanded that amendments be agreed upon before the Ratification of the Constitution, which was in effect a refusal, given that the imposed condition was to accept or reject the plan in its Entirety; and the Federalists consented to amendments, but following Ratification.

No doubt you will be surprised, My Lord, to find such a small Majority of 89 to 79, in a State such as Virginia, where, education is quite widespread: but as most of the Virginians are in debt, and as they fear all that tends to good order, many counties have chosen to be *passive* with their Delegates, and have given them as Instruction, only the positive order to refuse.

Mr. Patrick Henry, Leader of the Opposition Party, has displayed a popular Eloquence and an astonishing resource of Genius and abilities. He was always attacked, but never conquered. Those who did their best to support Mr. Henry are Messrs. Mason, Grayson, and Monroe.

Governor Randolph has surprised as much as amazed everyone, with the warmth and lively interest that he has applied to proving the necessity of adopting the proposed System. *Eight states, he said, having accepted it, Virginia should agree to it.*² He spoke often and with Eloquence, and his Arguments contributed in no small way to the favorable outcome.

Mr. Maddisson is the one who, among all the delegates, carried the votes of the two parties. He was always clear, precise and consistent in his reasoning, and always methodical and pure in his Language. He certainly would have convinced his Antagonists if they had not already had a predetermined plan.

Mr. Innes[,] Attorney General, closed the debates with a very forceful Speech.³

Mr. Pendleton, first Judge of the [High Court] of Chancery[,] so well known in all the States, was President of the Convention and Leader of the Adopting party. The weakness of his voice deprived three-quarters of the Assembly of his solid and persuasive Arguments.

The Debates being taken down by the Flying pen, or *short-hand*[,] I will have the honor of transmitting them to you as soon as they are printed.

We hope here, My Lord, that this Event will give a new appearance to the Affairs of the Continent, and that it will induce the Commercial Nations to enter into competition with the English. As we have the right to furnish the United States with a number of essential articles, I think that our Good Merchants will again turn their sights and speculations in this Direction, and that before undertaking anything, they will take the necessary counsel, for it is upon this counsel that their Success will depend.

[P.S.] Governor Randolph will resign at next October's assembly, and his resignation has been predicted.⁴

1. RC (Tr), Correspondance Politique, États-Unis, Supplement, Vol. IV, ff. 359-60, Archives du Ministère des Affaires Étrangères, Paris. This letter, dispatch number 57, was docketed as received on 5 October 1788. On 25 May Oster, who was stationed in Norfolk, had written Luzerne that he planned to leave for Richmond in a few days to attend the Virginia Convention and to receive some money for two Frenchmen (Affaires Étrangères, Correspondance Consulaires, BI 927, Norfolk, ff. 169-70, Archives Nationales, Paris).

2. Edmund Randolph first made this point in the Convention on 4 June (RCS:Va., 936) and repeated it several times thereafter. For other references to Randolph's point, see John Vaughan's 11 June letters to John Dickinson and John Langdon (both above).

3. For Innes's speech, see Convention Debates, 25 June (RCS:Va., 1519-24).

4. On 12 November 1788 Governor Randolph's letter of resignation was laid before the House of Delegates. Three days later Randolph reentered the House as a delegate from Williamsburg, replacing Samuel Griffin who had accepted the office of high sheriff of James City County.

Elbridge Gerry to James Warren Cambridge, 28 June (excerpt)¹

. . . The convention of New-York will, I am well informed, annex a bill of rights to a conditional ratification, which will remove all our objections, and it is believed Virginia will do the same. Patrick Henry has been brilliant in that convention, and very severe on —² who is reprobated for his duplicity and versatility. I know not what judgment to form with respect to the final event, but trust in Providence for protection from the thralldom, which may be apprehended, unless the new constitution shall be modified and amended. . . .

1. Printed: James T. Austin, *The Life of Elbridge Gerry* (2 vols., Boston, 1828-1829), II, 84-85. Warren (1726-1808), a Milton merchant-farmer, was speaker of the Massachusetts House of Representatives and an opponent of the Constitution.

2. Edmund Randolph.

An Obituary for Constitutional Liberty Virginia Gazette and Independent Chronicle, 28 June¹

Just departed this life in the bloom of Youth, our much admired and dearly beloved Friend CONSTITUTIONAL LIBERTY.

He was a youth of uncommon vigor during his services in a military capacity, where his zeal for the United States was not surpassed by any of his brother officers—he sustained during a bloody conflict of a desperate siege (for eight years,) his post of honor with a firmness that was never equaled by the oldest veteran so far from shutting himself up in a small (compass or) garrison, he encreased and enlarged the boundaries of the camp, where the soldiers might enjoy all the pleasures of domestic society, without weakening or losing one atom of his authority; the innocent recreations and friendly gambols of his faithful followers, were not restrained, even when he was on a line of march; and his orders were executed and obeyed with reverence and esteem, his aid[e]s were wise and discreet, and never executed any authority without engaging the accompaniment of two favorite subalterns, *love* and *affection*—In fine, all his marches, counter marches, and manœvers, delighted the whole camp; his discipline dazzled and

confounded his enemies, and his sorties have been so dreadful as to make the *British Lion* tremble at his feet:—His whole army were defended by redoubts, fortresses, bastions, counterscarps, batteries, fosses, ravellins, pickets, &c. &c.—All the neighbouring powers respected and loved him courted his friendship and alliance;—thus situated the reciprocation of good offices were the first thought of his soul, but, communicating his plan of defence to some of the adjoining confederacies, where he necessarily shew'd the plat of his whole encampment, they found a weak part therein; they like apparent friends, sent him a message to the following purport.—“We your brethren in one common cause, embarked have been sensible of the hardships of the war, in which you have sustained so great a part, we in sympathy to your distress, and by the ties of our federal articles, now propose to send as auxillaries, some of our choicest disciplined officers and soldiers, to command your out posts, [”] which were defended with some of the most valuable *brass ordinance*, he gladly opened the gates and received this supposed additional strength, having been on double duty for some time; no sooner had the auxillaries the management of his out posts and some batteries, within his lines, but they began to assume an equal command, and the disorderly behavior of a few of both soldiers and officers, plainly shew'd him their bad designs; in vain did he remonstrate against their licentious behavior, in vain did he wish to get rid of them;—a skirmish ensued in which he received several wounds, though none of them were thought to be mortal, the engagement at last became general and one of the principal batteries revolted and declared against him:—The battle now became more terrible than ever, the enemy (already dreadful with their musquetry) now turned their cannon on him, no less than 89 heavy brass pieces² incessantly playing upon his flanks and center, nor day nor night was the horrid din of arms less incessant; twenty two days in the list of time³ did he defend his rights with that fortitude and becoming dignity that marked his exalted soul; all the cannon in his whole park of artillery was dismounted or rendered useless, his ammunition on the point of giving out, forced him to surrender himself upon these sad terms, *not prisoner of war but prisoner at discretion!*

Such a reverse of fortune, brought about by his professed friends and allies, drove him into despair. In vain did the state physicians, prescribe a strict regimen; in vain did they prohibit patent medicines, and G. W's. circular prescription;⁴ in vain did they exhort him not to listen to a great quack, who wore a white coat; in vain I say was every anodyne administered, for fell despair had opened the bleeding wounds he had received afresh, and gave the grave the fairest portion

of independent excellence, that ever tread the theatre of this capacious stage.

Reader whoever thou art, drop a tear of pity on his ashes; let his remembrance be sacred in your grateful lays, let his dead corpse be placed before your eyes: let recollection tear his manes from the devoted tomb! and fix your steady purpose to revenge his cause! the cause of Heaven committed to your charge!

He was inter[r]ed in a manner suitable to his rank, but without the discharge of artillery that being forbid by his will, which is recorded in the large volume of Fame, and witnessed by 79 of his brother officers.⁵

Despondent anguish, pity, rage, terror, fury, working in the fettered soul, but faintly showed the affecting æra, and but faintly told that all was lost.

EPITAPH,

Here lies the blessed body of our CONSTITUTIONAL LIBERTY
in hopes of a glorious resurrection.

FUNERAL PROCESSION,

The corps[e] preceded by all the patriots in the city—Public integrity,
Virtue, Friendship, and every domestic smile.

PALL BEARERS,

The four great Pillars of the state, viz:
Liberty of the Press—Liberty of Conscience.
Taxation with representation—Trial by jury.

The solemn scene was closed by the Goddess Liberty sheading tears
for the loss of her departed Hero.

1. This item was reprinted in the *Baltimore Maryland Gazette*, 22 July; *State Gazette of South Carolina*, 28 July; and *Kentucky Gazette*, 2 August.

2. The final vote for ratification in the state Convention was 89 to 79.

3. The Virginia Convention was in session twenty-three days.

4. A reference to George Washington's circular letter of June 1783 to the state executives that was printed in the *Virginia Independent Chronicle* on 4 June (above).

5. See note 2 (above).

David Stuart to Harry Innes Richmond, 29 June (excerpt)¹

... Having dedicated so much of my letter to business, I must now try to season it with a little politics—Altho' most of your members on the Convention,² were opposed to the Constitution, I hope on more mature consideration your Country will not only be reconciled to it's adoption, but consider it as a benefit conferred on them in spite of themselves—Most of your alarms seemed to arise from apprehensions

of the navigation of the Mississippi being surrendered—The leaders of the opposition endeavoured to strengthen them, but the investigation of the subject, must I think have removed all fears on that head—On the contrary, it was proved I think well, to be the best means of securing that important right—From Maddison's account, it appeared never to have been so much endangered in Congress, as common fame had represented, and the best reasons given, for its not being attempted in future—Nor could Mr. Monroe and Grayson, tho' opposed to the government, and desirous of exciting alarms on every subject, which might gain them a few votes, contradict the representation³—The other great cause of dislike to the government, with your members, was the judiciary—Mr. Pendleton with other good judges of that particular subject, were of opinion, that from a fair construction of the clause, Congress were empowered to remedy every inconvenience, which was apprehended, being enabled to establish Courts with such restrictions and exceptions as they should deem necessary—The evils which every part of the Union, would suffer from improper arrangements on this head, will be the best security of the general governments consulting the interests of all, in the erection of Courts—I think a candid view of the arguments used in Convention, which have been well taken in short hand, will satisfy you, on every part, that the government is wisely constructed—

We have just recieved news that New Hampshire has adopted the government; so that Virginia makes the tenth State, which has acceded to this measure—You will soon I expect be occupied with forming a government for yourselves—Let me recommend the plan of the Maryland Senate to you as a model for yours—But, whatever be your form of government, I think it would be good policy in a people who [would?] wish to encourage emigrations among them, to fix on some pretty short term, at which it should be reconsidered, and amended if necessary. Indeed I am of opinion such a clause would be proper in every government, that it might at all times be rendered conformable to the manners, and circumstances of the people in an easy and quiet manner. . . .

1. RC, Innes Papers, DLC.

2. The Kentucky delegates voted 10 to 3 (with one not voting) against.

3. The issue of the navigation of the Mississippi River was debated on 12, 13, and 14 June.

Caleb Wallace to William Fleming 29 June (excerpt)¹

. . . I am impatient to hear from our Convention at Richmond. I am not better pleased with the New Federal Constitution than when I wrote to you on the subject;² but I am much better reconciled to

its adoption on account of the dangers the Union is exposed to from the greater imperfections of the old one. Of two evils I woud choose the least If neither can be avoided. . . .

1. RC, Hugh Blair Grigsby Papers, ViHi. Wallace, a resident of Fayette County, Ky., gave the place of writing as "Mrs. Bowman's," which was probably at Colonel Abraham Bowman's Station in Mercer County. Wallace referred to Colonel Bowman in a part of his letter that is not printed here, and on the address page, he wrote: "Honoured by Col. Bowman."

2. For Wallace's letter of 3 May to Fleming, see RCS:Va., 781-84.

**Thomas Willing to William Bingham
Philadelphia, Sunday Evening, 29 June (excerpts)¹**

I thank you for the good News from N Hampshire, wh. had reached Us by Colo. Henly abt. two hours before the Post got in; yet yr. letter gave me an agreeable confirmation of it. I hope by this time he has got to the end of his journey, & by his Intelligence given fresh courage to our friends at Richmond. by Post yesterday, Dr Rush rec'd a line of the 23d from Mr. Corbin. he say's, "no material change has taken place since my last; to morrow a Question will be put for the adoption with *previous* amendments. this will be rejected by a Majority of four or five. the Question for ratification generally will then be put, & will be carried by a Majority of twenty or thirty"—thus far Mr. Corbin²—Dr. Hutchinson³ say's yt. Mr. C— is mistaken, that he, Hutchinson, has got the intended amendments sent him; that they were to be of-ferr'd on Tuesday, wou'd take a long debate, & that no determination wou'd be had on them before Wednesday⁴—which Account is most to be depended on, you may guess—we can do no more, at present—for my part I wish the whole may be postponed till Colo. Henly reaches them; for his New's must I think change the Question very materially; the question then need not be whether the Constitution is a good One, or the best possible? it will be, in short, will Virginia form a part of the Union, or not? God grant they may join hands with Us, & try to do the best with it. As Number One, I am quite content to take it as it is, with all its *supposed* Imperfections, for real or essential One's, I have not sense or Skill enough to discover yet. . . .

[P.S.] I give this a chance by the Stage as being earlier than the Post—did the letter I wrote by the Stage last Wednesday Morng. get to you that Evng. or not?⁵ . . .

1. RC, Gratz Collection, PHi.

2. See Francis Corbin to Benjamin Rush, 23 June (above).

3. Dr. James Hutchinson, a member of the staff of the Pennsylvania Hospital, was a leading Philadelphia Antifederalist and possibly a co-author of the essays of "An Old Whig" (CC:157).

4. On Tuesday, 24 June, Patrick Henry presented a declaration of rights and a set

of structural amendments to the state Convention (RCS:Va., 1479). Hutchinson had received either these amendments or earlier drafts of amendments that were also carried to New York Antifederalists by Eleazer Oswald, the printer of the Philadelphia *Independent Gazetteer*. For Oswald's mid-June mission, see RCS:Va., 811-29.

5. Willing's 25 June letter is quoted in Willing to Bingham, 24 June, note 1 (above).

**Archibald Stuart to John Breckinridge
Charlottesville, 30 June (excerpt)¹**

Dr. friend

. . . The Convention broke up in friendship & Amity altho our Majority was a Very small one—ye Minority with a few exceptions have promised their aid to ye New Government

1. RC, Breckinridge Family Papers, DLC. This letter given "To ye Care of Colo. G Nicholas," who like Breckinridge, resided in Albemarle County.

New York Morning Post, c. 30 June¹

By a letter from Virginia dated the 23d inst. we learn, that the debates in the convention of that state were carried on with great warmth, and no small degree of acrimony by both parties; that it does not appear that the final question was taken up on the 21st, as agreed to by the federalists, rather than risque an adjournment. It is supposed that the Governor will prorogue the assembly, which was to meet the 23d, to a future day, in order to give the convention time to go fairly through with their deliberations; there is no doubt but the new constitution will be adopted there, though but by a small majority. Governor Randolph's retrograde motion in the political hemisphere has rendered the federal cause no service in that state; the Virginians are a shrewd, sensible, and discerning people, and are not ignorant of the ancient Hebrew Adage, "To beware of a Proselyte, even unto the tenth generation."

1. This item is transcribed from the *New York Journal* of 2 July which indicated that it had been taken from the *New York Morning Post*. Since the item does not appear in the extant issues of 26 and 28 June, and 1 July of the daily *Morning Post*, it probably appeared in the no longer extant issue of Monday, 30 June.

New York Packet, 1 July¹

Extract of a letter dated at Norfolk, 22d instant.

"I availed myself of the opportunity of hearing the debates of the Convention in Richmond, two days.—The debates run high: it is hardly possible to tell how it will be determined—tis supposed that the finishing question will be put the 24th or 25th instant.—it is expected to be carried only by a majority of four. The speakers, both for and

against the Constitution, have shewn great abilities, particularly those for it—the other side have made use of much declamation:—But yet, I think, not a proselyte has been gained to either side, so determined and firm are both parties. However, upon the whole, it is the general opinion, that it will be carried but by a small majority.”

1. This letter possibly was carried on the *Endeavour*, a sloop from Norfolk, whose arrival was reported in the *New York Morning Post* on 1 July.

Pennsylvania Mercury, 1 July

Extract of a letter from Richmond, June 23.

“We have every prospect of an adoption of the Federal Constitution, tho’ perhaps agreeable to the Governor’s proposition, which is to adopt and ratify, and at the same time explain the construction which we place on it in the ratification. The construction, we believe, will not run counter to the wishes of the warmest Federalist.”

Francis Corbin to Benjamin Rush

Richmond, 2 July¹

I inclose you a printed form of our Ratification.—It contains nothing of any consequence that you have not been already informed of. Except indeed the Committee appointed to bring in Amendments—. This whole business was ludicrous and is absurd in the Extreme

I myself scouted Every Idea of proposing any amendments—trusting alone to those which Experience might Suggest. I wish our friend Madison had not been of the Committee—I am sure he blushes when it is talked of. We have nothing new that can be entertaining or interesting to you to hear—if there ever should be it will give me pleasure to communicate it to you—Let our correspondence then be founded on the *basis of Reciprocity*—Tho’ I am rather apprehensive from the Dearth of intelligence in this part of the Continent that the Reciprocity (to use the jocular phrase of Lord North) will all be on *one Side*.

1. RC, Alexander Biddle Collection, PHi. This letter was postmarked Richmond, 1 July.

Philadelphia Independent Gazetteer, 2 July¹

Extract of a letter from a gentleman in Richmond to his friend in this city, dated 25th June, 1788.

“I inform you that this day the new constitution was adopted by a majority of eight, the whole number being 168. The opposition appear content, at least they say so. The inhabitants of the town are either

wise enough, or polite enough, to make no procession or other parade. The convention are to meet again to-morrow, when the last final fiat will be given to the business. In all the stages of the business I have been an opponent, but being out voted, or defeated, I submit cheerfully, and will give every support to the system which I can, until I find errors like to take place. Mr. Henry has been powerful, but now appears to be content. I suppose you will have some pompous eulogium from some person or other, whose mind is elevated on this occasion."

1. Reprinted in the *New York Journal*, 8 July.

Pennsylvania Packet, 2 July¹

Extract of a letter from Richmond, June 25.

"Permit me to congratulate you on the happy termination of the elaborate and ingenious deliberations of the convention of this state, who have this day agreed to ratify the proposed constitution, without the insertion of previous amendments, which were long advocated and strenuously urged by the opposition; but determined against them by a majority of ten, say 89 for, 79 against the ratification. The subsequent amendments which are proposed for the consideration of the first Congress, which may be elected under the new plan, it is supposed will take up two or three days discussion. The majority of the minority have declared themselves firmly attached to the Union, and generously offered their influence in support of the new system—indeed many who voted against the Constitution were compelled to it, in violation of their own judgments though in conformity to the positive instructions of their constituents—notwithstanding which there are a few individuals who are evidently influenced by prejudice or interest, that continue obdurate and inflexible, and who have boldly asserted, they are not without hopes of obtaining a better government at some favourable juncture, when the liberties of the people are endangered by that supineness which the operation of the government will naturally introduce among its rulers. The 28th of the month is proposed as a day of rejoicing."

1. This item was also printed in the *Pennsylvania Gazette* on 2 July. It was reprinted in the *Pennsylvania Mercury*, 3 July; *New York Journal*, 4 July; *Connecticut Journal*, 9 July; *Providence Gazette*, 12 July (excerpt); and *Massachusetts Centinel*, 12 July.

New York Daily Advertiser, 3 July¹

Extract of a letter from a Gentleman in Convention at Richmond, to his friend in New-York, dated 25th June, 1788.

"DEAR SIR, I have now to congratulate you on the accession of

Virginia to the New Government; the final vote in Convention was taken this day, about three o'clock, P. M.—for the ratification 89—against it 79;—a motion for previous amendment was negatived by 88 to 80. The form of ratification is prefaced by a declaration that all power, &c. (but I enclose you a copy). Our country's character never shone more conspicuous than upon this great and interesting event; awful and solemn was the pause which preceded the question; a discussion of 24 days, in which every clause of the plan had been weighed and debated, and its merits and demerits fully exposed, terminated at a period when decision was to involve the happiness or misery of present and future generations; whilst the event of the question too was yet doubtful, on the one hand a powerful, numerous and respectable body of advocates for the system, on the other a decided, respectable and little less numerous body in opposition—could the mind be otherwise than tremulously anxious?—to describe my feelings exceeds my powers of description. But if I felt before, how can I convey to you those sensations which filled my mind after the decision; in presence of upwards of a thousand spectators, with minds agitated by contending and opposite opinions—the dignified humility of the majority—the tempered patience, manly firmness and virtuous demeanor of the minority, accompanied with the most unanimous and honorable professions of acquiescence and support to the Government, finished a scene, which thus stood completed the most grand and solemn I ever beheld.”

1. By 18 July, this item was reprinted eleven times: N.H. (1), Mass. (1), R.I. (2), Conn. (4), N.Y. (1), Pa. (2).

Pennsylvania Packet, 3 July¹

Extract of a letter from Richmond, dated June 26.

“The amendments proposed in our convention for the consideration of the first Congress under the new adopted government are, chiefly, that the state shall have power to collect its own taxes, and pay Congress by requisitions; and it is expected they will pass the convention without opposition. Many of the Federal party being equally interested with the Anti's in the objects of them—though many fears are entertained of the new Congress not acceding to these amendments—and such are the apprehensions of the holders of military certificates, finding the certain resource, in their own revenue, for the payment of the annual interest, likely to be superceded by a national establishment, that is uncertain in its operations and remote in its effects, that they are already selling out at a lower price than when the constitution was

agitating. The convention, we think will break up tomorrow—and on the next day we shall have a general rejoicing.”

1. By 25 July, this item was reprinted seven times: N.H. (1), Mass. (2) R.I. (1), N.Y. (2), Pa. (1).

Charleston City Gazette, 9 July¹

Paragraph of a letter from a gentleman in Petersburg, Virginia, to his friend in this city, dated June 15th.

“Our convention has been sitting eight days already—hard debates in the house, and it is not yet known how it will go, but it is to be hoped that the federalists will carry the day. There has been a duel fought about it by two country members last Saturday, at Richmond; one fell, and the other took to his horse. The great question will be put next Saturday, the event of which you shall hear.”

1. Reprinted in the *Charleston Columbian Herald*, 10 July, and *Gazette of the State of Georgia*, 17 July.

William Short to Thomas Lee Shippen Paris, 11 July (excerpt)¹

. . . Letters from America mention that the convention of Virga. was sitting—they are dated from the 1st. to the 10th. of June.²—As they [were?] written from N. York they were not able to give any news later than the meeting of that convention—they mention only the disposition of the leading members—Mason & Randolph who headed the middle party have separated—the first has thrown himself with unexpected violence into the antifederal scale—the second had passed over to the federal one.—none of the Mr Lees are in the convention—they are all said to be extremely antifederal except Francis Lightfoot who is federal³—in short the question still remains as dubious as can possibly be conceived—although decided certainly long before this it will be probably some time before we hear the result—we are all exceedingly anxious on the subject. . . .

1. RC, Shippen Family Papers, DLC.

2. Two of these letters were probably Edward Carrington to Thomas Jefferson, 9 June, and St. Jean de Crevecoeur to Short, 10 June (both above).

3. Some of this information was probably obtained by Short from James Madison's 22 April letter to Jefferson (RCS:Va., 744).

William Nelson, Jr., to William Short York, 12 July (excerpts)¹

My dear Short

. . . As to politics, you say a few frigates wd. answer the purpose of coercion better than a standing army—Should N. Carolina be punished

for the delinquence of Virginia?—The non-importing states, by this system, wd. be involved in the fate of the importing states, if the latter deserve, or are *supposed* to deserve, chastisement—If any dispute of this kind shd. arise between a state & the united body, the *efficacy* preference of these schemes will probably be tried, as ten states have ratified the new government. New Hampshire was the ninth in succession & this state the tenth—When the convention of this state acceded to it, the members thought she was the ninth, the account from New Hampshire having arrived since. I inclose you the form of the ratification.—You will observe prefixed to it, a preamble which, the opponents of the government consider as a previous declaration of rights—exclusive of this, there is recommended a bill of rights, with separate amendments. If these, or the most important of them, shd. be engrafted, I think the mode of trying the president may be esteemed almost the only defect remaining in it. Yet there are many of them which, I am persuaded will be lost.—My darling amendment “that no person shall be elected capable of serving as president more than eight years in any term of sixteen,”² I feel great anxiety for. On this subject, in my last, I was guilty of an historical error. I mentioned the doge of Venice as in fact hereditary³—On examination, I find myself mistaken—The history of that government, however, furnishes a proof of the dangerous influence of an aristocracy over the people—The people once elected the doge—the senate now elect him, & present him to the people for the shew of their approbation. Thus did the military of Rome act towards the senate—Our circumstances are somewhat unlike, & we have not that aristocracy, nor this army. but I am not sure that some have not the disposition to it, & that power will not create the one, whilst the numerous & open defenders of a ~~standing~~ *army* the other, even in time of peace, by no means give cause to banish ~~suspicion~~ apprehension upon that subject.—Mr. Henry, with great talents & address, &, I verily believe, with views really friendly to liberty, stood forth, the opponent of the constitution—He was indefatigable, & more & more able day by day, for near three weeks, the convention continuing within one day of that term, & at last, when he discovered that there wd. be a majority agt him (tho’ a small one) declared that “as far as he had influence there shd be good order.”⁴—Mr. Mason is said not to have behaved with so much temper. The other speakers in the opposition were Mr. Tyler, Monroe, Grayson & Mr. Dawson.—Those in favor of the government, Mr. Madison, the Governour (who was very strenuous) Mr. G Nicholas, Innes, Z. Johnson, Marshall[,] Corbin, Colo H Lee, & Mr. Pendleton, who you will observe was the president. Mr. Wythe was silent except, when he brt. in the amendments.⁵—I have mentioned the names as I recollected

them. They had certainly the weight of talents. What must the individual be who cd. thus oppose them united? I did not hear him, not being at all at the convention—I confess I am not fond of his oratory in general; but on this occasion I shd. have been much gratified by hearing him—I wished extremely also to have heard Madison & Innes—By the unanimous voice of all whom I have heard speak on the subject, except one coxcomb, who did not like Madison,—they were astonishingly great in their respective ways—Innes spoke but once, & that was almost at the close of the business—Nicholas shewed himself to be very able, & was thought more equal to answering Henry, than any other person—Z Johnson surprized every body, altho' every body knew him to be very sensible & clear-headed. Indeed, I heard a man of judgement declare, that Johnson's speech was the best which was delivered in the convention—Marshall's perspicuity & force were greater than ever—These accounts I have universally heard from those, whom I have seen from the convention—I have heard various opinions as to the Governor, Corbin, & H Lee. . . .

I lament the opportunity, which Ternant⁶ lost of distinguishing himself, & weep over the corpse of dying republicanism. Yet, if some or all of the amendments, which this state has proposed to the new constitution, or some of the most important, be adopted, she may be recovered.—This, however, scarcely can be hoped. That, which limits the continuance of the president is recommended *only* by this state—In some others of consequence Massachusetts & S Carolina unite with us.—You say “when the patient will not take desperate remedies, he is in extreme danger.[’]” Now I think, if he fancies himself in extreme danger, he will take desperate remedies. The adoption of the new government is a case in point. The votes were 85 for & 75 against, the measure. Notwithstanding this small majority, the minority declare their determination to acquiesce, & use their influence with the people to promote it.—No commotions are apprehended, unless any abuses should take place. If such a disposition would otherwise have prevailed, the respectableness of the minority will curb it, as there was a majority of only 9 in Massachusetts, of 10 in this state & 10 in New Hampshire. . . . As to the state of our courts, the judges of the court of appeals at their last session drew up a very bold & sensible remonstrance to the legislature on the subject of the district court-law⁷—They declare that it is unconstitutional in calling on the judges of the Chancery & Admiralty to do the duty of common-law judges, & in directing the judges of the genl. court to perform additional duties without adding to their salaries. That the judiciary are independent of the legislature, that to increase duties without increasing the compensation is so far

a diminution of salary, & tends to destroy their independence—That all laws which have been made on this subject, since the first, are unconstitutional.—That, however, from the particular circumstances of the country they have acquiesced in them hitherto, this they consider as a direct attack on their independence—As to the mixed jurisdiction of the court of appeals, which they have exercised, this they justify from the necessity of the thing, as it must be the case, wherever there exists one *dernier resort* from all the courts.—They conclude by refusing to execute the law, & respectfully remonstrating to the assembly, declaring, if it shd. be necessary, that they will appeal to the People. As the operation of the law was to have begun on the 1st. of this month, it became necessary to call the assembly—The 23d. was the day appointed for their meeting. They did not proceed on business untill the convention rose, as many were members of both bodies. They appointed Colo. Matthews their speaker. Grayson was within five or six votes. They defer'd the operation of the district-law, the members being anxious to return to Harvest—The subject will be taken up in the fall.—I thought it necessary to give you this information, least my last letter shd. bring you over in expectation of a new field opening by the operation [of] this act.—The genl. court-business declines. Whether from the state of uncertainty as to our system, I know not. Altho' this prospect is shut for a time, a much brighter one unfolds itself to our profession at the dawn of the new-constitution—As a lawyer, I always, liked it; tho' as a citizen I was averse to it—

The resources of future delight, which you are now drawing from the Lycee, will no doubt hereafter afford you the most refined & deep satisfaction. But when you come to America; with less disposition than you seem to have for domestick life, you wd. find a matrimonial connection necessary:—unless indeed the splendid government, wch. we are to have, shd. furnish fresh objects of attention, more captivating & productive of real happiness in their pursuit, than have been known to us hitherto—But enough of this. . . .

1. RC, Short Papers, DLC.

2. In March, Nelson wrote Short that "After having served four years, he [the President] shd. return to the body of the people, & be incapable of serving for a certain term at least" (RCS:Va., 477).

3. In March, Nelson wrote Short that "The Doge of Venice was originally for life, he is now hereditary" (RCS:Va., 477).

4. On 25 June Patrick Henry said: "If I shall be in the minority, I shall have those painful sensations, which arise from a conviction of being overpowered in a good cause. Yet I will be a peaceable citizen!" (See RCS:Va., 1537.)

5. Between 4 and 21 June, George Wythe chaired the Committee of the Whole. On 24 June he introduced a motion in the Committee of the Whole to ratify the Constitution (RCS:Va., 1474). After the vote to ratify on the 25th, he was appointed chairman of

the committee on amendments; he presented the committee's report on the 27th (RCS:Va., 1541, 1551).

6. Nelson refers to Jean Baptiste, Chevalier de Ternant, about whom Short had apparently written him. Several months earlier, Ternant was in England and was pointedly introduced to the King and Queen by the French ambassador, Anne-César, Marquis de la Luzerne, but the King and Queen "passed him with a glaring and apparently premeditated insult." Ternant had fought with the Americans during the American Revolution (William Stephens Smith to Short, 22 February 1788, Boyd, XII, 621n). Shortly after, Ternant returned to France, "much displeased with London" (Short to Thomas Jefferson, 17 March, *ibid.*, 676). In 1791 Ternant was appointed French minister to the United States.

7. For the disposition of the district court bill, passed in early January, see Charles Lee to George Washington, 14 May, note 2 (RCS:Va., 797-98).

James Monroe to Thomas Jefferson Fredericksburg, 12 July¹

Altho' I am persuaded you will have received the proceedings of our convention upon the plan of government submitted from Phila. yet as it is possible this may reach you sooner than other communications I herewith inclose a copy to you. They terminated as you will find in a ratification which must be consider'd, so far as a reservation of certain rights go, as conditional, with the recommendation of subsequent amendments. The copy will designate to you the part which different gentn. took upon this very interesting & important subject. The detail in the managment of the business, from your intimate knowledge of characters, you perhaps possess, with great accuracy, without a formal narration of it. (*Pendleton tho much impaired in health and in every respect in the decline of life shewed as much zeal to carry it, as if he had been a young man.* Perhaps more than he discover'd in the commencement of the late revolution in his opposition to G. Britain.² *Wythe acted as chairman to the committee of the whole and of course took but little part in the debate, but was for the adoption relying on subsequent amendments. Blair said nothing, but was for it. the Governor exhibited a curious spectacle to view: having refused to sign the paper every body supposed him against it. But he afterwards had written a letter³ & having taken a part which might be called rather vehement than active he was constantly labouring to shew that his present conduct [was] consistent with that letter & the letter with his refusal to sign: Madison took the principal share in the debate for it. In which together with the aid I have already mention'd he was somewhat assisted by Innes, H. Lee Marshal Corbin & G. Nicholas as Mason Henry & Grayson were the principal Supporters of the opposition.* The discussion as might have been expected where the parties were so nearly on a balance, was conducted generally with great order, propriety & respect of either party to the other)—

and its event was accompanied with no circumstance on the part of the victorious that mark extra[ordinar]y exultation, nor of depression on the part of the unfortunate. There was no bonfire illumination &ca and had there been I am inclin'd to believe, the opposition would have not only express'd no dissatisfaction, but have scarcely felt any at it, for they seem'd to be gov'd. by principles elevated highly above circumstances so trivial & transitory in their nature.

The conduct of Genl. Washington upon this occasion has no doubt been right and meritorious all parties had acknowledged defects in the federal system, and been sensible of the propriety of some material change. To forsake the honourable retreat to which he had retired & risque the reputation he had so deservedly acquir'd, manifested a zeal for the publick interest, that could after so many and illustrious services, & at this stage of his life, scarcely have been expected from him. Having however commenc'd again on the public theatre the course which he takes becomes not only highly interesting to him but like wise so to us: The human character is not perfect; and if he partakes of those qualities—which we have too much reason to believe are almost inseparable from the frail nature of our being the people of America will perhaps be lost: be assured his influence carried this government; for my own part I have a boundless confidence in him nor have I any reason to beleive he will ever furnish occasion for withdrawing it. More is to be apprehended if he takes a part in the public councils again as he advances in age from the designs of those around him than from any dispositions of his own.

In the discussion of the subject an allusion was made I believe in the first instance, by Mr. Henry to an opinion you had given on this subject, in a letter to Mr. Donald.⁴ This afterwards became the subject of much inquiry & debate in the house, as to the construction of the contents of such letter & I was happy to find the great attention & universal respect with which the opinion was treated; as well as the great regard and high estimation in which the author of it was [held?]. It must be painful to have been thus made a party in this transaction but this must have been alleviated by a consideration of the circumstances I have mention'd.

From the fi[rst?] view I had of the report from Phila. I had some strong obje[ctions to it—but as I had no?] inclination to *inlist myself on either side* made no communication or positive declaration of my sentiments untill after the Convention met—being however desirous to communicate them to my constituents I address'd the enclos'd letter to them, with intention of giving them a view thereof eight or ten days before it met; but the impression was delayed so long, & so incorrectly made, and the whole performance upon reexamination so loosely

drawn that *I* thought it best to suppress it. There appear'd likewise to be an impropriety in interfering with the subject in that manner in that late stage of the business. I enclose it you for your perusal & comment on it.⁵

You have no doubt been apprized of the remonstrance of the Judges to the proceedings of the Legislature in the passage particularly of the district court law, as likewise of its contents—The subject will be taken up in the fall—The legislature altho assembled for the purpose declin'd entering into it, because of the season of the year being anxious to get home about their harvest. For this purpose they pass'd an act suspending the operation of the district court law untill sometime in Decr. or Jany next. Altho different modifications may be made of it yet I think the bill will be retained in its principal features.⁶

I still reside here and perhaps shall continue to do so whilst I remain at the bar, especially if the district court law holds its ground. I hold a seat in the legislature & believe I shall do it for some time. The absence from my family is painful but I must endeavor to have them with me as much as possible. I hope you enjoy your health well. I have heard nothing to the contrary. I hope also that Miss Patsy & Molly⁷ are well. Short I likewise hope is in health. Remember me to them & believe me most affectionately your friend & servant—

1. RC, Jefferson Papers, DLC. The text in italic type was written in cipher and was translated interlinearly by Jefferson, all of whose translations were verified and corrected by the editors of *The Papers of Thomas Jefferson* (Boyd, XIII, 351–55). Jefferson quoted the text in angle brackets in a letter to William Short on 20 September (*ibid.*, 620).

2. In his autobiography, Pendleton explained the position he had taken early in the Revolution: "When the dispute with Britain began, a redress of grievances, and not a revolution of Government was my wish . . . I opposed and endeavored to moderate the violent and fiery, who were plunging us into rash measures . . ." (David John Mays, *Edmund Pendleton, 1721–1803: A Biography* [2 vols., Cambridge, Mass., 1952], I, 357).

3. For Edmund Randolph's 10 October 1787 letter to the Speaker of the Virginia House of Delegates which was published around 27 December, see RCS:Va., 260–75.

4. For Jefferson's 7 February 1788 letter to Alexander Donald which Patrick Henry referred to in the Virginia Convention, see Convention Debates, 9 June, note 7 (RCS:Va., 1088).

5. See "James Monroe: Some Observations on the Constitution," c. 25 May (RCS:Va., 844–77).

6. For the disposition of the district court bill, passed in early January, see Charles Lee to George Washington, 14 May, note 2 (RCS:Va., 797–98).

7. Monroe refers to Jefferson's daughters.

John Brown Cutting to Thomas Jefferson London, c. 24 July (excerpts)¹

. . . One hundred and forty of the Convention of Virginia met on the 2d of June and after having appointed Mr. Pendleton their President, resolved that no general, or particular question shou'd be taken

on the federal constitution until the same had been considered paragraph by paragraph. There was a rumour in New York on the 12th that Virginia had adopted it. But from the briefness of the interval from the meeting of the Convention & that date I doubt its authenticity. . . .

There is a gentleman just arrived from Virginia who left the Convention debating on the 11th of June. He says he attended several days—and that nothing can exceed the teeming violence with which Mr Henry and Col Grayson combat the constitution—except the ability with which Mr Maddison and Governor Randolph advocate it. Mr Henry used such harsh language in reprobating the fickle conduct of the latter—that the house compel'd him to ask that gentleman's pardon.² No doubt was entertain'd in Virginia respecting the ratification by that State.

1. RC, Jefferson Papers, DLC. Printed: Boyd, XIII, 401–3. For the dating of this letter, see *ibid.*, 403n.

2. An especially heated exchange took place between Edmund Randolph and Patrick Henry on 9 June; it had begun on the 7th and it ended on the 10th. (See Convention Debates, IV above, especially pages 1082–83.)

James Madison to Thomas Jefferson New York, 24 July (excerpt)¹

Your two last unacknowledged favors were of Decr. 20. and Feby. 6.² They were received in Virginia, and no opportunity till the present precarious one by the way of Holland, has enabled me to thank you for them.

I returned here about ten days ago from Richmond which I left a day or two after the dissolution of the Convention. The final question on the new plan of Government was put on the 25th. of June. It was twofold 1. whether previous amendments should be made a condition of ratification. 2. directly on the Constitution in the form it bore. On the first the decision was in the negative, 88 being no, 80 only ay. On the second & definitive question, the ratification was affirmed by 89 ays agst. 79. noes. A number of alterations were then recommended to be considered in the mode pointed out in the Constitution itself. The meeting was remarkably full; Two members only being absent and those known to be on the opposite sides of the question.³ The debates also were conducted on the whole with a very laudable moderation and decorum, and continued untill both sides declared themselves ready for the question. And it may be safely concluded that no irregular opposition to the System will follow in that State, at least with the countenance of the leaders on that side. What local eruptions may be

occasioned by ill-timed or rigorous executions of the Treaty of peace against British debtors, I will not pretend to say. But altho' the leaders, particularly H—y—& M—s—n, will give no countenance to popular discontents violences it is not to be inferred that they are reconciled to the event, or will give it a positive support. On the contrary both of them declared they could not go that length, and an attempt was made under their auspices to induce the minority to sign an address to the people which if it had not been defeated by the general moderation of the party, would probably have done mischief.

Among a variety of expedients employed by the opponents to gain proselytes, Mr. *Henry first and after him Col. Mason introduced the opinions, expressed in a letter from a correspondent (Mister Donald or Skipwith i believe,) and endeavored to turn the influence of your name even against parts, of which I knew you approved.*⁴ In this situation I thought it due to truth as well as that it would be most agreeable to yourself and accordingly took the liberty to state some of your opinions on the favorable side. I am informed that copies or extracts of a letter from you were handed about at the Maryld Convention with a like view of impeding the ratification.⁵ . . .

1. RC, Madison Papers, DLC. For the balance of Madison's letter, some of which was written on 26 July, see Rutland, *Madison*, XI, 196–98. The text in italic type was in cipher which was decoded interlinearly by Jefferson.

2. See RCS:Va., 249–53; and Rutland, *Madison*, X, 473–75.

3. See From James Madison, 25 June, note 2 (above).

4. For Jefferson's 7 February 1788 letter to Alexander Donald which Patrick Henry referred to in the Virginia Convention, see Convention Debates, 9 June, note 7 (RCS:Va., 1088).

5. Madison refers to the 20 December 1787 letter that Jefferson wrote to him. On 31 December 1787, Jefferson sent an extract of this letter to Uriah Forrest, a Marylander in London who had requested his views on the Constitution. Forrest, who left for America in January 1788, was told that he could use the extract, but not to reveal the author. On 28 May 1788 Daniel Carroll, a former member of the Maryland Convention, wrote Madison that Jefferson's letter "was shown at Annapolis." (See Jefferson to Madison, 20 December, RCS:Va., 249–53; Forrest to Jefferson, 11 December, and Jefferson to Forrest, 31 December, Boyd, XII, 416–17, 475–79; and Carroll to Madison, 28 May, Rutland, *Madison*, XI, 64–65.)

VI. THE AFTERMATH OF RATIFICATION June–November 1788

Introduction

Reports and Celebrations of Virginia Ratification

The Virginia Convention ratified the Constitution on 25 June. Norfolk celebrated the adoption on the 27th, Alexandria on the 28th, and Winchester on the 30th. Most Virginia towns, however, probably combined their ratification festivities with their Fourth of July commemorations. Great Bridge, Hampton, Kempsville, Martinsburg, Portsmouth, Richmond, Shepherdstown, and Staunton are towns for which documents exist describing these combined celebrations. Norfolk and Winchester feted ratification again on the Fourth. The celebrants in the Kentucky town of Lexington did not know that the Constitution had been ratified, but that possibility was on their minds.

The news of Virginia ratification spread rapidly. In about three weeks, it went from one end of America to the other and to the new settlements in the West. It reached Bennington, Vermont, on 7 July; Fort Harmar in the Northwest Territory on the 9th; Portland, Maine, by the 10th; Charleston, South Carolina, on the 13th; and Augusta, Georgia, by 19 July. (See "Boston Celebrates the News of Virginia Ratification," 4 July, note 3, below; *Vermont Gazette*, 7 July, Appendix I, below; and John Doughty to Henry Knox, 5 July, note 1, *Charleston Columbian Herald*, 14 July, and *Georgia State Gazette*, 19 July, all in Mfm:Va.)

Expresses were especially important in spreading the news of Virginia ratification. An express went from Alexandria to Baltimore in a few hours. Three riders divided up the route from Richmond to Poughkeepsie, the site of the New York Convention, taking about one week to complete the route. One rider went from Richmond to Alexandria; a second from Alexandria to Baltimore, Philadelphia, Trenton, and New York City; and a third from New York City to Poughkeepsie. Another rider galloped from New York to Boston in less than two and a-half days. (Some documents printed below describe the arrival and celebration of the news in Baltimore, Philadelphia, New York, Poughkeepsie, and Boston. For documents related to other non-Virginia towns, see Mfm:Va.)

Public Commentaries on the Constitution

The public debate over the Constitution continued throughout 1788, reintensifying when the legislature convened in Richmond in October. Among other things, the legislature provided for the election of Senators and Representatives to the first federal Congress and requested

that Congress call a convention to consider amendments to the Constitution. From July through October, more than half of the essays appearing in Virginia's extant newspapers supported the Constitution. These newspapers also included many out-of-state reports demonstrating that opposition to the Constitution remained strong in many parts of America.

The most significant Virginia writings on the Constitution were two essays by the "Republican" printed in the *Virginia Independent Chronicle*. The "Republican," an advocate of a second convention to consider amendments, stopped writing upon learning that the 26 July Circular Letter of the New York Convention had recommended such a convention. In September Augustine Davis of the *Virginia Independent Chronicle* published a thirty-two-page pamphlet, *The Ratifications of the New Fœderal Constitution, Together With the Amendments, Proposed by the Several States* (Evans 21529), which included the amendments of those state conventions that had officially recommended amendments and the amendments proposed by a committee of the Maryland Convention and the North Carolina Convention, which had refused to ratify.

Virginia Federalists contributed only two pieces on the Constitution—an ode on Virginia's ratification by "W.A.R." and a brief item by "P.R."—both of which appeared in the *Virginia Independent Chronicle*. On 29 October the *Chronicle* published "Honestus," which briefly praised Virginia's ratification of the Constitution and warned against Antifederalist efforts to overturn it. The remainder of "Honestus" recommended reforming the state government (Mfm:Va.).

Virginia newspapers, however, reprinted many out-of-state Federalist items, all of which will eventually be printed in the fifth volume of *Commentaries on the Constitution*. These items are: "Peter Prejudice" (John Mifflin), *Philadelphia Federal Gazette*, 15 April; David Ramsay's 27 May oration in honor of South Carolina's ratification, *Charleston Columbian Herald*, 5 June (and a pamphlet edition); *New Jersey Journal*, 18 June; *Pennsylvania Mercury*, 28 June; James Wilson's Fourth of July oration in Philadelphia, *Pennsylvania Gazette*, 9 July (supplement); Dr. [William Pitt?] Smith, "An Ode, on the Adoption of the Federal Constitution," *New York Journal* and *New York Daily Advertiser*, 24 July; "A Federal Song: To the Tune of 'Rule Britannia'," *Albany Journal*, 4 August; Eli Lewis (words) and Edward Tyler (music), "A New Federal Song," *Pennsylvania Packet*, 5 August; "Solon, Jr.," *Providence Gazette*, 23 August; "Female Federalism," *Lansingburgh Federal Herald*, 25 August; and two North Carolina pamphlets, one by "A Citizen of North Carolina" (James Iredell) and the other by "A Citizen and Soldier," apparently printed in August and September, respectively. Lastly, the

Virginia Independent Chronicle and *Norfolk and Portsmouth Journal* advertised the sale of the book edition of *The Federalist* (RCS:Va., 654).

Because the contested Convention elections in Louisa and Warwick counties remained an issue, collections of relevant documents appeared in the *Virginia Gazette and Weekly Advertiser*, 4 September, and *Virginia Gazette and Independent Chronicle*, 1 November, respectively (RCS:Va., 615–17, 1458–64). A few items related to the first federal elections were also printed.

All of the above publications paled next to the numerous news reports, most of them from out-of-state, that were published. These reports include: (1) the announcement of Virginia ratification; (2) the Virginia Form of Ratification and the Convention's recommendatory amendments; (3) the celebrations of Virginia ratification; (4) the commemorations of the Fourth of July, especially the great Philadelphia procession; (5) the report of the Fourth of July "fracas" between Federalists and Antifederalists in Albany, N.Y.; (6) the acquiescence of backcountry South Carolina Antifederalists to their state's ratification; (7) the news of New Hampshire ratification; (8) the New Hampshire Convention's recommendatory amendments; (9) the prospects for ratification in New York, North Carolina, and Rhode Island; (10) the proceedings of the New York Convention, including a declaration of rights proposed on 7 July; (11) the huge New York City procession of 23 July; (12) the reports of New York ratification; (13) the New York Convention's Form of Ratification, recommendatory amendments, and Circular Letter; (14) the "purport" of the conciliatory address to that Convention by its president, Governor George Clinton; and (15) the ransacking of the office of the Antifederalist *New York Journal* following a celebration of New York's ratification.

Later news reports include: (1) the proceedings and failure of the North Carolina Convention to ratify the Constitution; (2) the North Carolina amendments; (3) the resolution of the North Carolina Convention stating that these amendments should be submitted to the Confederation Congress or a convention called for amending the Constitution; (4) the prospects of ratification by the next North Carolina convention; (5) the debate over and adoption by Congress of the ordinance calling the first federal elections; (6) the election ordinance of 13 September; (7) the public and private debate on the location of the federal capital; (8) the Pennsylvania county meetings seeking to procure amendments; (9) the proceedings of the Harrisburg (Pa.) Convention, including a petition for calling a second convention to consider amendments; (10) the Harrisburg Convention's proposed amendments; (11) the Pennsylvania legislature's rejection of the New York Circular Letter; (12) the willingness of Spain to surrender the navi-

gation of the Mississippi; (13) the belief that George Washington would be the first president; and (14) the report that Vermont was about to call a convention to consider the Constitution.

Private Commentaries on the Constitution

The private letters printed in this section consider the attitudes of the majority and minority of the state Convention; the lingering opposition to the Constitution; and the significance of Virginia's ratification. Private letters concerned with the issues of amending the Constitution and the calling of a second constitutional convention are not printed in this volume, but will appear in the Bill of Rights volumes in *The Documentary History of the Ratification of the Constitution and the Bill of Rights*.

Virginia Calls a Second Constitutional Convention

On 27 June 1788 the Virginia Convention enjoined the state's representatives to the new Congress under the Constitution "to exert all their influence" to have Congress propose to the states for their consideration, the forty amendments recommended by the Convention. This is one of the two methods that Article V of the Constitution provides for proposing amendments. The second procedure specifies that on the application of two-thirds of the states, Congress shall call a convention to propose amendments. Since many Virginia Antifederalists believed that Congress would either delay or refuse to propose amendments, they preferred the second method. Encouraged by the New York Convention's Circular Letter of 26 July 1788 calling upon the states to join it in asking Congress to summon a constitutional convention to propose amendments, the Virginia legislature under the leadership of Patrick Henry approved an application to Congress requesting that it summon such a convention. The legislature also approved letters to New York Governor George Clinton and the other state executives asking that their states concur in the call of a second convention. On 2 December Governor Beverley Randolph forwarded copies of Virginia's application to Congress to the state executives, and on 15 February 1789 he sent a copy of it to Virginia's newly elected federal representatives. The application was presented to the U.S. House of Representatives on 5 May. The Virginia legislature's application to Congress and the letters to Governor Clinton and to the other state executives are printed below.

Convention Expenses

A compilation of the expenses of the Virginia Convention is printed at the end of section IV above.

Spencer Roane to Philip Aylett
Richmond, 26 June¹

Yesterday the convention voted to ratify the constitution by a majority of ten. The Decision has been distressing & awful to great Numbers of very respectable Members; & it is generally beleived will be so received by the people. The minority is a very respectable one indeed, & made a most noble stand in Defence of the Liberties of the People—Mr. H. has given exemplary proofs of his Greatness, & in the opinion of many, of his Virtue. I have myself heard some Touches of Eloquence from him wch. wd. almost disgrace Cicero or Demosthenes.

Matthews is chosen Speaker of the House of Delegates; & John Jones, of the senate.

There is no rejoicing on Acct. of the Vote of ratification—it wd. not be prudent to do so; & the federalists behave with moderation and do not exult in their Success²—

I have not Time to say more—

1. RC, Unbound Emmet Collection, NN. Aylett (1767–1831) was a King William County planter, although the letter was addressed to him in King and Queen County. Both Aylett and Roane were married to daughters of Patrick Henry.

2. In an extract of a Richmond letter dated 25 June, a “gentleman” said: “The inhabitants of the town are either wise enough, or polite enough, to make no procession or other parade” (*Philadelphia Independent Gazetteer*, 2 July, V above. On 8 July the *New York Journal* reprinted this extract, italicizing the last five words of the sentence.). Writing on 26 June, another Richmond correspondent noted that “we shall have a general rejoicing” after the Convention adjourned (*Pennsylvania Packet*, 3 July, V above). No such celebration took place.

Possibly referring to more than just the town of Richmond, an Alexandria “gentleman” wrote on 30 June that “Since passing the new Constitution by this State, both parties have conducted themselves with great moderation and candour; and no rejoicings were permitted to aggravate the feelings of so respectable a minority” (*Connecticut Gazette*, 11 July. This item was reprinted once in Connecticut and twice in Massachusetts.).

Norfolk Celebrates the News of Virginia Ratification, 27 June¹

On Friday last the joyful intelligence of this State having adopted and ratified the Fœderal Union, was announced to the Public by a discharge of nine pieces of ordnance, (accompanied by an equal number from the shipping in the harbour.) The same ceremony was observed about eight o’clock in the evening which gave the signal for a general illumination throughout the Borough, where each person seemed to vie in emulation to excel. About 9 o’clock a Balloon (constructed by Mr. Balfour) ascended, amidst the acclamation of a numerous groupe of spectators; finally, the evening closed with every demonstration of joy.

1. This item was printed in the *Norfolk and Portsmouth Journal*, 2 July, and reprinted in the *Pennsylvania Packet*, 21 July. On 9 July the *Norfolk and Portsmouth Journal* printed an erratum, indicating that the phrase in angle brackets should read: "Responded by an equal number from the Town-Point and shipping at Portsmouth." "*This error*," continued the *Journal*, "*was occasioned entirely from misinformation*." See also Norfolk's Fourth of July celebration (below).

Alexandria Celebrates the News of Virginia Ratification, 28 June

According to George Washington, the news that Virginia had ratified the Constitution on 25 June arrived by mail in Alexandria on the evening of the 27th and that "two hours before day" on the 28th an express rider from New York City (Colonel David Henley) brought word that the New Hampshire Convention had adopted the Constitution on the 21st. On the 28th, Washington and others celebrated the news of both ratifications at John Wise's Fountain Tavern in Alexandria. Colonel Henley, one of the celebrants, headed back north with the news of Virginia's ratification on the 29th.

*George Washington to Charles Cotesworth Pinckney
Mount Vernon, 28 June (excerpt)*¹

I had the pleasure to receive, a day or two ago, your obliging letter of the 24th of last month, in which you advise me of the ratification of the fœderal Constitution by South Carolina. By a more rapid water conveyance, that good news had some few days before arrived at Baltimore, so as to have been very opportunily communicated to the Convention of this State, in session at Richmond.² It is with great satisfaction, I have it now in my power to inform you that, on the 25th instant, the Delegates of Virginia adopted the Constitution, in toto, by a division of 89 in favour of it to 79 against it: and that, notwithstanding the majority is so small, yet, in consequence of some conciliatory conduct and recommendatory amendments, a happy acquiescence it is said is likely to terminate the business here—in as favorable a manner as could possibly have been expected.

No sooner had the Citizens of Alexandria (who are fœderal to a man) received the intelligence by the Mail last night, than they determined to devote this day to festivity. But their exhilaration was greatly encreased and a much keener zest given to their enjoyment; by the arrival of an Express (two hours before day) with the News that the Convention of New Hampshire had, on the 21st instant, acceded to the new Confœderacy by a majority of 11 voices, that is to say, 57 to 46.

Thus the Citizens of Alexandria, when convened, constituted the first public company in America, which had the pleasure of pouring libation to the prosperity of the ten States that had actually adopted

the general government.³ The day itself is memorable for more reasons than one. It was recollected that this day is the Anniversary of the battles of Sullivan's Island and monmouth⁴—I have just returned from assisting at the entertainment; and mention these details, unimportant as they are in themselves, the rather because I think we may rationally indulge the pleasing hope that the Union will now be established upon a durable basis, and that Providence seems still disposed to favour the members of it, with unequalled opportunities for political happiness. . . .

George Washington to Tobias Lear
Mount Vernon, 29 June⁵

Your letter of the 2d: instant⁶ came duly to hand, and obliged me by its communications.—

On friday last, (by the Stage), advice of the decision of the *long*, and *warmly* (with temper) contested question, in the Convention of this State, was received.—89 ayes—79 Noes, without previous amendments;—and in the course of that Night, Colo. Henley, Express from New York on his way to Richmond, arrived in Alexandria with the news of the ratification by the State of New Hampshire.—This flood of good news, almost at the same moment, gave, as you will readily conceive, abundant cause for rejoicing in a place, the Inhabitants of which are *all* foederal.—The Cannon roared, and the Town was illuminated yesterday, as *magnificent* a dinner as Mr. Wise could provide (to which this family were invited and went), was displayed before the principal *Male* Inhabitants of the Town; whose Ears were saluted at every quaff with the melody of foederal Guns.—And on Monday, the business it seems is to recommence and finish, with fiddling & Dancing, for the amusement, & benefit of the Ladies.—

The final question was taken on the 25th.; and some recommendatory, or declaratory rights, it was supposed (by my corrispondents in Richmond), would follow the ratification of the Constitution the next, or following day.—As these two adoptions make ten affirmatives without a negative, and little or no question is made of North Carolinas treading in the steps of Virginia, it is hardly to be conceived that New York will reject it.—Rhode Island, hitherto, has so far baffled all calculation, that he must be a hardy man, indeed, who will undertake to declare what *will be* the choice of the Majority of *that* State, lest he should be suspected of having participated of *their phrensy*.

The Accts. from Richmond are, that the Minority will acquiesce with a good grace—Mr. Henry it seems having declared that, though he can

not be *reconciled* to the Government in its *present* form, and will give it every *constitutional* opposition in his power; yet, that he will submit to it peaceably; as every good citizen he thinks ought; and by precept and example will endeavour, within the sphere of his action, to inculcate the like principles into others.—

You have the best wishes of every one in this family, but of none in a higher degree than those of, Your Affect. friend and Obedient Servt.

[P.S.] Pray offer my compliments. to Mr. Langdon—

*Virginia Journal, 3 July*⁷

On Wednesday the 25th ult. the Convention of this State ratified the Constitution proposed to the United States of America by the late General Convention. The news of this important event arrived here on Friday evening—As a testimony of the joy which the inhabitants felt, the town was immediately illuminated in an elegant manner; and the agreeable intelligence was communicated to our neighbours, up and down the river, by a well-timed discharge of cannon.—On Saturday many of the gentlemen of the town and some from the country, who had heard the *glad tidings*, dined together at Mr. Wise's tavern on a sumptuous dinner prepared for the occasion, to which General Washington, Col. Humphreys, and many genteel strangers were invited.—The General was met some miles out of town by a party of gentlemen on horseback, and escorted to the tavern, having been saluted on his way by the light infantry company in a respectful manner.—His arrival was announced by a discharge of ten cannon under the direction of Captain Greenway. After dinner the following toasts, each followed by a discharge of cannon, were drank, expressive of the high satisfaction of the assembly, the happiness of which was rendered complete by that admirable harmony of sentiment which universally prevailed:

1st. The Convention of Virginia: May the Constitution of the United States of America be executed with the wisdom and integrity with which it was framed.

2d. The States which have ratified the Constitution: May their example be followed by those who are yet to decide.

3d. His Most Christian Majesty: As the effects of his friendship will be immortal, so may the gratitude of America never cease.

4th. The memory of those heroes who, in the late war, laid down their lives on the altar of freedom.

5th. The Marquis La Fayette: May the services he has rendered America be engraven on the hearts of her citizens.

6th. Our worthy Representatives in the present Convention, Dr. David Stuart, and Col. Charles Simms.

7th. The Potomack: May its navigation be improved to its sources, and its trade flourish to the degree bountiful nature intended.

8th. The learning, agriculture, manufactures, and commerce of America.

9th. The majesty of the people of America: Let the nations of the world look to them as an example, where, on mature deliberation, and with one accord, they have laid down one form of Government and accepted another.

10th. Union and harmony among the members of the federal empire: May its various natural resources be improved to make the people happy and the nation glorious.

On Monday the rejoicings were concluded by a ball in the evening, adorned by a large collection of elegant ladies, and the discharge of cannon.

1. FC, Washington Papers, DLC. Printed: Fitzpatrick, XXX, 9–11. In the remaining portion of his letter, Washington wrote about the prospects for ratification by North Carolina, New York, and Rhode Island. Pinckney (1746–1825), a Charleston lawyer-planter and a member of the South Carolina House of Representatives, was an aide-de-camp to Washington during the Revolution, and in 1783 he was brevetted a brigadier general. He signed the Constitution in September 1787 and voted for ratification in the South Carolina Convention in May 1788.

2. On Saturday, 31 May, the news of South Carolina's ratification arrived in Baltimore by sloop, and on 3 June both Baltimore newspapers, the *Maryland Gazette* and the *Maryland Journal*, printed this news. For a "handbill" announcing South Carolina's ratification that was sent from Baltimore to Richmond, see John Vaughan to John Langdon, 16 June, note 3 (V above). Some members of the Virginia Convention knew about South Carolina's ratification at least as early as 4 June. (See William Grayson to Nathan Dane, 4 June, V above.)

3. In his diary for this day, Washington wrote: "The Inhabitants of Alexandria having received the News of the ratification of the proposed Constitution by this State, and that of New Hampshire—and having determined on public rejoicings, part of which to be in a dinner, to which this family was envited Colo. Humphreys my Nephew G.A Washington & myself went up to it and returned in the afternoon" (*Washington Diaries*, V, 351).

4. On 28 June 1776 Americans stationed on Sullivan's Island (guarding the harbor of Charleston, S.C.) successfully repulsed an attack by the British forces under General Henry Clinton. This defeat ended the British army's "Southern expedition" which had been planned to subdue the four southernmost colonies. At the Battle of Monmouth in New Jersey on 28 June 1778, a Washington-led American army fought to a draw against a Clinton-led British army, which had evacuated Philadelphia and was enroute to New York City. This battle was the last major Revolutionary battle in the North.

5. RC, owned by Helen Marie Taylor, Orange, Va. For another account by Washington of the arrival of the news of ratification in Alexandria, see his 29 June letter to Benjamin Lincoln (Fitzpatrick, XXX, 11–12).

6. See Washington to Henry Knox, 17 June, at note 4 (V above).

7. This item has been transcribed from the Baltimore *Maryland Gazette*, 8 July, which

reprinted it from the no longer extant *Virginia Journal* of 3 July. It was also reprinted in the *Pennsylvania Packet*, 11 July.

Baltimore Celebrates the News of Virginia Ratification, 28 June

On the evening of 27 June, the mail arrived in Alexandria with the news of Virginia's ratification. On the 28th, stagecoach operator Colonel Gabriel Van Horne of Alexandria sent the news by express to William Goddard of the Baltimore *Maryland Journal* who received it that "Evening." Goddard quickly struck a handbill. Although this handbill has not been located, its contents have been reconstructed by comparing the *Maryland Journal's* account of 1 July (printed below) with reports published in several out-of-state newspapers. It is likely that the handbill was headed "Baltimore, June 28, 1788. The TENTH PILLAR"; and that it included the vote total on ratification (incorrectly given as 88 to 78), the text of the Form of Ratification, a summary of a Richmond letter stating that the Virginia Convention rejected prior amendments by eight votes, and a notice that Baltimore would celebrate with "a discharge of artillery, from Federal-Hill, at 7 o'clock, and a display of fire-works, from the Court-House Hill, at 9."

William Goddard reprinted the text of the handbill (minus the notice) in the *Maryland Journal* on 1 July, together with a description of the Baltimore celebration. The handbill's report was reprinted, in whole or almost so, in the *Carlisle Gazette*, 2 July; *Philadelphia Independent Gazetteer*, 2 July; *Pennsylvania Mercury*, 3 July; and *Pittsburgh Gazette*, 12 July. (See also note 1, below.)

On 1 July Baltimore's other newspaper, the *Maryland Gazette*, also published the Form of Ratification, stating that it had been sent by express from Richmond to the merchants of Baltimore. Following the Form, the *Gazette* noted: "The important question was decided in Virginia by 89 ays against 79 noes. Previous amendments were rejected by 88 against 80. The information adds, that subsequent amendments would be recommended; but were still to be settled." The *Gazette* also described Baltimore's celebration (note 2, below).

Maryland Journal, 1 July

The TENTH PILLAR.

IMPORTANT INTELLIGENCE (received last Saturday Evening) from VIRGINIA; communicated by Col. VAN HORNE, to the Printer hereof, (by Express from Alexandria) for the Gratification of *this Federal Community*.

RATIFICATION of the New Constitution, by the Convention of Virginia, on Wednesday last, by a Majority of 10; 88 agreeing, and 78 dissenting to its Adoption.

[Virginia Form of Ratification]

A Letter from Richmond advises, that a Motion for previous Amendments was rejected by a Majority of Eight; but that some Days would

be passed in considering subsequent Amendments, and these, it appeared, from the Temper of the Convention, would be *recommended*.¹

The above Intelligence having been announced to the Public in Handbills, it was received with the strongest Demonstrations of patriotic Joy. An immediate Discharge of Artillery took Place on Federal-Hill, and on board several Vessels^(a) in the Harbour, with a Display of Fire-Works from the Court-House:—After which a Number of Citizens, partook of an elegant Entertainment at the Fountain-Inn.—Social Mirth and Hilarity pervaded each Federal Heart, and crowned the festive Board.²—The following TOASTS were drank on the happy Occasion.

1. The New Constitution.
2. Our Sisters Virginia and New-Hampshire, and the other States which have adopted the Constitution.
3. The illustrious GEORGE WASHINGTON.
4. May the Virtue of the People remain unshaken, and none but decided Friends to the Constitution be chosen to put it in Motion.
5. A speedy Revival of Public and Private Credit.
6. Wise Federal Laws, and well executed.
7. The Learning, Agriculture, Manufactures and Commerce of America.
8. The Flag of the United States of America.
9. The PRINCE who assisted America in establishing INDEPENDENCE.
10. May the Liberty of America be perpetual.

(a) *On this Occasion, the Brig William, of Waterford, was particularly distinguished.*

1. This summary of a Richmond letter was reprinted in the *Kentucky Gazette*, 26 July, in New York City and Poughkeepsie broadsides, 2 July (Evans 21559, 45393; and Mfm:Va.), and in fourteen newspapers outside Virginia by 17 July: N.H. (1), Mass. (4), Conn. (2), N.Y. (1), Pa. (5), Md. (1). After the Virginia Convention adopted commendatory amendments, some Maryland Federalists apparently became alarmed. On 6 July a Maryland "gentleman" wrote that "It was for a long time doubtful whether the convention of Virginia would embrace the new federal faith or not, and it was carried at last but by a very small majority. They have however clogged it with a bill of rights and some considerable amendments, which have damped the spirits of many of our furious and zealous federalists" (*Philadelphia Independent Gazetteer*, 11 July).

2. In describing this celebration, the Baltimore *Maryland Gazette*, 1 July, stated: "The account of these interesting events [Virginia's and New Hampshire's ratification] was received by the inhabitants of this place with every demonstration of heart-felt satisfaction, and we dare say will give equal pleasure in almost every part of the State. On Saturday evening the artillery was fired from Federal-Hill, and some very beautiful fire-works displayed from the Court-house hill, after which a number of citizens partook of an elegant supper at Mr. Grant's." (A list of the ten toasts followed.) This description was reprinted in the *Pennsylvania Mercury*, 5 July, and the *New York Journal*, 9 July.

**James Madison to Alexander Hamilton
Richmond, 29 June¹**

Inclosed is the final result of our conventional deliberations. The intended address of the Minority proved to be of a nature apprehended by me. It was rejected by the party themselves when proposed to them, and produced an auspicious conclusion to the business. As I shall set out in a few days for N. York, I postpone further explanations. I have this instant the communications from N. Hampshire, via Poughkeepsy; also your two favors of the 19 & 20.² Yrs. affectly.

1. RC, Hamilton Papers, DLC. This undated letter was postmarked, Richmond, 30 June. Since Madison states that he had just received the news of New Hampshire's ratification, the letter was probably written on 29 June, the day on which this news arrived. (For the arrival of the news, see David Stuart to Harry Innes, 29 June, V above.)

2. For letters that Madison received from New York concerning New Hampshire's ratification, see RCS:Va., 1673-74, and for Hamilton's letters of 19 and 21 (not 20) June respecting the New York Convention, see Syrett, V, 10-11, 35.

**St. George Tucker to Theodorick Bland Randolph
and John Randolph, Richmond, 29 June (excerpt)¹**

. . . You will have heard that the Constitution has been adopted in this State; that Event, my dear Children, affects your interest more nearly than that of most others. the recovery of British debts can no longer be postponed, & there now seems to be a moral certainty that your patrimony will all go to satisfy the unjust debt from your Papa to the Hanbury's. The consequence, my dear boys, must be obvious to you—your sole dependence must be on your own personal Abilities & Exertions: it is happy for you, my sons, that the Event has been so long postponed as to give an opportunity of laying the foundation of a good Education for you both. But it is barely the foundation: the superstructure must depend upon your assiduity. The present moment is the most precious of your lives; I trust my dear Fellows you will not suffer it to pass off without availing yourself of every opportunity of Improvement. . . .

1. RC, Bryan Family Manuscripts, ViU. This letter was addressed to "Masters Theodorick & John Randolph" in New York. Theodorick Bland Randolph (1771-92) and John Randolph (1773-1833), stepsons of St. George Tucker, had recently left their Virginia home to go to New York City to study at Columbia College. The brothers had been at Princeton College in 1787.

Winchester Celebrates the News of Virginia Ratification, 30 June

On 25 June Alexander White, who had published an essay in support of the Constitution in February (RCS:Va., 401-8, 438-45), and his fellow Frederick County delegate John Shearman Woodcock voted to ratify the

Constitution. The next day White wrote a letter to John Hatley Norton, the mayor of Winchester, reporting Virginia's ratification, and on 2 July the town's two newspapers, the *Virginia Centinel* (immediately below) and the *Virginia Gazette*, printed his letter. The *Gazette's* publisher noted that White's letter was brought to town by Ralph Humphreys and Ebenezer Zane on Sunday evening, the 29th of June. (Humphreys and Zane represented the western counties of Hampshire and Ohio, respectively, in the Virginia Convention, where both had voted to ratify.) On both 30 June and 4 July the people of Winchester celebrated ratification.

Virginia Centinel, 2 July

Ninth Pillar.

The very agreeable intelligence of the ratification of the FEDERAL CONSTITUTION by this State, which completes the NINTH PILLAR of the GRAND NATIONAL FABRIC, was received in this town on Sunday evening last, in a letter from ALEXANDER WHITE, Esq. one of the Delegates to the Convention, from the county of Frederick, of which the following is a copy:

RICHMOND, June 26, 1788.

SIR,

"I have the pleasure to inform you, that yesterday the Convention came to a final decision respecting the new Constitution.—A resolution for the admission of previous amendments was first proposed,—this was rejected by a majority of 8. The question for adoption was then put, and agreed to by a majority of 10, to wit,

For the adoption,	89,
Against it,	79.

"A Committee of thirteen is appointed to prepare amendments to be recommended to Congress—they will make their report to-day, when it is hoped the business of the Convention will end. I am sorry there was not a greater majority, but if I may judge from the cool dispassionate manner in which the great subject was discussed, and the conduct of gentlemen in opposition since the determination, I cannot entertain a doubt of the peaceable reception of the government; I have as little doubt of Congress agreeing to incorporate in the Constitution such articles as the States shall suppose necessary to secure their liberties—when this is done, discontent must subside.

"I congratulate you, Sir, and all my worthy constituents on this auspicious event—which you will please to publish in the most effectual manner for their information.

"I am, with great respect, Sir, your most obedient Servant,

ALEXANDER WHITE."

To The MAYOR of WINCHESTER.

*Winchester Virginia Gazette, 2 July*¹

On receipt of the above pleasing and important information, the extreme joy of the inhabitants of this town was fully evinced by the sparkling eyes and the elated spirits which shone conspicuous through all ranks of people. Being desirous publicly to demonstrate their approbation of the happy decision of a subject for which they had been several days waiting with the most anxious expectation, on Monday afternoon the Infantry company, commanded by Capt. *Hieskell*, and under the immediate orders of Major *McGuire*, appeared on the parade, when, after discharging nine volleys in honor of the *nine pillars* which now support the glorious *American Fabric*, they marched through the town, performing a number of evolutions, street-firings, &c. as they passed. Towards evening a large quantity of combustibles were collected and conveyed to *Federal Hill*, by the *Federal Waggon*, drawn by nine horses, decorated. As soon as night came on, fire was set to the materials collected, which exhibited a large and beautiful bonfire, and which was seen for many miles in the vicinity. The Court-House, and several other buildings were elegantly illuminated on this joyful occasion. At nine o'clock, a select number of *pure* Federals retired to Mr. *McGuire's*, and spent the remainder of the evening in the greatest conviviality, mirth, and good humour. After supper the following toasts were announced, and drank with the most heartfelt satisfaction.

1. His Excellency General Washington.
2. His most Christian Majesty.
3. The Marquis de la Fayette.
4. The Hon. Benjamin Franklin, Esq.
5. The memory of the American Worthies who fell in the late revolution.
6. The United States.
7. The memorable 4th of July.
8. The Patrons of Freedom.
9. The friends of the Federal Constitution.
10. May the manufacturing spirit increase as the Federal Union becomes permanent and respectable.
11. The Majority of the Virginia Convention.
12. May the Federal Pillars be raised to the highest pitch of greatness.
13. May the sword never be drawn but in the cause of justice.

The company then departed, solacing themselves with the pleasing expectation, that the consequences which will result from the establishment of that government they had been celebrating, would render us a respectable, happy, and wealthy people.

1. This account was reprinted in the *Pennsylvania Packet*, 15 July. A similar but briefer description of the Winchester celebration of Virginia's ratification appeared in the *Virginia Centinel* on 2 July (Mfm:Va.).

Philadelphia, New York City, and Poughkeepsie Celebrate the News of Virginia Ratification, 30 June-2 July

On 25 June, at 1:00 P.M., express rider David Henley left New York City for Richmond with the news of New Hampshire's ratification. Early in the morning of 28 June, Colonel Henley reached Alexandria, where he met an express from Richmond carrying the news of Virginia's ratification. Henley remained in Alexandria for the festivities honoring ratification and departed the next day, the 29th, for New York City. He reached Philadelphia on 30 June, between 6:00 and 7:00 P.M., and the bells of Christ Church rang in celebration. On 2 July, between 2:00 and 3:00 A.M., Henley arrived in New York City.

Some time between 3:30 A.M. and dawn, ten cannons were discharged and the bells of New York City were "set a ringing" for several hours. Shortly after Henley's arrival, William Smith Livingston left the city for the New York Convention in Poughkeepsie with the news of Virginia's ratification. Colonel Livingston dismounted in Poughkeepsie between 12:30 and 1:00 P.M., after a ride of between nine and ten hours. He went immediately to the Convention chamber, arriving while Governor George Clinton was speaking. His news "occasioned such a buz through the House, that little of his Excellency's Speech was heard" (*New York Daily Advertiser*, 8 July). That evening, ten cannons were fired in Poughkeepsie.

In both New York City and Poughkeepsie, printers struck off similar broadsides announcing Virginia ratification (Evans 21559 and 45393). See Mfm:Va. for photographic reproductions of these two broadsides.

In addition to the documents printed immediately below, see the following on Mfm:Va.: Samuel Blachley Webb to Joseph Barrell and to Catherine Hogeboom, 2 July; Henry Knox to Jeremiah Wadsworth, 2 July; *New York Journal*, 2 July; Thomas Goadsby to Kirkman, Holmes, and Company, 3 July; and *Charleston City Gazette*, 22 July.

New York Independent Journal, 2 July

By a person who arrived in town last night from Philadelphia,¹ just as this Paper was going to press, we were informed, "that an express had arrived at Philadelphia, betwixt six and seven o'clock on Monday evening [30 June], with the important intelligence that Virginia had ADOPTED the New Constitution; in consequence of which, all the bells in the city were rung, and continued till twelve o'clock that night." These are all the particulars we could learn, but we hope this day's post will bring a confirmation of the above very important information.

Pennsylvania Gazette, 2 July

TENTH PILLAR.

RATIFICATION of the NEW CONSTITUTION by the *Convention of Virginia*, on Wednesday last, by a majority of Ten; 88 Agreeing, and 78 Dissenting to its Adoption.

[Virginia Form of Ratification, with a notation at the end of the Form that the Constitution followed.]

On the receipt of the foregoing intelligence on Monday evening last, a general joy pervaded this city, and the bells of Christ-Church were rung, which was repeated yesterday morning, accompanied with a salute of cannon.

The accession of the commonwealth of VIRGINIA, to the form of government for THE NEW UNION fixes the fate and ensures the happiness of AMERICA. The three states which have not yet ratified the Fœderal Constitution, will find irresistible inducements to join the confederacy. The merits of the Constitution itself, the scattered situation of the undecided states, the powerful and respectable body in each of them attached to *the Constitution*, and to *the Union*, the miserable condition of one of the undecided states, all afford us a comfortable and certain prospect of our being, once more, united in the bonds of dearest interest and affection. Our present situation is, indeed, like that of the glorious sun, when his powerful beams first dispel the darkness and terror of a tempestuous, awful night. The œconomy, the industry, the virtue, and the steady perseverance of THE PEOPLE in the principles which have led to this great reformation in our government, can alone raise OUR SUN to its meridian height.²

Extract of a letter from Richmond, dated June 25.

[For the text of this letter, see *Pennsylvania Packet*, 2 July, V above.]

Mr. Maddison made the first motion in the United States, in the Assembly of Virginia, for appointing a Convention to frame a new government. How great must be the pleasure and triumph of that amiable young man, to see his patriotism and good sense thus crowned with success!³

Philip Schuyler to Stephen Van Rensselaer
Poughkeepsie, 1:30 P.M., 2 July⁴

Less than half an hour ago Colonel William Smith Livingston arrived here in 9¾ hours from New York the dispatches he brought announced the adoption of the new Constitution by Virginia on Saturday Wednesday the 25 [ult:?] by a Majority of ten in Its favor.—I congratulate you on this very Important Occasion with all that satisfaction which arises in the heart, impressed with the danger to which the country would probably have been exposed had the determination of Virginia been adverse.—

I trust this event will have a proper influence on the minds of those in the Convention here who have not ~~totally~~ resolved to shut their

heirs [i.e., ears] and to steel their hearts against all conviction.—I do believe, nay I perceive that ~~many~~ several of those in opposition who came with prejudices created by influence will not sacrifice their Country to the Obstinacy of certain desperados—I do not apply this term to those who have taken a lead in debate in opposition to the constitution, but to others who—but prudence dictates that I should not too strongly mark the men I alluded to.—

Colo: Hamilton is well, so am I, and both of us Join in love to you and all our friends—

[P.S.] pray Let our friends be prudent in rejoicing on this Occasion.—It will tend more to Accomplish our public & private interests than a Contrary conduct

New York Journal, 3 July⁵

Convention of Virginia.

Yesterday morning Col. Henley returned from Virginia, to which place he was expedited on Wednesday last with the intelligence of the ratification of the new constitution by New-Hampshire.

Immediately on the arrival of Col. Henley, William Livingston, Esq. sat off for Poughkeepsie with the intelligence.

Colonel Henley, having arrived at Alexandria, met an express bound to New-York, with the intelligence of the RATIFICATION of the new constitution by the state of VIRGINIA. This interesting circumstance rendered Colonel Henley's further pursuit fruitless; he therefore returned, with the same zealous expedition he went, to bring the tidings to the anxious expectants in New-York, and arrived here, at THREE o'CLOCK yesterday morning.

On this occasion the bells of the city were set a ringing immediately, and at FIVE o'clock TEN guns were fired in honor of the ten states which have adopted the constitution.

The purport of the Virginia intelligence, is, that after a session of eighteen days, in which the merits of the constitution were fully investigated, clause by clause, both parties being equally zealous in the cause, speaking freely, and discussing (sometimes) dispassionately, on the TWENTY-FOURTH instant, viz. Tuesday sen'night, the *decisive* question was put, whether the convention would RATIFY the constitution, when there appeared—YEAS, 88, and NAYS, 78, giving a MAJORITY of TEN.—*Thus have TEN STATES RATIFIED the CONSTITUTION proposed by the GENERAL CONVENTION, who sat at Philadelphia in September last.*

RATIFICATION of the NEW CONSTITUTION, by the VIRGINIA CONVENTION, on *Tuesday*, the 24th instant.

[Virginia Form of Ratification, with a notation at the end of the Form that the Constitution followed.]

Our readers will readily perceive that the preceding ratification is more pointed, and differs in many instances, very materially from any one yet produced.

We are further informed, from Virginia, that the CONVENTION are still sitting; and that their business is to prepare such AMENDMENTS to the general system as they, on mature deliberation, may judge proper.

Poughkeepsie Country Journal, 8 July

On Wednesday last at half after 12 o'clock P.M. Col. Wm. S. Livingston arrived at this place with the news of the Ratification of the new Constitution by the State of Virginia—It arrived at New-York at 37 minutes after two in the morning of the same day.—The distance between New-York and this place is 82 miles, and from the stoppages on the road, the journey was performed in 7 hours and one quarter.—The ruffness of the road and the change of horses being but twice, rendered the expedition an act of contemplation; and it appears from information to have been performed on this occasion with more expedition than has hitherto been known on that road. Col. Livingston was received with great joy by the federal party, and in the evening Ten guns were fired in honor of the Ten states which have adopted the Constitution.

1. On 2 July the *New York Daily Advertiser* reported: "By a passenger of veracity, who came in the stage from Philadelphia, and arrived here last evening, we are informed, That the State of Virginia has ADOPTED the Federal Constitution."

2. This paragraph was reprinted in the *Virginia Centinel*, 16 July, and in seven newspapers outside Virginia by 24 July: N.H. (1), Mass. (2), R.I. (2), Pa. (1), Md. (1).

3. This paragraph was reprinted in the *Virginia Centinel*, 16 July, and in seven newspapers outside Virginia by 26 July: N.H. (1), Mass. (3), Pa. (1), Md. (1), S.C. (1).

4. RC, Henry Ford Museum Bicentennial Collection, Edison Institute, Greenfield Village and Henry Ford Museum, Dearborn, Mich. Schuyler dated his letter: "Poughkeepsie Wednesday July 2d 1788/half after One P M." Van Rensselaer (1764–1839), Schuyler's son-in-law, was the patroon of a vast manor in Albany County. Schuyler put the time of Colonel William Smith Livingston's arrival in Poughkeepsie at about 1:00 P.M.; while the *Poughkeepsie Country Journal* and New York Convention delegate Cornelius C. Schoonmaker said it was 12:30 P.M. (See *Country Journal*, 8 July, below; and Schoonmaker to Peter Van Gaasbeek, 2 July, Roosevelt Collection, Franklin D. Roosevelt Library, Hyde Park, N.Y.)

5. This report was reprinted in whole or in part nine times by 21 July: Vt. (2), N.H. (1), Mass. (1), Conn. (3), N.Y. (2). On 2 July, at "4 o'clock, A.M.," the printer of the *New York Journal*, inserted this item in his newspaper: "NEWS from VIRGINIA! What this news is, could not be ascertained last evening, but we shall doubtless hear THIS DAY

by express. It is pretty well authenticated, that the bells rang at Philadelphia Monday evening—and it is *supposed*, that the cause was, the RATIFICATION of the constitution, by Virginia! The express above referred to, arrived, of which particularly to-morrow.”

Virginia Centinel, 2 July¹

This happy event will form an epocha more peculiar in its nature, more felicitating in its consequences, and more interesting to the philosophic mind, than ever the political history of man has displayed. Where is the country in which the principles of civil liberty and jurisprudence are so well understood as in this; and where has ever such an assembly of men as formed the late General Convention been deputed for such a purpose? To see an assemblage of characters, most of them illustrious for their integrity, patriotism, and abilities, representing many sovereign states; framing a system of government for the whole, in the midst of profound peace; unembarrassed by any unfavourable circumstances abroad, uninfluenced by any selfish motive at home; but making the most generous concession to each other, for the common welfare, and directing their deliberation with the most perfect unanimity, to see a constitution of government thus formed, and fraught with wisdom, economy and foresight, adapted to the political habits of their constituents, to the state of society and civilization, to the peculiar circumstances of their country, and to those enlightened sentiments of freedom and toleration so dear to all good men: and finally, to see this constitution ratified and adopted by several millions of people, inhabiting an extensive country, not from any coercion, but from mere principles of propriety, wisdom and policy—these are objects too great and too glorious to be viewed with common admiration and delight: the idea alone is animating to every bosom susceptible of the emotion of patriotism or philanthropy. The attempt alone reflects a dignity upon hu[man?] [— —]² [se?]cures freedom and public happiness to remote posterity.

1. This item followed Alexander White's letter to the mayor of Winchester announcing Virginia's ratification (see above) and a description of Winchester's celebration honoring that ratification (see Mfm:Va.).

2. At least one line is missing at this point.

Virginia Centinel, 2 July¹

FROM a CORRESPONDENT.

The calm, cool and deliberate manner in which the important subject of the Federal Constitution has been investigated, will be a lasting monument of national gratitude to those venerable statesmen, who have so eminently distinguished themselves in forming this new plan

of government. Posterity will, with gratitude, view the services of this Convention; and with extacy and admiration they will contemplate, in the records of time, the magnanimity and disinterested patriotism which has been so eminently distinguished on this occasion. No doubt can be entertained but that the minority will reconcile themselves to it with their usual love for their country—and the virtuous majority will be echoed with applause throughout succeeding generations.

1. On 2 July the Winchester *Virginia Gazette* and the *Norfolk and Portsmouth Journal* (minus the last sentence) also printed this item, indicating that either the "CORRESPONDENT" sent the manuscript version to several printers simultaneously or that it had been published earlier in another newspaper. The best possibility for an earlier printing is the non-extant Petersburg *Virginia Gazette*, 26 June, which published another report of Virginia's ratification. (See V above for this report.) The paragraph by "a CORRESPONDENT" was reprinted in the *Pennsylvania Packet*, 15 July.

W.A.R.

Virginia Independent Chronicle, 2 July¹

*On the adoption of the FEDERAL CONSTITUTION
by the State of Virginia.*

Struck with a theme, so new!—so unconfin'd!
As new, Ideas, rush into my mind:
Wrapt by Apollo, in Poetic fire;
Soft numbers, melt, melodious, on my Lyre:
I rise, to Hail Columbia, Great, and Free!
Ten States (at least) in Harmony agree:
The Fœderal Dome, supported thus, will rise,
And bend its Arches thro' the Azure Skies:
The Sons of Freedom, now their rank may Claim,
And greatly rival, Greek, and Roman Fame!
The Clouds, and Darkness, late o'erspread the Land:
(Our Wealth, and Commerce, wholly at a stand)
The prospect brightens:—UNION now appears,
To Crown the blessings of revolving Years!
Receive the Cherub,—never to depart;
But sit enthron'd, in ev'ry Freeman's heart:
No bold invaders, then shall brave our shore;
Nor dire disputes, distract our Councils more:
A lib'ral spirit, shall pervade the whole;
And all be animated by one Soul!
What Power shall crush?—What Influence shall divide?
A chosen band of Brothers thus allied

1. This verse was reprinted in the *Virginia Centinel*, 16 July, the *Virginia Gazette and Weekly Advertiser*, 24 July, and in six newspapers outside of Virginia by 13 August: Mass. (1), N.Y. (1), Pa. (2), Md. (1), S.C. (1).

Virginia Independent Chronicle, 2 July¹

As the great and important question relative to the new Fœderal Government, is decided upon, a correspondent, begs leave to suggest the propriety of the Legislature of this state making an offer of that elegant new building intended for the capitol, and this respectable city, to the Congress of America.—The advantage to be derived from having the seat of the government of the United States fixed in Virginia, cannot but be evident to every one—and the agreeable manner in which that honorable body could be accommodated by having a building superior in every point of view to any in America, might be an inducement to fix their residence here.—It is well known that Virginia is the most central state—and her staple commodity is an object, material in supporting the credit of the United States.—But should Congress decline this offer from a wish of being more retired, this state can with equal advantages accommodate the new government, by offering the public buildings in Williamsburg, and that city,—a situation that is possessed of all the advantages of communication—remarkably healthy—and furnished with every necessary in an ample manner.

1. This item was reprinted in the *Norfolk and Portsmouth Journal*, 9 July, the *Virginia Centinel*, 16 July, and in four newspapers outside of Virginia by 28 July: N.Y. (1), Pa. (1), Md. (1), S.C. (1).

Fourth of July Celebrations in Virginia

Newspapers printed reports of the Fourth of July commemorations in Great Bridge, Hampton, Kempsville, Lexington, Martinsburg, Norfolk, Portsmouth, Richmond, Shepherdstown, Staunton, and Winchester. With the exception of Lexington, which had not yet heard about Virginia's ratification, these towns combined their Fourth of July and ratification celebrations. The toasts at Lexington, however, demonstrated that the Constitution and the Virginia Convention were in the thoughts of the celebrants. Norfolk and Winchester, which had already feted ratification, celebrated it a second time.

These Fourth of July commemorations were characterized by flags and banners, processions of craftsmen and public officials, militia parades, cannon firings, illuminated and decorated private houses and public buildings, elaborate dinners and barbecues at which ten, thirteen, or fourteen toasts were drunk, elegant balls, bonfires, orations, and fireworks.

Lexington Celebrates the Fourth of July

*Kentucky Gazette, 5 July*¹

Yesterday being the Aniversary of the declaration of the Independence of America, it was celebrated in this town with the greatest festivity.

A numerous and respectable company of Ladies and Gentlemen assembled at capt. Thomas Youngs tavern, where an elegant entertainment was prepared for the occasion; dinner served, the following ode composed by a gentleman of this place, was sung to the tune of 'Rule Britannia' the company joining in cheerful chorus.

*AN ODE, written at Lexington in Kentucke, for
the 4th of July, 1788.*

I.

When the Almighty Fiat gave
 "Creation's boundless range" a birth;
 The choir of Angels hail'd our Land,
 The Land most favour'd of the Faith
 'Hail, Kentucke! Kentucke, thou shalt be
 'For ever great, most blest and free.

II.

'High as thy streams, whose swelling pride
 'Increasing torrents quickly raise;
 'So high, the trump of Fame shall swell
 'Thy name with tributary Praise.
 'Hail, Kentucke! for ever be thy name
 'The theme of never dying Fame.

III.

'Till latest times, thy teeming fields,
 'By lib'ral Heav'n's great commands,
 'Shall on thy torrents unconfi'd
 'Send plenty to far distant lands.
 'Hail, Kentucke! Kentucke thou shalt be
 'For ever great, most blest and free'

The following Toasts and Sentiments, the effusions of the hearts of freemen were then drank, accompanied with a discharge of fourteen rifles at each interval, and in the evening an elegant Ball with suitable refreshments concluded the social entertainment.

The elegance, order and decorum with which every part of the en-

tainment was conducted contributed greatly to the harmony of the day, and did honor to the Gentlemen who had the management of it.

Toasts & Sentiments, for the day.

- 1st. The United States of America.
- 2nd. The Western world, perpetual Union, on principles of equality, or amicable Separation.
- 3rd. The Illustrious GEORGE WASHINGTON Esq. may his services be remembered.
- 4th. The Navigation of the Missis[s]ippi, at any price but that of Liberty.
- 5th. Harmony with Spain, and a reciprocity of good offices.
- 6th. Our Brethren at Muskingum, and prosperity to their Establishments.
- 7th. May the Savage enemies of America, be chastised by Arms, and the jobbing system of Treaties be exploded.
- 8th. The Convention of Virginia; may Wisdom, Firmness, and a sacred regard to the fundamental principles of the Revolution, guide her Councils.
- 9th. Energetic Government, on Fœderal principles.
- 10th. Tryal by Jury, liberty of the Press, and no standing Army.
- 11th. May the Atlantic States be just, the Western States be Free, and both be happy.
- 12th. The memory of departed Heroes and Patriots.
- 13th. No paper Money: no Tender Laws, and no Legislative interference in private Contracts.
- 14th. The Commonwealth of Kentucke, the fourteenth luminary in the American Constellation, may she reflect upon the original States, the wisdom she has borrowed from them.

Lexington, July 4, 1788.

Virginia Independent Chronicle, 3 September (excerpt)²

Extract of a letter from Kentucke, dated Fayette, August 4, 1788, to a gentleman in this city.

“The regard for you which I have ever possessed, and the apparent return of your affection, prompts me at present *to write*, in order to pay a tribute to which your merits seem so justly to entitle you. Since your departure from our country, nothing extraordinary has taken place, except a circumstance, which although not of the utmost importance, may serve to amuse you in some solitary hours.

“July 4th, being the Anniversary of American Independence, for the celebration of that memorable day, a large concourse of ladies and

gentlemen assembled at Lexington, where a most elegant dinner was prepared, the sumptuousness of which will appear more conspicuous upon descending to particulars, and at the same time exhibit a striking example of the genuine liberality of the inhabitants of the Western World.

“The booth in which the dinner was prepared, was constructed in the form of a cross. In the centre was a side board twelve feet square; in each wing was a table thirty feet long; the roof was an arch twenty four feet high; in the centre over the side board was erected a platform fourteen feet high, on which was placed a band of music consisting of fourteen instruments; there were arched windows amounting to fourteen, and four large arched doors; on each table were forty nine dishes, in all an hundred and ninety six—We were at different periods saluted by fourteen riflemen’s firing to the number of fourteen rounds. We danced on the green till six o’clock in the evening, when we retired to Capt. Young’s tavern, where after drinking tea, we danced a sufficient time; when an elegant supper was provided by that gentleman; after partaking of the delicacies of which, and spending our time till three o’clock in the morning, as between tea and supper, we finished the rejoicings consecrated to that auspicious day. During the whole time the greatest sobriety and œconomy reigned triumphant (to the honour of the company be it said) and the greatest marks of approbation and satisfaction were visible in every countenance.³ . . .”

1. On 4 July the inhabitants of Lexington were still unaware that the Virginia Convention ratified the Constitution. The *Kentucky Gazette* finally reported this news on 26 July, when it reprinted the Form of Ratification.

2. This item was reprinted in whole or in part eleven times by 15 October: Mass. (1), N.Y. (2), N.J. (1), Pa. (4), Md. (1), N.C. (1), S.C. (1).

3. At this point, the *Chronicle* printed the fourteen toasts and sentiments that appeared in the *Kentucky Gazette* on 5 July (immediately above).

Martinsburgh and Shepherdstown Celebrations¹

We hear from Martinsburgh and Shepherd’s-Town, that great rejoicings were held in those towns on Friday last, in commemoration of American Independency and the adoption of the Federal Constitution by this state.

1. This item was printed in the *Virginia Centinel* on 9 July.

Norfolk Celebration

Norfolk and Portsmouth Journal, 9 July¹

TENTH PILLAR.

Friday last being the Anniversary of American Independence, as also the day appointed by a respectable Committee of Gentlemen to man-

ifest our joy on the happy occasion of Virginia having ratified the Fœderal Union, the morning was ushered in by a salute of ten guns (emblematical of the Ten States which have united in the New Government).

About ten o'clock, the different ranks of citizens began to assemble on the *Federal Commons*, and at eleven the procession commenced as follows:

Martial Music.
 Ten Gentlemen Volunteers.
 Paul Loyal, Esq. Senator for this
 District, on horseback.²
 A Plough drawn by two horses, guided
 by Mr. William Foster.
 Farmers and Gardiners sowing Seed.
 Butchers.
 Fishermen.
 Bakers.
 Brewers and Distillers.
 Inspectors.
 Printer.
 Merchants and Factors.
 Grocers.
 Vendue-Masters.
 Ship Carpenters and Caulkers.
 Ship Joiners.
 Riggers.
 Boat Builders.
 Sail Makers.
 Pilots.
 Block Makers.
 Harbour and Ballast Masters.
 Rope Makers.
 Carvers.
 Blacksmiths.
 Ship
New Constitution,
 drawn by ten horses, dressed and decorated,
 commanded by Captain Maxwell.
 Ship Masters.
 Mates and Seamen.
 Commissioners of Marine Hospital.
 Architects.

House Carpenters.
 Masons, Bricklayers and Plaisterers.
 Painters and Glaziers.
 Cabinet Makers and Upholsterers.
 Wheel Wrights and Turners.
 Coopers.
 Hatters.
 Taylors and Habit Makers.
 Boot and Shoe Makers.
 Tanners, Curriers and Leather Dressers.
 Saddlers and Harness Makers.
 Peruke Makers and Hair Dressers.
 Gold and Silver Smiths.
 Watch and Clock Makers.
 Copper Smiths, Brass Founders and
 Tinmen.
 Gun Smiths and Lock Smiths.
 Tallow Chandlers and Soap Boilers.
 Draymen and Carters.
 Naval-Officers.
 Searchers and Clerks.
 Physicians and Surgeons.
 Lawyers.
 Schoolmasters and their Scholars with
 books.
 Serjeant with the Mace.³
 Town Clerk.
 Mayor, Aldermen, and Common
 Councilmen.
 Constables with their Staves.
 Ten Gentlemen Volunteers

On their arrival at the Town Point, they were received by a well directed fire of ten field pieces, when the procession marched into a beautiful green square, enclosed around, wherein were tables and seats to accommodate 700 people. Here Mr. O'Connor mounted the rostrum, and displayed his oratorical powers in favour of the New Constitution; proving, by the clearest demonstration, that the Fœderal System was calculated to promote the happiness, interest and welfare of this extensive empire, and might be justly stiled the best government thro' the world existing.⁴ The company then sat down to a plentiful collation provided by Mr. Smith, of the Borough Tavern, who, to add

to the general harmony of the day, appeared in the character of old *Will. Boniface*,⁵ and paid every possible attention to his numerous and respectable assemblage.—Dinner ended, the following toasts were drunk, each accompanied by a discharge of ten guns under the superintendance of Mr. Lemuel Carter, and Captain Ritter, whose active management throughout the day very well deserves the plaudits of the public.

TOASTS.

1. Success to the New Constitution of the United States, and may the wheels of government be soon put in motion.
2. The late Federal Constitution of the United States, may their wisdom be every day more and more conspicuous by the increase of agriculture, manufactures and commerce.
3. May the public good be the predominant principles in American councils.
4. May the arts and sciences ever be encouraged and protected under the New Constitution.
5. Our Sister States that have adopted the New Constitution; may the remaining three be soon added to the number.
6. The State of Virginia and the late Convention.
7. Our illustrious brother Citizen FARMER WASHINGTON.
8. Our good and great Ally, Lewis the XVIth. and the friendly Powers in every part of the world.
9. Marquis La Fayette, Count Rochambeau, and the French army and navy that served in America in the late war.
10. To the memory of the brave Officers and Soldiers that fell and bled in defence of American liberty.

Between every toast, "*The Song with festive glee went round.*"—At half past eight, a large bonfire was kindled, composed of ten barrels of pitch (pyramidically formed), but we have to regret that the violence of the wind prevented, in a great measure, a successful progress of the fire-works, and other ærial experiments, prepared by Mr. Balfour on this occasion, who had taken uncommon pains to amuse the spectators with a great variety.

The chiefest ornament to the day must, with propriety be placed to the respectable assemblage of the Fair Sex, whose animating form, and most bewitching charms, caused the hearts of many batchelors to sigh and lament their weyward fate.

With respect to the procession it must be observed, that all strove with an emulation to excell, by their flags and mottos, but those who appeared more strikingly conspicuous to the impartial spectator, were

the Taylors, Bakers, Hatters and Coopers. As to the first, two beautiful boys represented Adam and Eve, whose uncommon garb of fig leaves, and simple innocent aspects, truly delineated the characters they walked, and displayed, as well as their motto, a happy thought.

The Baker's flag made a superb appearance, as did also the regular assortment and rich selection composing their sashes and cockades.

The Ship *New Constitution*, notwithstanding its dangerous passage (tho' clear of shoals and quicksands), reached safe at her moorings by the vigilance and expert abilities of her commander and crew; these sons of Neptune presented every vein of humour which their respective situations could characteristically display.

The Hatters formed a truly grand appearance, as well from the emblems they introduced, as by their well chosen motto.

From the good decorum, order and regularly observed through the whole of the procession, the public are much indebted to the unwearyed exertions of Colonel Newton, who conducted the same, assisted by Adjutant Henley. Not a single accident (the general concomitant of crowds and bustle) happened through the proceedings of the day.

We, hear also that HAMPTON observed nearly the same public manifestations of joy. Kempsville and the Great-Bridge illuminated, and gave a ball to the ladies. In short the whole country around, as far as we have learned, seemed to observe the general Jubilee.

*Norfolk and Portsmouth Journal, 16 July (excerpt)*⁶

Substance of a SPEECH

DELIVERED BY

Mr. John O'Connor,

On the Anniversary of American Independence, and the celebration of the Union of America, by Ten Sister States adopting the New Government.

Spoken by particular Request.

Mr. President, and Gentlemen of the Committee, . . .

This well founded apprehension served to stimulate the adherents to freedom. They were politically in a state of nature, and with arms in their hands, they formed a plan of confederation. It was a measure of great prudence, and considering all circumstances, abounded with such numerous principles of Republican wisdom, as commanded the praise of every free and dispassionate mind. It was however defective; but this inadequacy was supplied by the talents and character of one man, who possessed the address to collect, cement and impel with

electric power, while in station, all the virtue and energy in America. His admonition and example were engraved on the soul, and his countrymen enthusiastically obeyed without suspicion. But when his resignation convinced all Europe, how incompetent impurity is to decide on a perfect character, then, and not before, we view the confederation operating.⁷ Minds long practised in the affairs of men, and perfectly conversant in laws and jurisprudence, contemplating in the calm hour of peace, the several parts of the system, found it beautiful in theory, but inadequate to supply the necessary energy of government. These apprehensions and defects were pointed out in vain, until experience justified their rectitude. The decline of agriculture soon followed the decay, or rather annihilation of commerce. Every expedient was tried; foreign Powers were resorted to; this application produced no remedy; the source of calamity was explored, and it was found rooted in narrowness of policy, and a reluctance through jealousy or envy, to delegate a larger portion of scattered authority to enable our rulers to support justice, enforce law, and defend us from foreign invasions, as well as intestine broils.—This crisis was delicate and awful. The wisdom of America submitted her case to the College of State Physicians.⁸ The great and good were called from all parts to this august assembly, and Virginia distinguished herself particularly, by compelling, in some degree, her Son, whom the recording page may call the Father of his Country, into this great council. In this instance she impressed the Union with gratitude, for confidence would result, as a necessary consequence, from any system receiving his sanction. Difference of opinion produced different codes, but one only could be selected on the true Republican principles, to submit to the people as a government to be adopted, or rejected, *by themselves for themselves*, by a majority.⁹

The adoption, Sir, of this government by Ten States, but particularly by Virginia is one of the causes which called this numerous meeting together to day to rejoice and be happy. A day which, we trust, posterity will recollect and celebrate for ever in several latitudes and regions of America, where the prowling wolf, the angry panther, or unsubdued savage, are at present the possessors.—A day on which we perceive a prospect of collecting all our resources in one focus to secure us against ravages similar to, and infinitely more numerous, than those which I have recited. Even the opposers of this Code, among whom were many great and good men distinguished for learning and integrity, will rejoice in the appearance of harmony and order.—They wanted amendments to the system, and no doubt they will be constitutionally indulged. A certain degree of political jealousy is a very powerful security to the reign of liberty and reason, in exclusion of

the Tyrant's fiat, whose bloody sword was never sheathed but in the human breast, until the monster was tied and decollated. The virtue which prompted the exertions of the opposers, will induce them to support and guard, as a sacred deposit, this system, flowing from the science and skill of men so elevated in character as to distinguish them very particularly and this æra and country from those unhappy periods and climes, where massacre and desolation superceded every principle of religion, reason and justice.

Let us, Sir, embrace this and every future opportunity to entwine the wreath of praise around the venerable brow of the framers of this government, which, if well administered, can only be depreciated by comparing it with the dreams of Plato or Lycurgus. It possesses the benefits and is destitute of the oppression of British governments, where five millions of subjects are unrepresented or disfranchised, probably for adhering to the mode they conceive, in their conscience, the purest and the best to discharge their humble homage, as in duty bound, to the Creator of the Universe!

Let us, Sir, embrace this, the brightest prospect of erecting an empire of justice and morality, which has ever been exhibited on the political theatre of the world—in receiving the fairest of human fabrics, pregnant with principles to expand as well as perpetuate liberty. Let us embrace this Code, pouring forth effusions of gratitude, in humble adoration, to unerring wisdom and inexhaustible mercy, who inspired so much of his purity and intelligence as produced this scheme of rules for the promotion of human happiness! Such language and conclusion is very suitable to the infirmity of man, his slow progress in legislation, or conceiving means to substitute law for arms, and liberal arts for the brutal artifice to rob and massacre his species!

This new government has one striking recommendation, paramount to all others;—it has emerged from the fiery ordeal of discussion by the Legislatures of Ten States, with additional purity and lustre; and if it contained radically and intrinsically, materials and principles of general reprobation, it must have been rejected in this State, where it was inspected and scrutinized by the penetrating, intuitive eye of a H—. ¹⁰ When I bear honourable testimony to his eloquence, I only unite with Virginia, whose gratitude for his long services has been and ever will be discharged as a public duty. While the public admired the variety of his genius and creative fancy, the sons of Virginia were visibly affected by the pure streams of energetic elocution flowing with propriety, grace and attitude, from a R—, ¹¹ vindicating an honest heart, the consistency of his whole life, and the most cautious conduct from suspicion and misrepresentation. Strangers viewing this scene thro'

different mediums, united with natives in lavishing every encomium on a M—, a M—, a N—, nor were a L—, or C—, D—, M—, or M—,¹² forgotten, all rising hopes of Virginia.

But what future hope may not be conceived from the avidity with which the youth pressed foremost to imbibe the periods of the rapid, lucid, nervous eloquence of an I-n-s.¹³ Education and art found in him the statue nearly compleated by a superior hand; and genius, for the courts expansion, found a soil congenial to her nature. The melody of his voice is calculated to produce elevated impressions. What but conviction of the rectitude and excellence of this Constitution, could be expected from such talents, vindicating the rights of man in the sweetest tones that ever conveyed the suggestions of the human mind, and the first character of ancient and modern days from the inuendo of unfounded suspicion!—Demosthenes was eminently great in his and our days, but I-n-s has no obligation to pebbles to correct defect, or to extend his voice by contention with the ocean, in order to habituate himself to the tumult of popular assemblies.

Future generations emulous to extol the names of the framers of this Code, will rehearse the eulogium of the historian's descriptive pen who may have genius to animate his page, rendering justice to their eminence, while future poets, whose inspiration, the immediate gift of Heaven, enriching our language, will diffuse their fame, accompanied by their heroes, round the world, singing of aims and of arts, and eloquence on this great Continent.

I have trespassed too long Sir, on your attention, and the patience of this numerous and respectable audience, and I beg leave to assure you that I am as highly sensible of the honour you have conferred, as the candour with which you have received, the eulogium of a Stranger. If I were in Europe, the subject would merit my praise, and the air of America will ever continue friendly to the panegyrics of her visitors.

1. On 2 July the *Journal* printed this notice: "For the arrangement of the procession intended for Friday next, our Readers are referred to a lengthy Hand-Bill dispersed yesterday morning throughout this town and neighbourhood." The description of the celebration printed here was preceded by a report of New Hampshire's ratification of the Constitution.

2. Loyall, sometime mayor and alderman of Norfolk, was senator of the district comprising the counties of Princess Anne, Norfolk, and Nansemond from 1779 to 1789.

3. The Norfolk Mace was presented to the Borough of Norfolk in 1754 by Lieutenant Governor Robert Dinwiddie who followed a royal practice dating back to the reign of Edward II of England.

4. An excerpt from John O'Connor's oration is printed immediately below.

5. "Old Will. Boniface" was the merry innkeeper in George Farquhar's play, *The Beaux' Stratagem* (1707).

6. John O'Connor, a graduate of Trinity College, Dublin, and an Irish barrister, was an unusual choice to deliver the Fourth of July oration in Norfolk because, as O'Connor

himself admitted, he was "a Stranger" in town. In the pamphlet edition (see below), O'Connor said that "The committee, conducting the office of celebrating the 4th of July, and the adoption of the constitution by Virginia, requested a traveller, to prepare and deliver an oration, suitable to the two great causes of their rejoicing." O'Connor had come to America after the Revolution, and for a short time in early 1787 he was possibly the editor of the Philadelphia *Columbian Magazine*.

For several months before he delivered his Norfolk oration, O'Connor traveled through Maryland and Virginia seeking subscribers to a multivolume geographical and topographical history that he planned to have published by Prichard and Hall of Philadelphia. Between September 1787 and August 1788, advertisements for his projected history appeared in the *Pennsylvania Packet*, *Annapolis Maryland Gazette*, *Virginia Centinel*, *Winchester Virginia Gazette*, *Virginia Gazette and Weekly Advertiser*, and *Norfolk and Portsmouth Journal*.

In the spring of 1788, Prichard and Hall denied that their firm had any agreement with O'Connor, and on 29 September the *Edenton State Gazette of North Carolina* published their letter, stating that one of O'Connor's advertisements was "the dark production of some scribbling adventurer." They hoped that all American newspapers would publish their letter so that the public could be warned about "the artifices of a pretender to literature" and not subscribe to the non-existent history. Immediately below the letter, the *State Gazette* printed a reply by O'Connor, who had gone to Edenton, N.C., where, according to his wife, he had been appointed to a public office and the superintendency of an academy. O'Connor insisted that his work would be published. Its publication, he declared, had been delayed by Prichard's "unprovoked persecution."

Early in the fall of 1789 O'Connor, now in Georgetown, Md., and writing as "A Citizen of America," published a pamphlet entitled *Political Opinions, Particularly respecting the Seat of Federal Empire . . .* (Evans 22072). This pamphlet included the oration which he had delivered in Norfolk on 4 July 1788. On 5 October 1789 O'Connor sent a copy of the pamphlet to George Washington, to whom it was inscribed, stating that he still intended to publish his history. It never appeared.

7. O'Connor refers to George Washington, whom he had visited at Mount Vernon in early February 1788. In June O'Connor's wife, who had opened a female academy in Alexandria, tried but failed to convince Washington to act as one of the school's official visitors. For a discussion of Washington's June 1783 letter to the state executives, reprinted in the *Virginia Independent Chronicle*, 4 June 1788, see V above.

8. The pamphlet edition changed "the College of State Physicians" to "her Statesmen."

9. At this point, the pamphlet edition changed the period to a semicolon and added "and which we anxiously expected soon to see in operation from the centre of our Union."

10. The pamphlet edition has "Henry."

11. The pamphlet edition has "Randolph."

12. Probably James Madison, George Mason, George Nicholas, Henry Lee of Westmoreland, Francis Corbin, John Dawson, John Marshall, and James Monroe. The pamphlet edition has ". . . every encomium on a *Madison*, collating and comparing his various talents with those of the first rank in the British Senate."

13. The pamphlet edition has "Innes."

Portsmouth Celebration¹

July 4, 1788.

On the arrival of the intelligence that the *New Constitution* was adopted by this Commonwealth, the inhabitants of this Town con-

vened, and agreed to celebrate that event, and the Anniversary of Independence on this day; accordingly the morning was ushered in by a discharge of ten cannon from a battery under the direction of Captain Thomas Timson; at ten o'clock, the inhabitants² assembled themselves at the Market-Hall, and formed the following procession:

Marshal of the Procession on horseback.

Band of Music.

Colonels of the County on horseback.

Farmers and Gardiners sowing seeds.

Two Ploughs with horses.

Butchers leading an Ox with his horns richly ornamented.

Fishermen.

Bakers.

Brewers and Distillers.

Inspectors of Tobacco and Lumber.

Merchants and Factors.

Vendue Masters.

Ship Carpenters and Caulkers.

Ship Joiners.

Rope Makers.

Boat Builders.

Block Makers.

Riggers.

Pilots.

Harbour and Ballast Masters.

Ship Federalist,

drawn by ten horses, decorated with flags,

commanded by Capt. Ralph Pigot,

manned by Officers and Seamen

belonging to the Port.

Ship Masters.

Masters and Seamen.

Commissioners of the Marine Hospital.

Nailers at work on a car drawn by horses,

with this motto, *May the Nail of*

the Union be driven by the

*Hammer of Virtue.*³

House Carpenters.

Masons, Bricklayers and Plaisterers.

Painters and Glaziers.

Cabinet Makers and Upholsterers.

Wheelwrights and Turners.
 Coopers at work on a car ornamented
 with curious devices of the Craft.⁴
 Hatters.
 Ta[y]lors and Habit Makers on a car highly
 ornamented, with this motto,
*May these Shears cut the
 Thread of Discord.*
 Boot and Shoe Makers.
 Tanners, Curriers, and Leather Dressers.
 Saddlers and Harness Makers.
 Peruke Makers and Hair Dressers.
 Gold and Silver Smiths.
 Watch and Clock Makers.
 Copper Smiths and Tinmen.
 Blacksmiths.
 Gun and Lock Smiths.
 Tallow Chandlers and Soap Boilers.
 Draymen and Carters.
 Searchers.
 Post-Masters.
 Physicians and Surgeons.
 Clergy and Lawyers.
 Schoolmasters with their Scholars, books
 and globes.
 Town Clerk.
 Trustees of the Town.
 Magistrates and Strangers.
 Constables with Staves.
 The Portsmouth Volunteers under command
 of Captain James Harper.

In the above order the Procession advanced until its arrival at Town-Point, when a salute of ten guns was given from the Ship Federalist, and returned by a like number from the battery, followed by a discharge of ten rounds from the Volunteers.

After which the company retired to a repast provided for the occasion. The joyful spirit of Republicanism pervaded every breast; the utmost harmony and good order was preserved through the day, which was closed by a discharge of thirteen cannon from the battery. In the evening bonfires were displayed, with a general illumination of the Town, which exhibited a most beautiful spectacle: During the day the

shipping in the harbour were decorated with the flags of different nations, and in the evening the Ship *Clementina*, commanded by Captain Edmund Nowland, was richly illuminated.⁵

1. This item was printed in the *Norfolk and Portsmouth Journal*, 9 July. A similar description of the Portsmouth celebration appeared in the *Petersburg Virginia Gazette*, 10 July (not extant), which was reprinted in the *Pennsylvania Packet*, 21 July (Mfm:Va.). The *Norfolk and Portsmouth Journal* and the *Petersburg Virginia Gazette* disagreed about the order of the procession; while the *Gazette* printed details not found in the *Journal*. See notes 2–5, below.

2. The *Petersburg Virginia Gazette* noted that the inhabitants were “assisted by a number of their friends from the country.”

3. In the *Petersburg Virginia Gazette*, this entry reads: “Nailors, with the implements of their occupation, and at work upon a machine constructed for the purpose, inscribed with this motto, ‘May the Nail of Union be driven by the Hammer of Virtue.’”

4. In the *Petersburg Virginia Gazette*, this entry reads: “Coopers at work upon a carr, with a flag inscribed with this motto, ‘Prosperity to all True Federalists.’”

5. The description in the *Petersburg Virginia Gazette* ends with this sentence: “The thanks of the inhabitants of Portsmouth are justly due to Samuel Davis, Esquire, chairman, and the gentlemen of the federal committee; also to John Kearnes, Esq. marshal, for their management on this occasion.”

Richmond Celebration

William Heth Diary

Curles, Henrico County, 4 July¹

Friday 4th July 1788—Skinner & self Went to town immediately after breakfast, caught in a shower of rain—attended in Council til 12. OC—The anniversary of Independence Celebrated at Andersons,² and an entertainment on the late adoption of the New Constitution, *all in one*—A numerous Company expected, declind going, on account of the great croud, and an apprehension of being pressd to drink more than I wd. wish—Dind at Beverley Randolphs ret. in the evening

Virginia Independent Chronicle, 9 July³

On Friday last, being the 4th of July, a respectable body of gentlemen of this city convened at the Eagle Tavern (where an elegant entertainment had been previously provided) to celebrate the anniversary of that glorious day which spoke America into Empire, as well as to testify that genuine joy which the adoption of the Fœderal Constitution by Virginia has infused through all ranks of citizens. At sun-rise the Union Flag of America was displayed to the discharge of 13 cannon.—At noon the discharge was repeated.—After dinner, the following toasts were drank to the discharge of ten cannon.

1st. The Fœderal Constitution—may it form a perpetual bond of union for the thirteen States.

2d. George Washington.

3d. Louis XVIth and the French nation.

4th. The memory of those who fell in the cause of liberty.

5th. Unanimity—may discordant opinions cease, and the friends and opponents of the new Government meet on the firm basis of American union and public liberty.

6th. Agriculture—may industry till the land, and Ceres reward with plenteous store the labouring husbandman.

7th. Commerce—may her range be co-extensive with the world, and under the happy auspices of the American flag, produce wealth and honor to our country.

8th. Arts and manufactures—may American genius, rivalling ancient or modern improvement, extend their benefits to the whole human race.

9th. The year 1788—may its civil revolution form the great epoch of American honor, happiness and glory.

10th. Universal peace, liberty and happiness.

At sun-set the Union Flag was struck to the discharge of 13 cannon, accompanied with three cheers from the numerous and respectable body of citizens then assembled; the day was spent with that hilarity and social mirth which pervades every fœderal mind; affording a happy presage of the future prosperity and glory of our country.

1. MS, DLC.

2. Robert Anderson's Eagle Tavern.

3. This item was reprinted in the *Norfolk and Portsmouth Journal*, 16 July; *Philadelphia Independent Gazetteer*, 16 July; and *Pennsylvania Packet*, 17 July. A brief account of the celebration at Robert Anderson's Eagle Tavern was printed in the *Virginia Gazette and Weekly Advertiser*, 10 July (Mfm:Va.), and reprinted in the *Pennsylvania Packet*, 16 July, and the *New York Journal*, 18 July.

Staunton Celebration¹

Yesterday being the anniversary of American Independence, as also the pleasing information obtained that this state and New-Hampshire had adopted the constitution—the inhabitants of the town, and as many of the neighbourhood as could with convenience attend,—desirous, publicly to demonstrate their approbation—met and collected a large quantity of combustibles on a hill adjoining. In the evening Captain Gibson's company of Infantry, in uniform, appeared on the parade and performed a number of evolutions. They were then joined by Captains Perry's and Douthat's companies of militia, under the orders of Col. Gamble; and after discharging ten volleys in honor of the states that had *ratified* the constitution, the frings continued to the amount

of 13, in the pleasing expectation the remaining three states will follow the example, and complete the grand *fabric*. Between the discharges, toasts suitable to the occasion were drunk, with satisfaction, &c. Joyful spirit of republicanism seemed to pervade every breast without distinction. At night fire was set to the materials collected. The Mason Hall and the houses in the town were elegantly illuminated—The utmost order, good humour, and harmony was preserved, and the day closed with a ball at Mrs. Burns's.

1. This item was printed in the *Virginia Independent Chronicle*, 16 July, under the dateline "Staunton, July 5," and was reprinted in the *Virginia Gazette and Weekly Advertiser*, 17 July; *Pennsylvania Mercury*, 24 July; and *Pennsylvania Packet*, 25 July.

Winchester Celebration¹

Friday last being the glorious ANNIVERSARY of AMERICAN INDEPENDENCY, the same was observed here with every token of heart-felt satisfaction and joy.—The Federal Constitution having been so recently adopted by this state, and although great rejoicings were held in town on Monday the 30th ult. in consequence thereof,² it was determined by the inhabitants to celebrate these two important events (which will shine conspicuous in the annals of our country till time shall be no more) at one and the same time, with a GRAND PROCESSION, &c.

At twelve o'clock the different crafts, consisting of upwards of two hundred, with Captain HIESKILL's company of Light Infantry, commanded by Major M'GUIRE, assembled at the Court-House, from whence they marched in procession through the principal streets to the FEDERAL SPRING, at General Wood's Plantation,³ where an elegant BARBAQUI was prepared for their reception. Having arrived at this delightful spot, where zephyrs gently fan the air, and stately trees afford a pleasing shade, the Light Infantry fired ten volleys in honor of those states which have adopted the constitution, (New-Hampshire having ratified it before Virginia, though the account had not come to hand previous to our last publication) after which the whole partook of the regalia. The jovial bowl and glass went briskly round after the repast, and the good humour and conviviality which prevailed among all ranks, would have done honor to an assemblage of the first characters in the world. A large concourse of the FEDERAL FAIR honored the sons of freedom with their presence, which added greatly to the brilliancy and harmony of this auspicious scene. At five o'clock the whole returned to town, and the day concluded with military evolutions, &c. In the evening bonfires and illuminations were exhibited, and a splendid ball given at Mr. T. Edminson's, on Federal Hill.

The following is the ORDER of the PROCESSION, each craft bearing implements suitable to their several occupations.

The Light Infantry company.
 Farmers with sheefs of wheat.
 Bakers and Brewers.
 Butchers.
 Coppersmiths.
 White and Blacksmiths.
 Tanners.
 Sadlers.
 Shoemakers.
 Masons.
 Hatters.
 Taylors.
 Watchmakers and silversmiths.
 Wheelwrights.
 Carpenters and Joiners.
 Painters.
 Potters.
 Weavers.
 Barbers.
 Combmakers.
 Printers.
 Merchants.
 Doctors.
 Clergy and bar.

1. This item was printed in the *Virginia Centinel*, 9 July, and reprinted in the *Pennsylvania Packet*, 22 July.

2. See Winchester *Virginia Gazette*, 2 July (RCS:Va., 1722-23).

3. General James Wood's plantation was called "Hawthorn." Wood himself was not present at this celebration because he was in Richmond as a member of the Council of State.

Boston Celebrates the News of Virginia Ratification, 4 July

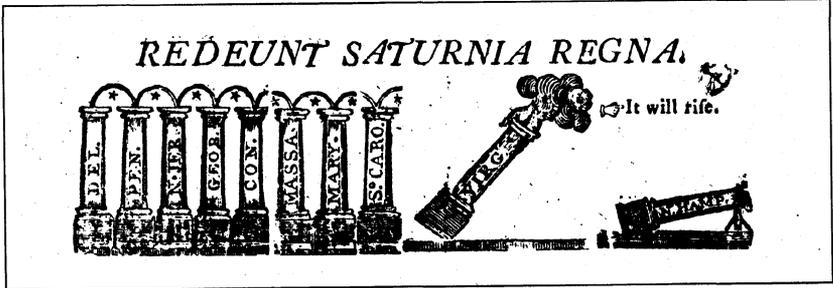
At 7:00 A.M., on 2 July, Levi Pease (see note 4 below) left New York City with letters announcing that Virginia had ratified the Constitution. He hoped to reach Boston at 2:00 P.M., on 4 July. Pease arrived in New Haven a little after midnight on the 3rd and departed for Hartford at 4:15 A.M. (Ezra Stiles Diary, 3 July, Mfm:Va.). He got to Hartford at about 12:00 P.M. and delivered Henry Knox's letters to Jeremiah Wadsworth (Wadsworth to Knox, 3 July, Mfm:Va. One of Knox's letters was dated 2 July, Mfm:Va.). Wadsworth immediately announced the news of Virginia's ratification to the meeting of the Connecticut Society of the Cincinnati whose proceedings Pease had interrupted.

Pease left Hartford and, probably following the route his stage would take, rode north to Springfield, and then east passing through Wilbraham and Worcester (see Springfield *Hampshire Chronicle*, 9 July, Mfm:Va., and note 4 below). He reached Boston on 4 July, at 5:00 P.M., a ride of fifty-eight hours. The letters that he carried were delivered to Massachusetts Governor John Hancock who read them "to a large number of gentlemen assembled at his house." Three of the letters, all dated 2 July, that Pease brought to Boston were printed in the *Massachusetts Centinel* on 5 July (see below). The first letter was written by Henry Knox to Henry Jackson, the second by Richard Platt to Elnathan Haskell, and the third by an unidentified writer in New York to a Boston "gentleman."

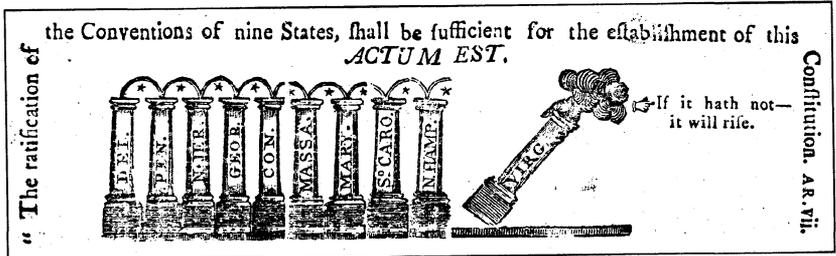
By the time that Pease had gotten to Boston, the public celebration of the Fourth of July was nearing its end, but, when the inhabitants learned of Virginia's ratification, the bells of Boston and the surrounding towns "were set to ringing, and the guns to firing again, without any mercy." "A number of citizens paraded the streets with lighted candles, amidst the firing of rockets, loud huzzas, and other demonstrations of joy" (John Quincy Adams Diary, 4 July; William Heath Diary, 4 July; and *Boston Gazette*, 7 July, all in Mfm:Va.).

In its 5 July report of Virginia's ratification, the *Massachusetts Centinel* included an illustration showing "The Tenth *PILLAR* erected." In previous illustrations on 11 and 25 June, the *Centinel* had predicted that Virginia would ratify. All three illustrations are printed immediately below.

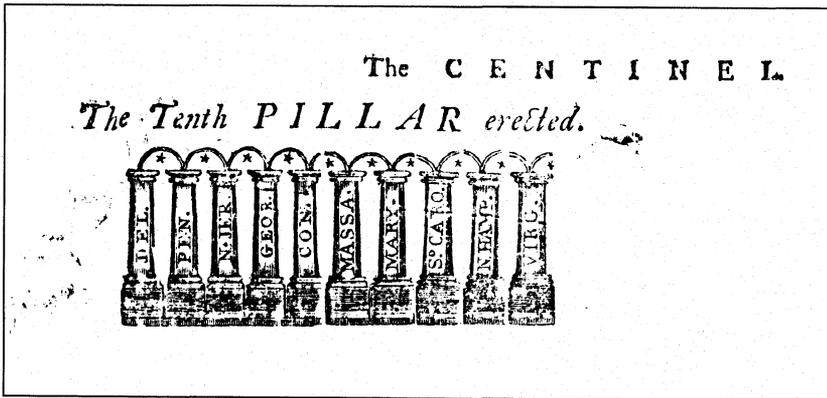
Massachusetts Centinel, 11 June¹



Massachusetts Centinel, 25 June²



Massachusetts Centinel, 5 July³



BY EXPRESS.

Yesterday at 5 o'clock, Mr. Pease⁴ arrived here, in 58 hours from New-York, with the glorious intelligence of the RATIFICATION of the FEDERAL CONSTITUTION by the Ancient Dominion of VIRGINIA. The letters containing these agreeable tidings, were read by his Excellency the Governour,⁵ to a large number of gentlemen assembled at his house, which crowned the joy of the day. The following are extracts from some of the abovementioned letters.

"New-York, July 2d, 5 o'clock, A.M.

"MY DEAR SIR, It is with the most sincere pleasure I congratulate you and all my friends on the adoption of the Constitution by Virginia—This great event took place on the 25th of June—the majority ten.—The amendments are stated, as by Massachusetts, in the manner pointed out by the Constitution. The express arrived here with this glorious intelligence about three hours ago. The sensibility and joy of this city are extreme—The news is one third of the way to Poughkeepsie.

"Mr. PEASE who is here, will take charge of this letter and forward it—I want my Boston friends to participate of our joy.

Your affectionate H. KNOX."

*Gen. HENRY JACKSON.*⁶

"New-York, July 2, five o'clock, A.M.

"DEAR SIR, I give you great joy on the adoption of the Constitution by Virginia—Yeas 88, nays 78, majority 10. This comes by Col. *Henley*, who went from hence this day week to Virginia, express, with an ac-

count of New-Hampshire's adoption, and met the express coming from Richmond, at Alexandria, with this important news, upon which after rejoicing with Gen. Washington, and the Alexandrians, he turned about, and brought the first accounts. In haste, your's cordially,
RICHARD PLATT."⁷

Major E. HASKELL.⁸

*Extract of a letter from New-York, dated July 2d, 1788,
to a gentleman in this town.*

"I congratulate you, my dear Sir, on the adoption of the New Constitution by the State of Virginia. Col. *Henley*, who rode express from this city to that State, had the pleasure of communicating this acceptable intelligence on his arrival this morning, at one o'clock.—At day light *all* the Bells of the city were ringing, and at sunrise a discharge of ten cannon from the Battery.

"The city of New-York, which may be pronounced truly federal, is at this moment made happy at this event. Col. *Henley*, who left this place on Wednesday last, at 12 o'clock, reached Alexandria on Friday night, about one o'clock.—On Saturday he dined with General *Washington*, and rejoiced with the good people of that place on the occasion of the adoption of the Constitution with them.

"The majority was 10, and Amendments were recommended similar to those proposed by other States which have adopted. Col. *William Livingston*, left town at two o'clock this morning, express for Poughkeepsie, where he will probably arrive by two o'clock, P.M.

"Col. *Henley* is just writing by my side at a friend's house, from whose mouth I have the information herein contained."

1. *Redeunt Saturnia Regna*: The golden age returns.

2. *Actum Est*: It is all over.

3. This account was reprinted by the *Massachusetts Gazette*, 8 July; *Salem Mercury*, 8 July; *New Hampshire Spy*, 8 July; *New Hampshire Gazette*, 10 July; and Exeter, N.H., *Freeman's Oracle*, 11 July. The first paragraph was reprinted or summarized thirteen times by 14 July: N.H. (3), Mass. (7), R.I. (2), N.Y., (1). The Knox and Platt letters were reprinted eleven times by 11 July: N.H. (3), Mass. (6), R.I. (2); and the extract of a letter was reprinted in whole or in part nine times by 11 July: N.H. (3), Mass. (5), R.I. (1).

The weekly *Portland Cumberland Gazette*, reprinted the three letters on 10 July, indicating that it had taken only about two weeks for the news of Virginia ratification to reach one of the two northernmost American towns that had a newspaper. In Windsor, the other town, the *Vermont Journal* reprinted the Virginia Form of Ratification on 21 July.

4. Levi Pease, a native of Enfield, Conn., operated a stagecoach line with Boston as its eastern terminus. After an interruption of seven or eight months, Pease advertised that on 21 July 1788 the service to New York City would be reestablished. Three stages per week would leave New York City for Boston, reaching that place in forty hours. The stages would pass through Fairfield, New Haven, and Hartford, Conn., and Springfield, Wilbraham, and Worcester, Mass. (See Oliver W. Holmes, "Levi Pease, The Father

of New England Stage-Coaching," *Journal of Economic and Business History*, III [1931], 249-50.)

5. John Hancock.

6. General Henry Jackson (1747-1809), treasurer of the Massachusetts Society of the Cincinnati, 1783-1809, was Knox's business agent and friend.

7. Colonel Richard Platt (1754-1830), a graduate of the College of New Jersey (Princeton), a broker, and a land speculator, served as chairman of the committee of arrangements to plan a Fourth-of-July federal procession which organizers delayed until 23 July, hoping for New York's ratification.

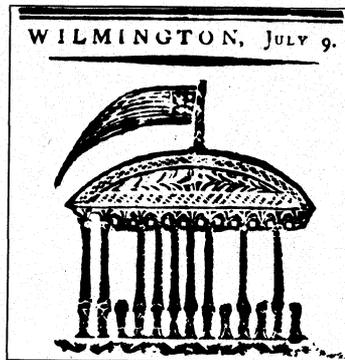
8. Elnathan Haskell (1755-1825) served in the Continental Army from 1775 to 1784, rising from the rank of sergeant to major.

William Nivison to Thomas Ruston Suffolk, 9 July (excerpt)¹

... Now I must congratulate you on the adoption of the federal Governmt. in this State—It is a subject of great joy in the lower parts of Virginia, and I doubt not but it will ensure us happiness & prosperity—notwithstanding the dangers & horrors Mr. Henry exhibited to our view we hear of nothing at present but processions, federal ships, & balloons, The Towns vie with each other in shewing their demonstrations of joy—I suppose Philidelphia will now exhibit a magnificent scene as you are all so violently federal, and expect your City to be shortly crowned with metropolitan honors—You will soon I dare say be a resident within the ten miles square—

1. RC, Tench Coxe Papers, Thomas Ruston Section, PHi. A part of the letter not printed here reveals that William Nivison of Suffolk, Nansemond County, was probably a lawyer hired by Thomas Ruston (c. 1740-1804), a Philadelphia land speculator who had formerly practiced medicine.

North Carolina Wilmington Centinel, 9 July¹



[At this point the *Wilmington Centinel* reprinted a letter (or an extract of one) from the Petersburg *Virginia Gazette*, 26 June, announcing that Virginia had ratified the Constitution (V above).]

On Saturday the 5th instant, in consequence of the *important* and interesting intelligence being received from our respectable sister state, the commonwealth of Virginia, that the Convention of Delegates appointed to take into consideration the proposed confederated Constitution, had *unequivocally* adopted the same, the inhabitants of this town, with a *virtuous* and *patriotic* warmth, testified their satisfaction with illuminations, bonfires, and other demonstrations of joy.²

It would be difficult to convey an adequate idea of the general enthusiastic happiness this fortunate event diffused. The acquisition of Virginia to the new confederated system, would of itself, have been highly important; but, at this crisis, when it was considered, that her accession, by being the ninth approving state, has *established* the *liberty*, independence, and public credit of this rising Western Union, their joy was not to be described. A general sympathy united all—Hope, *rational hope*, animated every rank and profession. The prospect of justice, parent of liberty and support of virtue, being speedily and impartially administered—public faith and dignity supported—a consistent productive commerce, disseminating its happy consequences through every rank of citizens, arrested the attention and feelings of every lover of liberty and mankind.

Shortly shall we begin to reap the blessings of the *glorious revolution*, purchased with difficulties and anxieties which none but a sufferer can truly comprehend. No longer shall the useful artizan be paid with procrastinated promises, but, being worthy, shall receive his hire—no longer shall the planter sweat for a hard-earned, narrow, uncertain competence, but receive the just reward of his labours—no longer shall we be *insulted* with the tantalizing name of wealth, depreciation to a shadow, even while we contemplate its nominal amount—specie (that valuable *quid pro quo*) attendant on all well regulated efficient governments, will again circulate—the price of imports and exports will be regulated—in short, it is to be expected, as a natural consequence, that industry and ingenuity will be rewarded with peace, plenty, and content, under this well-digested, approved confederation, framed by some of the wisest and most virtuous men now existing, and by the most strenuous supporters of liberty, through the mazes of the late war.

1. The text printed here was reprinted in the Petersburg *Virginia Gazette*, 31 July; *Pennsylvania Packet*, 9 August; and *Pennsylvania Mercury*, 9 August (first paragraph only). On 2 July the printers of the *Wilmington Centinel* told their readers that "it was generally

thought” the vote would take place on 20 or 21 June and that they hoped to publish the decision of the Virginia Convention in their next issue. Towns in the northeastern part of North Carolina, such as Edenton, Tarboro, and Washington, had learned about Virginia ratification by 30 June. (See James Iredell to John Gray Blount, 29 June; Petersburg *Virginia Gazette*, 10 July; and *Norfolk and Portsmouth Journal*, 30 July, all in Mfm:Va.) The North Carolina Convention, which many believed would be influenced by Virginia’s ratification, was scheduled to convene on 21 July.

Viewing the illustration from left to right (south to north), the missing pillars represent the states of North Carolina, New York, Rhode Island, and New Hampshire. The idea for this domed structure was probably taken from the Charleston *City Gazette*, 28 May, which first used it to announce South Carolina’s ratification. (See Charleston *City Gazette*, 16 July, immediately below, for the domed structure which it published after Virginia ratified.)

2. On 16 July the *Wilmington Centinel* printed the following letter from “An Inhabitant of Wilmington”: “As you have published in your last paper, a very fine account about public marks of joy, shewn in this town on account of the adoption of the constitution by Virginia, I wish you would tell who it was that illuminated, &c. because I believe there were only three houses so decorated, and I do not understand that three or four people should be called the town.”

Charleston City Gazette, 16 July¹



[At this point the *City Gazette* printed a letter (or an extract of one) from the Petersburg *Virginia Gazette*, 26 June, announcing that Virginia had ratified the Constitution (V above).]

So that the proposed form of government has now been ratified by NINE states, to wit—

Massachusetts,
Connecticut,
New Jersey,
Pennsylvania,
and Georgia.

Delaware,
Maryland,
Virginia,
S. Carolina

The state conventions of New-Hampshire and New-York are now sitting, if not already adjourned.

1. On 17 July this item, without the illustration, was reprinted in the *Charleston Columbian Herald* and the *State Gazette of South Carolina*. The latter newspaper printed it under the heading: "*The Ninth Pillar.*" A similar illustration with eight pillars was first printed in the *City Gazette* on 28 May, when it reported South Carolina's ratification. For an explanation of the order of the pillars, see North Carolina *Wilmington Centinel*, 9 July, note 1 (above).

"P.R."

Virginia Independent Chronicle, 16 July

Mr. DAVIS.

Sir, Many persons having lamented that the majority in favor of the new constitution was not much greater than it was, I have thought it not amiss to remind them, that if there be any weight in the objections of the minority, their numbers tend ultimately to secure *that* which both parties were aiming at, that is, *a free and happy government*; and directly, to keep the government within the strictest limits of the constitution: besides, a minority so great and respectable must support amongst their constituents the illustrious character they supported in convention; that is of virtuous citizens acquiescing in the determination of the majority, and by this means, whilst the constituents of the majority approve of the constitution without exultation at the adoption of it, those of the minority will acquiesce in it, without repining; and resolve like their patriotic representatives, to give the government a fair trial, and their support; so long as it shall answer the purposes for which government amongst freemen was intended—Had the majority been much greater, it would have been no proof of their infallibility—great majorities are as often obtained by the influence of mere eloquence, as of sound reasoning—and the truth of a proposition does not depend so much on the numbers of those who assent to it, as on their knowledge of the axiom and data on which its demonstration depends.

I will observe farther that a small and weak minority might give a loose to their resentment at the exultations of the majority, and might excite by their activity a discontent and confusion, which a great and respectable minority must have every possible motive to avoid and

prevent.—It might be asked indeed in reply to this, what possible confusion could be excited upon the present occasion amongst a people so enlightened as the Virginians? For do they not see that the opposition to the constitution, was grounded on certain speculative points of a nice and intricate nature, which had better be left to the discussion of a convention, or Congress of able statesmen, than to be hastily determined on, by a mob? Do they not know, that a majority of the wisest and most virtuous citizens in ten States, have approved of the constitution? And do they not see, that it directly tends to encrease their importance; to revive commerce; to introduce money amongst them; to restore confidence between man and man, state and state, and between these states and their allies? Do they not see, that by the constitution they have a peaceable and regular mode of amendment pointed out? What possible grounds then can there be for clamour and confusion? To this I can only reply that, for my part I see no grounds for either, and do believe that the people will be delighted with the constitution, when impartially explained.

Republican I

Virginia Independent Chronicle, 16 July

On 9 July this announcement appeared in the *Chronicle*: "The Printer is authorised to inform the public, that a SERIES of LETTERS, addressed to the citizens of Virginia, on the subject of the new Constitution, will be hereafter published in this paper weekly, until the plan upon which they are written shall be fully executed. As the Author abhors, so will he avoid personalities. His sole object is to view with candour the objections, which were urged in the late Convention of this state, and to answer such others, as may from time to time appear. His only wish is to undeceive his fellow-citizens; not by an indiscriminate defence of parts, which he himself censures, but by opposing plain reasoning to any misconstruction, which may take place."

A second number possibly appeared in the no longer extant issues of the *Virginia Independent Chronicle* on 23 July and 13 August, because on the latter day Governor Edmund Randolph sent the first two numbers to James Madison who had requested them after reading the above announcement. (See Madison to Randolph, 22 July, and Randolph to Madison, 13 August, Rutland, *Madison*, XI, 191–92, 231. Rutland speculates that Randolph might have written the "Republican" essays.) On 27 August the "Republican" published this statement in the *Chronicle*: "Since the publication of my last number, a proposition has been received from the convention of New-York, for a new convention of the states. Thus a new scene is presented; and a mode suggested, which will, I trust, be effectual in satisfying scrupulous minds. As therefore my only object in writing was to answer this purpose, I expect the accomplishment of it rather from the expedient proposed, than any reasoning, which I can use. With a hope, that a second convention will produce harmony, and a general

support of the constitution, I shall not trouble you further." (The proposition from the New York Convention was the New York Circular Letter of 26 July. See "Virginia Calls a Second Constitutional Convention," 30 October–20 November, below.)

LETTER, No. 1.

To the PEOPLE of VIRGINIA.

It is a fact, not less honorable to our country, than demonstrative of the respectful attention, with which her propositions are received, that she laid the ground-work of the new government. She invited the other States to the convention at Annapolis, and was the first, which appointed deputies to that of Philadelphia. By them and their associates, all of whom possessed the public confidence, the constitution was recommended for adoption. This recommendation was embraced by eight States, and by some of them unanimously, before Virginia met in convention. It is at least allowable to say of those who composed it, that their situation in life was so interwoven with the fate of their fellow citizens, that a government, bad in its original form, or its subsequent operation, would oppress the whole alike. What passed after they had assembled, corresponded with the hopes which had been previously entertained. A plan of debate was fixed, to the satisfaction of the friends and foes to the constitution; and was conducted with civility, temper, and patience, and with every allowance of time, which any of the speakers desired. Nay the final question was postponed, until the minutest parts had been severely examined, and until the opposition itself had declared, that they were ready to decide.—It was at length adopted.

After these auspicious events, the constitution would now seem to require no farther patronage. But there are among you some, who have conceived honest, though ill founded objections, to it; who may perhaps have been misled by constructions, which were formidable only, while they lurked in secret, and who, not being present at the late convention, know not the answers which were given, nor the little stress, which was placed on many of the most popular terrors.

The design therefore of these letters is to convince and undeceive you—to inlist your hearts and hands into a fair experiment of the constitution. They will differ from former publications, in being confined to the proceedings of our convention. No past arguments will be repeated which are not directly subservient to this particular end; and personalities will be banished, as being injurious to every cause, and disgraceful to their author.

Hence you perceive, that you are addressed by a friend of the constitution. But whosoever he may be, he claims the character of a re-

publican, and pledges himself to labor for the destruction of the government, if at any time it shall cease to yield the blessings of liberty.

I freely confess that Virginia would be unwise, were she to entangle herself, even by a treaty, in the fortunes of the other States, without a clear necessity or the prospect of advantage. But when the advocates of the constitution were shewing the necessity of a general union to Virginia, from the exposure of her territory, the thinness of her population, her inability to raise a fleet or army of defence, the danger from foreign enemies and foreign politics—When they were exhibiting the advantages which such an union would create to her commerce, to her revenue, and to republicanism itself,—They were informed, that this was a wasteful display of truths, which none but an enemy to the honor and happiness of his country would deny.

The point then, next in order for consideration was, whether the confederation had betrayed no radical defect, fatal to the welfare of America. Here too the unanimity was compleat. From every corner of the house was its inefficacy resounded; and from those, who were the least partial to the constitution or most splendid in their encomiums on the confederation, the most ample acknowledgments of this inefficacy were extorted.

By this train of enquiry, the convention were led to seek a remedy for our national distress. From one of the following expedients only could relief be drawn; to form an confederacy with a number of the States, less than the whole, and to treat the rest as aliens; to incorporate more extensive powers into the confederation; to adopt the constitution without amendments; to adopt it on certain specified conditions; or to adopt it, and recommend subsequent amendments. The first expedient was reprobated by all, as infinite in mischief, and almost treasonable in idea; and, if it was even remotely meditated, no man had the hardiness to avow it.

The other expedients will be discussed, by arranging the debates of the convention under these heads. 1. What new powers are necessary for the general government? 2. Whether they could be introduced into the confederation without an alteration of its essence? 3. Whether they be not duly organized by the constitution? 4. And whether it was not better, under the existing circumstances of America, and especially of Virginia, to rely for amendments on some future, more favorable opportunity. According to this order, the subject will be handled; with no other deviation, than that which may be occasioned by the matter flowing from adversary pens.

George Washington to John Langdon
Mount Vernon, 20 July¹

I had the satisfaction to receive regularly your favour of the 21st. Ultò. announcing the adoption of the foederal government by the Convention of New Hampshire. you will already have been informed, through the ordinary channels of communication, that the same event took effect in this State a few days afterwards.² And I am happy to say, that, so far as I have been able to learn, a spirit of harmony and acquiescence obtained among the large and respectable minority in a[s] great a degree as could possibly have been expected.

If we may calculate upon rectitude in the views and prudence in the conduct of the leading characters throughout the States, accompanied by industry and honesty in the Mass of the people, we may assuredly anticipate, a new æra; and, perhaps, we shall not deceive ourselves by expecting a more happy one than hath before appeared on this checquered scene of existence. But we ought not to be too sanguine or to expect that we shall be entirely exempted from the ills which fall to the lot of humanity.

With congratulations to your Excellency on your elevation to the Chief Magistracy of your State, and With sentiments of consideration And respect I remain, Sir Your Excelly's &c.

1. FC, Washington Papers, DLC.

2. According to the Portsmouth *New Hampshire Spy*, 8 July, the news of Virginia's ratification arrived in Portsmouth in the evening mail on 7 July. (See also Pierse Long to Paine Wingate, 7 July, Mfm:Va.)

George Mason to John Mason
Gunston Hall, 21 July (excerpt)¹

I have been so ill for these two Days past, that I have been unable to sit up, & now write in great pain; You must therefore excuse the Shortness of this Letter.—

I enclose You the two or three last Day's Proceedings of the Virginia Convention; by which You will see the small Majority which has ratified the new Project.²—

The Minority are as respectable for their weight & Influence, as their Number, & it will require their most prudent Exertions to keep the People quiet in some Parts of the Country. The Debates are not Yet published; nor is there any Cause to expect that they will be authentic; the Short-Hand Man,³ who took them down, being a *federal* Partizan, they will probably be garbled, in some such Partial Manner as the Debates of the Pensylvania Convention have been by Lloyd.⁴ . . .

1. RC, Mason Papers, DLC. Printed: Rutland, *Mason*, III, 1126–27. John Mason (1766–1849), the seventh child of George Mason, was a merchant in Bordeaux, France, representing the mercantile firm that he had recently formed with James and Joseph Fenwick of Maryland—Fenwick, Mason, and Company.

2. This enclosure was probably Augustine Davis's four-page broadside of the Convention proceedings of 25 and 27 June. (See Convention Debates, 27 June, note 1, RCS:Va., 1558n–59n.) On 21 July, Mason also sent Thomas Jefferson a copy of this broadside, stating that "I intended to have given You the fullest Information in my Power upon the present gloomy State of American Politics, but the Ship, this Letter goes by, sails to-morrow; and I have had so severe an Attack of the Gout in my Stomach, for two or three Days past, that I have not been able to sit up, & now write in so much Pain, that I must defer it, to another Opportunity. I enclose You however the last two or three Days proceedings of the Virginia Convention; which will shew You by how small a Majority, the new plan of Government has been ratified here" (Rutland, *Mason*, III, 1124–25).

3. The first volume of stenographer David Robertson's notes of the Convention debates appeared in October 1788. In December Mason again complained to his son about Robertson's version of the debates (RCS:Va., 903–5). On 29 May 1789 James Duncanson informed James Maury that the second volume of the debates had been received in Fredericksburg the previous night; he also noted that "this Performance was suppressed for some time, I don't know for what Reason, but it was supposed it would not appear at all" (Maury Papers, ViU).

The second volume was in press since late October 1788, when a newspaper announcement stated that the volume "will be published with all possible expedition" (RCS:Va., 903). The exact date that the volume was available has not been determined, but it appears to have been in circulation for at least two or three weeks before Duncanson wrote Maury. On 13 May "Junius-Brutus" declared in the *Virginia Independent Chronicle* that "the second volume of the debates are now making their appearance"; while on 21 May James Madison, writing from New York City, said that the volume had "just come to hand" (RCS:Va., 1175, note 31). The third volume was possibly available by July because "Decius" cited page 27 of that volume in a letter that he dated "July, 1789." This letter was published in *Decius's Letters on the Opposition to the New Constitution in Virginia, 1789* (Evans 21971), a pamphlet which was first advertised for sale on 2 September.

4. While taking shorthand notes of the debates in the Pennsylvania Convention, Thomas Lloyd promised to present a full and accurate account of the speeches. Two months after the Convention adjourned, Lloyd published one volume consisting only of the speeches of Federalists James Wilson and Thomas McKean. A promised second volume never appeared. (See RCS:Pa., 41–42; and CC:511.)

George Washington to Nathaniel Gorham Mount Vernon, 21 July¹

I received your congratulatory letter of the 5th. inst by the last Mail.²—It gives me reciprocal satisfaction to find that the adoption of the Constitution by Virginia has diffused so general a joy through the other States.—The good disposition manifested by the Citizens of your Commonwealth, excites also a flattering & consolatory reflection in all who wish well to the foederal interest & the glory of the American Nation.—Much happiness may rationally be anticipated from the en-

creasing prevalence of industry & frugality, invigorated and encouraged by the operation of a free, yet efficient general government.—

Although I am passing rapidly into the *Vale of Years*, where the genial warmth of youth that fires its votary with a generous enthusiasm becomes extinct, & where the cheerfulness³ of the prospect often infects the animal spirits with a similar contagion; yet I trust there are few who rejoice more fervently in the expectation that the beams of prosperity will break in upon a Country, which has ever engaged my most disinterested wishes & fondest hopes.—And although I shall not live to see but a small portion of the happy effects, which I am confident this system will produce for my Country; yet the precious idea of its prosperity will not only be a consolation amidst the encreasing infirmities of Nature, and the growing love of retirement, but it will tend to sooth the mind in the inevitable hour of seperation from terrestrial objects.—

With earnest prayers that you and all the worthy patriots of America may long enjoy uninterrupted felicity under the New Government—

1. RC, James S. Copley Library, La Jolla, Calif. Gorham (1738–1796), a Charlestown, Mass., merchant, was a member of Congress, 1782–83, 1786–87 (president, 1786), 1789. He signed the Constitution in September 1787 and voted to ratify it in the Massachusetts Convention in February 1788.

2. On 4 July the news of Virginia's ratification reached the Boston area, and the next day Gorham wrote Washington that it gave "the most sincere and heart-felt pleasure to all ranks of People here—The importance of that State is fully understood and our anxiety was in proportion—the business I now look upon to be compleat & that every thing will go on harmoniously & with good will" (Washington Papers, DLC).

3. The letterbook version reads "cheerlessness" (*ibid.*)

Edmund Randolph to James Madison Richmond, 27 July (excerpt)¹

My dear friend

... We hear nothing of the constitution on this side of the river. On the other indeed the discontents are said to be loud, but it does not appear that any of the opponents, who were of the convention, are active by word or deed in fomenting them. Nay it has been reported, (but I cannot answer for the authority) that the members from Amherst have recommended a patient trial. . . .

1. RC, Madison Papers, DLC. Printed: Rutland, *Madison*, XI, 208–9.

John Page to James Madison Williamsburg, 6 August¹

Yours of the 27th. Ulto. inclosing the New York Papers, with the joyfull News of the Ratification of the Plan of the foederal Constitution has just come to Hand. I return you many Thanks for communicating

to me so early, an Authentic Account of that important & glorious Event. I heartily congratulate you on the brightening Prospect of our Affairs, & the Success of your Wishes & patriotic Labours—they are crowned with Success, & to your immortal Honor; for it is to you, we are indebted for the Part Virginia took in this great Affair & we see her Influence in the other States. I confess I have always attributed to you the Glory of laying the Foundation of this great Fabric of government; of supporting the Plan of it in Convention & of animating all the States to cooperate in the great Work. I write in such Haste that I can only add that I am my dear Sr. with the highest Respect & Esteem your Friend & most obedt. Servt.

1. RC, Accession 7960, ViU.

**George Washington to Thomas Jefferson
Mount Vernon, 31 August (excerpt)¹**

... The merits and defects of the proposed Constitution have been largely & ably discussed.—For myself, I was ready to have embraced any tolerable compromise that was competent to save us from impending ruin; and I can say, there are scarcely any of the amendments which have been suggested, to which I have *much* objection, except that which goes to the prevention of direct taxation—and that, I presume, will be more strenuously advocated and insisted upon hereafter than any other.—I had indulged the expectation, that the New Government would enable those entrusted with its administration to do justice to the public creditors and retrieve the National character.—But if no means are to be employed but requisitions, that expectation was vain and we may as well recur to the old Confœderation.—If the system can be put in operation with out touching much the Pockets of the People, perhaps, it may be done; but, in my judgment, infinite circumspection & prudence are yet necessary in the experiment.—It is nearly impossible for any body who has not been on the Spot to conceive (from any description) what the delicacy and danger of our situation have been.—Though the peril is not passed entirely; thank God! the prospect is somewhat brightening.—You will probably have heard before the receipt of this letter, that the general government has been adopted by eleven States; and that the actual Congress have been prevented from issuing their Ordinance for carrying it into execution, in consequence of a dispute about the place at which the future Congress shall meet.—It is probable that Philadelphia or New York will soon be agreed upon. . . .

1. RC, Jefferson Papers, DLC. Printed: Boyd, XIII, 554–57.

James Madison to Philip Mazzei
New York, 8 October (excerpt)¹

I have been favored with several letters from you since the date of my last; but some of them having been recd. in Virginia I am not able now to acknowledge all of them by their respective dates. The date of the last was in May.

You ask me why I agreed to the Constitution proposed by the Convention at Philada.? I answer, because I thought it safe to the liberties of the people, and the best that could be obtained from the jarring interests of States, and the miscellaneous opinions of Politicians; and because experience has proved that the real danger to America & to liberty lies in the defect of *energy & stability* in the present establishments of the United States. Had you been a member of that assembly, and been impressed with the truths which our situation discloses, you would have concurred in the necessity which was felt by the other members. In your closet at Paris and with the evils resulting from too much Government all over Europe fully in your view, it is natural for you to run into criticisms dictated by an extreme on that side. Perhaps in your situation I should think & feel as you do. In mine I am sure you would think & feel as I do. . . .

1. RC, Sol Feinstone Collection of the American Revolution, American Philosophical Society Library. Printed: Rutland, *Madison*, XI, 278–79. In 1773 Mazzei (1730–1816), a former resident of Tuscany, emigrated from London to Virginia, where he bought an estate for the culture of grapes, olives, and other fruits. In 1779 Mazzei went to Tuscany as Virginia's agent to borrow money from the Grand Duke. Mazzei returned to America in 1783, but he left two years later, never to return. Writing from Paris in February 1788, Mazzei sent Madison sixty-four copies of his *Recherches Historiques et Politiques sur les États-Unis de l'Amérique Septentrionale . . .*, which he wanted sold in America.

Virginia Calls a Second Constitutional Convention
30 October–20 November

On 27 June 1788, two days after it ratified the Constitution, the Virginia Convention recommended that the first federal Congress consider forty constitutional amendments—twenty in the form of a declaration of rights and twenty designed to change the structure of government created by the Constitution. Speaking for the people, the Convention enjoined the state's future senators and representatives to seek the adoption of these amendments in one of the two methods provided by Article V of the Constitution—the proposal of amendments to the states by a vote of two-thirds of both houses of Congress. This method was advocated by Federalists, most of whom did not want amendments, especially amendments altering the structure of government.

Antifederalists, who had wanted to ratify the Constitution with conditional amendments, refused to trust the state's recommended amend-

ments exclusively to Congress, which might delay acting on amendments or not act at all. Consequently, they decided to use the second procedure in Article V for proposing amendments, that is, having the state legislatures apply to Congress to call a constitutional convention, which in turn would propose amendments to the states. Once two-thirds of the state legislatures requested such a convention, Congress was required to summon it.

On 20 October the Virginia legislature convened in Richmond and Governor Edmund Randolph turned over to that body the New York Convention's Circular Letter of 26 July, which called upon the states to join New York in requesting that Congress summon a second constitutional convention "at a Period not far remote." This measure was supported by Randolph, who had long advocated such a convention, and it was even considered by some of "the staunchest friends to ye new Constitution," one of whom saw "primâ facie . . . no impropriety in it" (George Lee Turberville to James Madison, 20 and 24 October, Rutland, *Madison*, XI, 309, 316). Many Federalists in the legislature, however, strongly opposed a second convention.

On 29 October Patrick Henry, the most powerful member of the House of Delegates, declared that he would "oppose every measure" for putting the Constitution into motion unless the legislature called for a second convention. To the Committee of the Whole, Henry submitted several resolutions, one of which requested that the legislature apply to Congress for a second convention. Henry charged that "the most precious rights of the people if not cancelled are rendered insecure" by the Constitution. Such language, one Federalist asserted, was "a direct and indecent censure on all those who have befriended the new constitution holding them forth as the betrayers of the dearest rights of the people" (Charles Lee to George Washington, 29 October, Washington Papers, DLC). Henry's resolutions did not surprise Federalists who had been concerned that Virginia and New York would lead "an effort for early amendments" (George Washington to Benjamin Lincoln, 26 October, Fitzpatrick, XXX, 118).

According to Federalist delegate Richard Bland Lee, Federalists hoped to modify Henry's resolution "so as to divest it of it's inflammatory dress—or to postpone it's operation to such a distant period as to give the poeple of America a fair experiment of the government." This stratagem, however, would be difficult to achieve because Henry, the most effective orator in the House, "is old in parliamentary science and is supported by the prejudice and apprehensions of many members of the assembly." Moreover, Federalists in the House were "all young & inexperienced," forming "but a feeble band against him" (to James Madison, 29 October, Rutland, *Madison*, XI, 322–23).

In line with the state Convention's 27 June resolutions, Federalists on 30 October proposed counter-resolutions, calling on Congress to propose a bill of rights and other amendments and stating that until these amendments were ratified, Congress should conform "their Ordinances to the true spirit of the said Bill of Rights and articles of amendment." The House defeated this Federalist substitute 85 to 39, approved Henry's resolutions by a voice vote, and appointed a committee of thirteen Antifederalists—ten of whom as delegates in the state Convention had voted

against ratification—to draft the application to Congress and letters to New York and the other states asking them to join Virginia in applying for a second convention. Federalist delegate George Lee Turberville announced that “The triumph of Antifederalism is compleat” (to James Madison, 10 November, Rutland, *Madison*, XI, 340).

The committee of thirteen reported on 11 November. Three days later, Federalists submitted a substitute application and substitute letters drafted by Francis Corbin, John Page, and Edward Carrington that conformed to the resolutions of the state Convention, “insisting that the people in that Convention had pointed out the mode in which amendments should be sought, and that the Assembly ought not to divert the course of their pursuit” (Corbin to James Madison, 12 November, and Carrington to Madison, 14 November, *ibid.*, 342, 345; and Merrill Jensen, Robert A. Becker, and Gordon DenBoer, et al., *The Documentary History of the First Federal Elections, 1788–1790* [4 vols., Madison, Wis., 1976–1989], II, 273–79). The House defeated these substitutes. Whereupon, the House approved the committee of thirteen’s application to Congress and its two letters. A jubilant but wary Patrick Henry wrote: “The universal cry is for amendments, & the federals are obliged to join in it; but whether to amuse, or conceal other Views seems dubious” (to Richard Henry Lee, 15 November, Henry Papers, DLC).

The Senate considered the application and the two letters in the Committee of the Whole on 18 November and the next day the Senate adopted them with minor changes. The House of Delegates agreed to the Senate’s alterations on 20 November. George Lee Turberville hoped that the resolutions would “be received as the Child of temporarily triumphant faction—& Ultimately that they will rather be ridiculous & [i.e., than] Dangerous” (to James Madison, 16 November, Rutland, *Madison*, XI, 347). Edward Carrington felt that “the palpable untruths contained in the [Anti-federalist] drafts ought to fix the condemnation of the people upon them” (to Madison, 18 November, *ibid.*, 352).

On 25 November the House of Delegates ordered that the application to Congress be engrossed and sent by the governor “to the new Congress, as soon as they shall assemble,” and that the letters to New York Governor George Clinton and the other state executives be prepared, signed, and transmitted “without delay.” The Senate concurred on the 27th. On 2 December newly elected Governor Beverley Randolph, agreeable to an order of the Executive Council, forwarded printed copies of the letters by post, enclosing printed copies of the application to Congress. Randolph asked Clinton and the other state executives to lay this information before their legislatures “as early as possible.” On 15 February 1789, Randolph transmitted the application to Congress to the state’s newly elected federal representatives, who presented it to the U.S. House of Representatives on 5 May. The next day, the House received New York’s call for a second convention. Both applications were entered on the Journal and ordered to be filed.

Most of the state executives received Randolph’s letter in December 1788. Governor Clinton, who had expressed “apprehensions that measures may be taken to retard the delivery of it so as to defeat its utility,” sent the letter and its enclosures to the New York legislature on 26 December, “with the greater pleasure from the persuasion that it will give

you satisfaction to find a State, so respectable for wisdom and patriotism, concurring in sentiment with our Convention, respecting the necessity of amendments to the new system of General Government, and the means of obtaining them" (Clinton to John Dawson, 12 December, Mfm:Va.; and *Journal of the Assembly of the State of New-York* . . . [11 December 1788–2 March 1789, Albany, 1788 (1789)], 24).

Federalists decried the appeal for a second convention. James Madison complained that "The measures pursued at Richmond are as impolitic as they are otherwise exceptionable—if alterations of a reasonable sort are really in view, they are much more attainable from Congress than from attempts to bring about another Convention—It is already decided that the latter mode is a hopeless pursuit" (to Henry Lee, 30 November, Rutland, *Madison*, XI, 372). An anonymous newspaper correspondent (traveling from South Carolina back home to Rhode Island) suggested, in a widely reprinted extract of a letter, that the entire state of Virginia outside of Richmond was "all Federal, and firmly attached to the Constitution." The debate in the House of Delegates, however, had been filled with "virulent Invective . . . and a great Quantity of whining Cant, addressed to the Passions of the weaker Members, holding forth that they must enter into certain Resolves to quiet the Minds of the good People of Virginia." He asserted that Virginians were "at ease and quiet"; it was the Antifederalists in the House who "were using their utmost Endeavours to disturb and disquiet the Minds of the People, by asserting, without advancing one Reason or Argument, that their dearest and most valuable Rights were in danger" (*Maryland Journal*, 12 December).

*House of Delegates Resolutions on a Second Convention, Thursday,
30 October¹*

Whereas the Convention of Delegates of the people of this Commonwealth, did ratify a Constitution or Form of Government for the United States, referred to them for their consideration, and did also declare, that sundry amendments to exceptionable parts of the same ought to be adopted; *And whereas* the subject matter of the amendments agreed to by the said Convention, involves all the great essential and unalienable rights, liberties, and privileges of freemen; many of which if not cancelled are rendered insecure under the said Constitution, until the same shall be altered and amended.

Resolved, That it is the opinion of this committee, That for quieting the minds of the good citizens of this Commonwealth, and securing their dearest rights and liberties, and preventing those disorders, which must arise under a government not founded in the confidence of the people, application be made to the Congress of the United States, so soon as they shall assemble under the said Constitution, to call a Convention for proposing amendments to the same, according to the mode therein directed.²

Resolved, That it is the opinion of this committee, That a committee

ought to be appointed to draw up and report to this House a proper instrument of writing, expressing the sense of the General Assembly, and pointing out the reasons which induce them to urge their application thus early for the calling the aforesaid Convention of the States.

Resolved, That it is the opinion of this committee, That the said committee ought to be instructed to prepare the draft of a letter in answer to one received from his Excellency GEORGE CLINTON, Esquire, President of the Convention of New-York, and a circular letter on the aforesaid subject, to the other States in the Union, expressive of the wish of the General Assembly of this Commonwealth, that they may join in an application to the NEW CONGRESS, to appoint a Convention of the States so soon as the Congress shall assemble under the New Constitution.

Virginia Legislature Application to Congress, 20 November³

VIRGINIA, *to wit:*

IN GENERAL ASSEMBLY,

FRIDAY, *the 20th* NOVEMBER, 1788.

RESOLVED, That an application be made, in the name and on behalf of the Legislature of this Commonwealth, to the CONGRESS of the UNITED STATES, in the words following, to wit:

“The GOOD PEOPLE of this COMMONWEALTH in CONVENTION ASSEMBLED, having ratified the Constitution submitted to their consideration, this Legislature has, in conformity to that act, and the resolutions of the UNITED STATES in Congress assembled, to them transmitted, thought proper to make the arrangements that were necessary, for carrying it into effect—Having thus shewn themselves obedient to the voice of their constituents, all America will find, that so far as it depended on them, that PLAN of GOVERNMENT will be carried into immediate operation. But the sense of the PEOPLE of VIRGINIA would be but in part complied with, and but little regarded, if we went no farther. In the very moment of adoption, and coeval with the ratification of the new plan of government, the general voice of the Convention of this state, pointed to objects, no less interesting to the people we represent, and equally intitled to our attention. At the same time that from motives of affection to our sister states, the Convention yielded their assent to the ratification, they gave the most unequivocal proofs, that they dreaded its operation under the present form. In acceding to the government under this impression, painful must have been the prospect, had they not derived consolation from a full expectation, of its imperfections being speedily amended. In this

resource therefore, they placed their confidence—a confidence, that will continue to support them, whilst they have reason to believe, they have not calculated upon it in vain. In making known to you, the objections of the people of this Commonwealth, to the new plan of government, we deem it unnecessary to enter into a particular detail of its defects, which they consider as involving all the great and unalienable rights of Freemen: For their sense on this subject, we refer you to the proceedings of their late Convention, and the sense of the House of Delegates, as expressed in their resolutions of the 30th day of October, 1788. We think proper however to declare, that in our opinion, as those objections were not founded in speculative theory, but deduced from principles, which have been established, by the melancholy example of other nations in different ages—So they will never be removed, until the cause itself shall cease to exist. The sooner therefore the public apprehensions are quieted, and the government is possessed of the confidence of the people, the more salutary will be its operations, and the longer its duration. The cause of amendments, we consider as a common cause, and since concessions have been made from political motives, which we conceive may endanger the republic; we trust that a commendable zeal will be shewn for obtaining those provisions, which experience has taught us, are necessary to secure from danger, the unalienable rights of Human Nature. The anxiety with which our Countrymen press for the accomplishment of this important end, will ill admit of delay. The slow forms of Congressional discussion and recommendation, if indeed they should ever agree to any change, would we fear be less certain of success. Happily for their wishes, the Constitution hath presented an alternative, by admitting the submission to a Convention of the states. To this therefore we resort, as the source from whence they are to derive relief from their present apprehensions. We do therefore, in behalf of our Constituents, in the most earnest and solemn manner, make this application to Congress, that a Convention be immediately called, of deputies from the several states, with full power to take into their consideration, the defects of this Constitution that have been suggested by the state Conventions, and report such amendments thereto, as they shall find best suited to promote our common interests, and secure to ourselves, and our latest posterity, the great and unalienable rights of Mankind.”

Signed by Order and on Behalf of the General Assembly.

John Jones SS
Thos Mathews S.H.D

Virginia Legislature to Governor George Clinton, 20 November⁴

Virginia, to wit:

In GENERAL ASSEMBLY, Friday, the 20th November, 1788.

SIR, The letter from the Convention of the State of New-York hath been laid before us, since our present session. The subject which it contemplated was taken up, and we have the pleasure to inform you of the entire concurrence in sentiment between that Honorable Body, and the Representatives, in Senate and Assembly, of the *freemen* of this *Commonwealth*. The propriety of immediately calling a Convention of the States, to take into consideration the defects of the Constitution, was admitted, and, in consequence thereof, an application agreed to, to be presented to the Congress, so soon as it shall be convened, for the accomplishment of that important end. We herewith transmit to your Excellency a copy of this application, which we request may be laid before your Assembly at their next meeting. We take occasion to express our most earnest wishes, that it may obtain the approbation of *New-York*, and of all our sister States.

Signed by order and in behalf of the General Assembly,

JOHN JONES, S. S.

THO's. MATHEWS, S. H. D.

Virginia Legislature to the State Executives, 20 November⁵

VIRGINIA, to wit:

IN GENERAL ASSEMBLY,

FRIDAY, the 20th NOVEMBER, 1788.

[“]SIR, The FREEMEN of this COMMONWEALTH in CONVENTION ASSEMBLED, having, at the same time that they ratified the FEDERAL CONSTITUTION, expressed a desire that many parts which they considered as exceptionable should be amended, the General Assembly, as well from a sense of their duty, as a Conviction of its defects, have thought proper to take the earliest measures in their power, for the accomplishment of this important object. They have accordingly agreed upon an application, to be presented to the Congress, so soon as it shall be assembled, requesting that Honorable Body, to call a Convention of deputies from the several States, to take the same into their consideration, and report such amendments, as they shall find best calculated to answer the purpose. As we conceive that all the good people of the United States, are equally interested in obtaining those amendments, that have been proposed, we trust that there will be an harmony in their sentiments and measures, upon this

very interesting subject. We herewith transmit to you a copy of this application, and take the liberty to subjoin our earnest wishes that it may have your concurrence."

Signed by Order and on Behalf of the General Assembly.

John Jones SS
Thos Mathews S.H.D

1. *House Journal* [20 October–30 December 1788] (Richmond, 1789), 12. The House proceedings for 30 October on calling a second convention (except for the appointment of the committee of thirteen) were printed in the *Virginia Independent Chronicle*, 12 November. They were reprinted in whole or in part (including the resolutions) in eight out-of-state newspapers by 11 December: Mass. (1), Conn. (1), N.Y. (3), Pa. (1), Md. (1), N.C. (1). (See Mfm:Va. for the House proceedings respecting these resolutions.) The resolutions alone were printed in the *Virginia Journal*, 6 November (not extant); *Virginia Herald*, 13 November; and Winchester *Virginia Gazette*, 26 November. They were also reprinted in the November issue of the Philadelphia *Columbian Magazine*, and in twenty-six out-of-state newspapers by 20 December: N.H. (1), Mass. (4), R.I. (3), Conn. (1), N.Y. (1), N.J. (2), Pa. (9), Del. (1), Md. (2), Ga. (2). Brief reports or summaries of the resolutions appeared in the *Virginia Gazette and Weekly Advertiser*, 6 November; *Norfolk and Portsmouth Journal*, 12 November; and in seventeen out-of-state newspapers: N.H. (2), Mass. (5), R.I. (1), Conn. (6), N.Y. (1), N.J. (1), N.C. (1).

2. See Mfm:Va. for a photographic reproduction of a draft of the first two paragraphs that is in the Papers of the House of Delegates at the Virginia State Library.

3. The application to Congress has been transcribed from one of the signed printed copies that was enclosed in Governor Beverley Randolph's 2 December letter to the state executives, now in the Broadside Collection of the Massachusetts Historical Society (Evans 45395). The engrossed parchment copy sent to the state's newly elected representatives to the first federal Congress has not been located. The application can also be found in the *Journal of the U.S. House of Representatives*, 5 May 1789, and in the proceedings of the Virginia House of Delegates, 14 November 1788. The latter proceedings were reprinted in whole or in part in the *Virginia Independent Chronicle*, 26 November; *Virginia Journal*, 4 December; *Virginia Herald*, 4 December; Winchester *Virginia Gazette*, 10 December; and *Virginia Centinel*, 10 December; and in twenty-two out-of-state newspapers by 15 January 1789: Vt. (1), Mass. (1), R.I. (1), Conn. (5), N.Y. (5), Pa. (7), Md. (2).

4. The letter to Governor George Clinton has been transcribed from the *Journal of the Assembly of the State of New-York . . .* [11 December 1788–2 March 1789] (Albany, 1788 [1789]), 25.

5. This letter has been transcribed from one of the signed printed copies which was sent to the state executives and which is now in the Library of Congress (Evans 45396).

SUPPLEMENT

Edmund Pendleton Letters

The three letters printed below that Edmund Pendleton wrote from his estate in Caroline County to James Madison on 12 August 1787, 8 October 1787, and 29 January 1788 have been transcribed from photocopies of the originals in the Edmund Pendleton-James Madison Papers, Gilder Lehrman Library, New York, N.Y., which has kindly permitted the letters to be printed here. These letters would have been printed in RCS:Va., Volume 1, but their location was unknown to the editors at the time that volume was published. However, two paragraphs of the 8 October letter, obtained from an auction catalog, appear in RCS:Va., 46-47, and CC:Vol. 1, pp. 354-55; and a summary of the 29 January letter, probably made by or for historian Peter Force, appears in RCS:Va., 399, note 2. Madison replied to the 8 October letter on 28 October and to the 29 January letter on 21 February (RCS:Va., 125-26, 398-99).

Edmund Pendleton to James Madison Edmundsbury, 12 August 1787¹

I have hitherto delayed to pay you my respects, lest I should For a moment withdraw your Attention From the great & important work you was engaged in; but the papers having announced that the Convention had settled the Principles of their System, and appointed a Committee to reduce it to Form,² I could no longer delay letting you know I am yet in the living Class, I think my health considerably better, & Possess strong hopes of being able to Attend the Courts this fall.

We are all in anxious expectation of some great work, the produce of such Collective wisdom and prudence, and I have the pleasure to Observe amongst the Serious, best Citizens, a general disposition to approve and adopt whatever is recommended; tho' on the other hand, some few, & of them, Members of the Assembly, declare themselves against it Ante Mainum, (as the Dicers say). I am sorry there are not more Members of the Assembly in Our Delegation to explain and inforce what is done. I hope Colo. Mason will make a truce with the Gout For that Season at least, as his Attendance will be useful in that, as well as other Instances.

The Secrecy enjoined & observed by the Convention, was not only beneficial in that it occasioned the Ebullitions of Fire, Fancy & Party amongst the Members to evaporate in the room of their Session, and their work to be submitted to the Public in it's perfect State, but it

also prevented these pre-determined Gentlemen, From making mangled details of the work, and by misrepresentations to Form a prejudice against it amongst the Citizens.

I have heard much of threaten'd Riots, In Opposition to the payment of debts and taxes, but no particular Instance of mischief of the sort, except the burning of the Court House in King William, the Prison in New Kent, and the Clerk's Offices of both. That the famous Mr. Posey was author of the latter, nobody seems to doubt, tho' they have not yet evidence sufficient to convict him.³ Money is indeed very scarce, wch. is generally Attributed, & I beleive very justly, to our late Regulations of trade, which has driven many Foreign Vessels to Baltimore. The Season has been remarkably dry, and the prospect of Crops generally melancholly—particularly on the Southside of James River. My best respects to all yr. worthy Colleagues. I am, Dr. Sir, with Sentiments of perfect Esteem & respect, For them & you Yr. Affe. Friend

1. RC, Edmund Pendleton-James Madison Papers, Gilder Lehrman Library, New York, N.Y.

2. On 28 July the *Pennsylvania Herald* reported that the Constitutional Convention had adjourned until 6 August "in order to give a committee, appointed for the purpose, time to arrange and systemize the materials which that honorable body have collected" (CC:30-1). This item was reprinted in the *Virginia Independent Chronicle* and the *Virginia Gazette and Weekly Advertiser* on 8 and 9 August, respectively.

3. See RCS:Va., xxviii.

Edmund Pendleton to James Madison Edmundsbury, 8 October 1787¹

The Governor in his return drop'd at the Bowling Green, yr. very kind Fav. of the 20th. past covering the result of your long labours at Philadelphia, For both of which I thank you.² I had heard of and lamented the withholding the Names of the two respectable Gentn. of our delegation, tho' am yet Ignorant of the ground of their dissention; what ever it was, I cannot approve their Conduct. To expect individual or even State unanimity in Points of so great Magnitude and difficulty, was contrary to all experience; and to maintain ones Opinion by all the Arguments which reason and mental powers afford, is manly & becoming whilst the Subject is in agitation & Suspense; but to yield to the decision of a Majority, when Further Opposition can have no good, & may produce many bad effects, is not only commendable, but in my opinion an Individual duty. I was afraid that if they Publish the reasons of their Conduct, as they would probably think necessary, it might create much dissentions in the State. I am told that what they have done & any thing they may do to justify it, is more likely to injure

their own popularity, than prevent the adoption of the Plan, but of this I can form no Judgment of my own, except in the narrow circle I am confined to, wherein high & low run into approbation of the measure. I can't help submitting it to your consideration, whether a speedy dispatch of it in Congress may not be Useful.

I have read the paper with great Attention, but without the Aid of any Judicious friend to confer with; however I mean to trouble you with my thoughts upon it, as they Occur, which, tho' I do not Flatter my self with a thought that they will be useful to you, will be doing on my part what you seem to have expected, when you did me the honour of sending it.

I began to read it with two Impressions on my mind, with which I think every reader of it should set out. 1st. That something was necessary to be done, and that a Plan, very Far short of perfection, was greatly preferable to our present Condition, and which would probably have been considered as desperate, if the Convention had risen without doing any thing. 2d. that in Governments as well as other things, perfection is unattainable, and indeed Attempts to approach it, by too much refinement, generally produce more mischief than good. I recollected the very sensible observations of Sr. Wm. Temple³ "That none was ever perfect, or free From very many & just exceptions. The Republics of Athens, Carthage & Rome, so renowned in the world, & which have furnished Story with the greatest Actions and persons upon the Records of time, were but long courses of disorder & vicissitude, perpetually rolling between the Oppressions of Nobles, the Seditions of the people, the Insolence of Soldiers, or Tyranny of Commanders. The very Ideas of Government have been liable to exceptions as well as their Actual Frames & Constitutions. The Republic of Plato, the Principality of Hobbes, the Rotation of Oceana⁴ have all been Indicted & Found guilty of many Faults or great Infirmities. Nay the very kinds of Government have never yet been out of dispute, but equal Faults imputed to them all. An Absolute Monarchy ruins the people; One Limited endangers the Prince; an Aristocracy is Subject to Emulations of the great, and Oppressions of the poor; and a Democracy to Popular tumults & Convulsions." His conclusion is "A perfect scheme of Government seems as endless and as useless a search as that of the Universal medicine or the Philosopher's Stone." And mine is that all which human wisdom is capable of on this great Occasion is to adopt the Form most likely to co-incide with the genius of the People to be governed; to Preserve the great outlines and Fundamentals of that Form, and avoid, as far as may be, the natural infirmities, which experience has proved to be annexed to it.

A Republic was inevitably the American Form, and it's natural danger Popular Tumults & Convulsions, with these in view I read over the Constitution accurately & do not find a Trait of any Violation of the great Principles of the Form, all Power being derived mediately or immediately From the People: No titles or Powers that are either hereditary or of long duration so as to become Inveterate; and the Laws & not the arbitrary Will of any Man, or body of men made the Rule of Government. The People, the Origin of Power, cannot Act personally, & can only exercise their Power by representation—the great bodies of both Fœdral & State Legislatures, are to consist of their immediate choice, and From that choice all other Powers are derived: the secretions required in the choice of the Fœdral Senate and President, seem admirably contrived to prevent Popular Tumults, as well as to preserve that Equilibrium to be expected From the Balancing Power of the three branches. In The Presidents Power of Negation to the laws, the modification strikes out a happy medium between an Absolute Negative in a Single person, & having no stop, or Cheque upon laws too hastily passed, or the Offspring of Party or Faction such as upon a re-consideration, are approved by $\frac{2}{3}$ s. of Each House, ought to Pass independant of any other Power.

The President is indeed to be a great man, but 'tis only in shew to represent the Fœdral dignity & Power, having no latent Prerogatives, nor any Powers but such as are defined & given him by law. He is to be Commander in Chief of the Army & Navy, but Congress are to raise & provide For them, & that not For above two years at a time. He is to Nominate all Officers, but Congress must first Create the Offices & Fix the Emoluments, and may discontinue them at pleasure, & he must have the consent of $\frac{2}{3}$ s. of the Senate to his nomination.⁵ Above all his tenure of Office is Short, & the Danger of Impeachment, a powerful restraint agt. abuse of Office. A Political Head and that adorned wth. a full-bottom'd powdered wig hair, seems as necessary & useful in Governmt., as that member so adorned in the natural body; and I have observed in the history of the united Netherlands, that their affairs always succeeded best, when they allowed their Stadtholder to exercise his Constitutional powers.

I was struck with an Objection to the Senate having been made the Executive Council; since having a Participation in two branches, they might Influence laws For creating unnecessary Offices, or giving extravagant Salaries to those necessary, & then fill them up with themselves, their Families or dependts.—& thought it best to have the three branches kept wholly distinct From each other, and as an Execut[iv]e Council was necessary, I cast about For their Formation, & thought

they might be found in the numbers voted For President, but when I considered that the Objection has no force, but in the case of a General Corruption pervading the whole Legislative & Executive bodys, and that on such a Supposition it would admit of no remedy, but what was afforded by new Elections or by recurring to Revolution Principles; That in the House of Representatives, as well as the Incapacity of members of either House to be appointed to Offices created whilst they are members, there are considerable cheques on the Senate; and above all as the considerable expence of this Seperate Council is saved (and I am more afraid of expence then Fraud) I became reconciled to the mode, as an evil which did not admit of a Remedy, that ~~did~~ would not introduce a greater evil.

The like objection occurs to the Senates being made the Triers upon Impeachmts, as they therein Participate in the Judicial Powers, and it may be Added that in case of Impeachment Of the President For Mal Conduct by their advice, they will be a strange Tribunal to Judge of it; at the same time it will be objected to, as borrowed From the British Form and approximating too nearly to the obnoxious power of the Lords. Tho' I do not see any material reason For having taken this trial out of the Judiciary course, yet it is really not so exceptionable as it at first appears. the mode of Prosecution, as generally practiced, is not a favorite with me, being generally the Engine of Party contentions For Offices, and no matter how Seldom practiced. It is in the hands of the House of Representatives, who will not use it in the case Supposed, or if they do, and meet the obstruction, may yet resort to the Courts of Justice, as an Acquital would not bar that remedy—the assimilation to the Power of the Lords, is too futile to merit notice.

The line between the Fœdral & State Powers, the most difficult part of the work, appears to me most happily drawn, and I much applaud that Spirit of Amity and concession which produced, and which I hope may continue to perfect it. In the Regulations of Commerce however, I shall hope not to see projects introduced For discouraging Foreign Trade, or driving Us too soon into Manufactures, in favr. of wch. our Presses have groaned under labour'd nonsense in the course of this Summer. Trade & manufactures should both be Free, and will make their way in proper time.

The restrictions of Paper emissions & unjust tender Laws are alone of value Sufficient to outweigh all Objections to the System—In the exclusive right of Coining, I foresee great risque & expence in conveying Bullion & money between the Seat of Congress & the remote States, overballancing the Fœdral Revenue, wch. seems the only reason For confining it. when Congress had fixed the Proportion of Alloy,

the value of the coin, and other regulations to prevent Counterfeits, might not the States have been trusted wth. Coining Subject to those Rules?

In Art. 1. S. 9. Clause 5th. are these words “Nor shall Vessels bound *to, or from* one State, be *obliged to enter, clear* or pay *duties* in another,” which do not appear sufficiently explicit.⁶ If it was intended to allow a Free trade between the States without entry, clearance or duty, (wch. does not seem to be meant, tho’ the words, may bear that construction) will it not tend to defeat all Regulations of Commerce & Revenue? If, as I suppose, It was intended to reach the cases only of casually touching at a State Port they were not bound to, or passing through one State to get to their Ports in another, (as the Vessels of Maryland do thro’ ours in Navigating Chesapeake) there appears to want words of Restriction From trading, added to the exemption

My last Criticism you will probably laugh at, tho’ it is really a Serious one wth. me. why require an Oath From Public Officers, and yet interdict all Religious Tests, their only Sanction? Those hitherto adopted have been narrow & illiberal, because designed to preserve Established modes of Worship; But since a belief of a Future State of Rewards & Punishments, can alone give consciensious Obligation to Observe an Oath, It would seem that Test should be required or Oaths Abolished.

It is time I had done with my trifling observations, wth. which & a thousand others more material, you had been sufficiently tired at Phila., I will only add my warmest thanks as an Individual, to the Authors of the work For their labours, & declare my unequivocal acceptance of it, with all it’s imperfections.

The Viset you mention of my two old friends From Orange,⁷ gave me infinite pleasure. We discussed the Politics of the day and the history of Former times; We retraced the Familiar Anecdotes of our lives, and in short spent the most agreable week I ever experienced; which I beleive increased the train they Found me in of gaining strength & ease from my Complaints, wch. Flatter me with hopes of being able to Attend the approaching Courts.

You mention your right of Franking having ceased; I suppose you meant it only as a Member of Convention, & that yr. Congressional Privilege in that way subsists—otherwise yr. bargain in this Letter, will be still worse then I intended.

We understand a general Eligibility in Members to Our Convention, & expect you will come From Congress (where important business will no doubt be Suspended) to make one of them. I wish you every Felicity,

being Dr Sir with unreserved Esteem & regard Your very Affe. & obt. servt.

1. RC, Edmund Pendleton-James Madison Papers, Gilder Lehrman Library, New York, N.Y.

2. For Madison's 20 September letter, in which he enclosed a copy of the six-page Dunlap and Claypoole printing of the Constitution, see RCS:Va., 12-13, and for that copy, which Pendleton annotated, see Mfm:Va.

3. The quoted text that follows in this paragraph is from Sir William Temple, "Of Popular Discontents," *The Works of Sir William Temple, Bart.* (4 vols., London, 1770), III, 38-39. Pendleton also quoted some of the same passages in a 10 October letter to his nephew, Nathaniel Pendleton, Jr. (RCS:Va., 47-48).

4. Temple refers to James Harrington's book, *The Commonwealth of Oceana* (1656). Pendleton confused the two-thirds vote needed in the Senate to ratify treaties with the simple majority needed to confirm appointments.

6. Pendleton quotes part of clause 6, not clause 5. The italics are Pendleton's.

7. Madison's father and uncle, Erasmus Taylor, had recently visited "Edmundsbury." In his 20 September letter to Pendleton, Madison said that his father told him about the visit without commenting on Pendleton's health. Madison told Pendleton that he inferred from this silence "that no unfavorable change had happened in it" (RCS:Va., 12-13).

Edmund Pendleton to James Madison Edmundsbury, 29 January 1788¹

This date makes me blush when I acknowledge to have rec'd in due time yr. kind Fav. of October 22d.,² which Found me at Richmond, engaged incessantly in the business of the Courts until December. Fond of ease after my return home, and occupied by the conviviality of the late Season, it wholly escaped my recollection until now that I am left alone.

You'l have long since been informed that Mr. Dawson was rather mistaken in Supposing the Fœdral Constitution met the prompt or General Approbation of the Assembly in their late Session:³ whether a Majority were For or against it, was a Speculation which the members themselves were divided about; but this is certain, that For the First three Weeks, many attempts were made to Cast some unfavourable shades upon it, in the recommendation For a Convention, and it was not agreed to be left at large 'til the appearance of Colo. Mason, who properly reprobated the Idea of sending it to the people under any prejudice For or against it, and being Supposed an Enemy, prevailed to have the Resolutions as they stand.⁴ However Subsequent Resolutions empowering the Convention to defray the expence of Messengers to other States, & of Members to another Genl. Convention, were Supposed to be intended as a test, and to have proved that a Majority were at least For amending.⁵

I am told that a considerable Revolution has happened in the minds

of the middle & lower Class's of people on the Subject, at which I am not at all Surprised. At First they were warmly For it, From a confidence in the wisdom & Integrity of their representatives. In the various publications & conversations on the Occasion, it is exceedingly difficult, indeed impossible, to make the good people at large well Acquainted with the different Forms & combinations of Power necessary to constitute Government For the protection of liberty and property: and hence they are exposed to impositions From designing men, and particularly Of those in Opposition to Government, who have the popular side, and by decrying powers as dangerous to liberty, will include indiscriminately, such as are unavoidable to good Government, with those which are really hurtful, and to this cause I attribute the change in those Sentiments, in which the people were right at first, as I believe they always are when left to their own Judgment. The Fountain of Power which the Constitution has properly made them, they cannot defuse personally, but must distribute the various Streams by representatives—in the choice of those therefore they should use all their circumspection and Judgment, preferring abilities and Integrity in whomsoever they Find them and in them place their confidence, as they submit their lives, liberty & Property to their disposal. This is the advice I have given in the choice of Representatives to the Convention, as a measure more Safe than Judging of the Constitution From Partial or prejudiced States of it, & voting For those who make them. The people of Caroline at first pretty generally For the Constitution, had pitched on their old Servants Colo. James Taylor and my self to represent them, on a Supposition of our being so. so it stands at present, no other Candidate being yet announced, tho' I am told that some people, having changed their minds on the Subject, are wishing to start an Opposing one, wch. may probably be the case by the day.⁶ I do not conceal my Opinion being at present in favor of the Constitution, but can truly say that if I am honor'd with the Appointment, I shall go to that, as I have ever done to other deliberative Assemblies, with a mind open to Conviction, resolved to hear all that can be said, & to decide as my Judgment shall direct me to the general Good. but too much of my self: it is much more important that you should be there, and wish For that reason that you could be in your County some time before the day, lest some designing men may endeavour to avail themselves of yr. Absence.

In a late letter From Georgia, I am informed that the new Government will be unanimously adopted there, & nearly so in South Carolina.⁷ N. Carolina have put off their Convention 'til August, it is said with a view to know & Follow the Resolutions of ours—As I believe

all others will precede Ours, we shall probably have the Subject to consider upon ground, not hitherto reconitred, with nine approving States, to be joined, or wholly Separated from.

You'l have heard that the Assembly have lessen'd our taxes considerably, a measure very popular, and would be pleasing to all, could we be convinced of it's consistence with good faith and the Payment of our debts; but if it is to produce only temporary ease, at the expence of Public default, & future accumulations of Arrears, it is delusive & unwise.

The District Court Bill has also pass'd, tho' I am told it is suspended as to civil suits until Jany. next, but to commence in June as to Criminals. I have not seen the Law, but am told there are 18 districts—4 of wch. Richmond, Wms.burg, Petersburg & King & Queen Court House are Assigned to the Chancery Judges; some on the Sea Coast (I know not which) to those of the Admiralty, & to the rest the Judges of the General Court with the four new Judges are to allot themselves at pleasure. there is no Addition of Salary but 5d. a Mile For travelling, & 20/ a day during the Sessions in the district Courts. All licenced lawyers are admissible in these Courts, & the Fee reduced to the County Court Standard, at which the Gentn. who now attend the Superior Courts are very Clamorous.⁸

My health has continued to mend ever since Midsummer, & I was Surprized to find that my Fatigue at Richmond did not at all impede the progress—If I can rub through this Winter without a relapse, I shall hope to get Stout again. That you may long continue to enjoy health & every other Felicity, is the cordial wish of Yr. very Affe. Friend

1. RC, Edmund Pendleton-James Madison Papers, Gilder Lehrman Library, New York, N.Y.

2. Pendleton probably means Madison's letter of 28 October, not 22 October. Pendleton docketed Madison's 28 October letter: "Answd. Jan. 29-88."

3. In his 28 October letter, Madison reported to Pendleton that, according to John Dawson, "the proposed Constitution is received by the Assembly with a more prompt & general approbation than could well have been expected" (RCS:Va., 126).

4. For the adoption of these resolutions, see RCS:Va., 110-20.

5. For the passage of this act, see RCS:Va., 183-93.

6. For the election of state Convention delegates from Caroline County, see RCS:Va., 576-77.

7. Pendleton probably refers to his nephew Nathaniel Pendleton, Jr.'s letter of 2 December 1787 (not found) which was a reply to Pendleton's letter of 10 October (RCS:Va., 47-48, and note 1 thereto). On 14 January 1788 Madison himself noted that "A letter from Georgia, of the 25. of Decr. says that the Convention was getting together at Augusta and that every thing wore a federal complexion" (to George Washington, CC:446).

8. For the district court bill, see RCS:Va., 797n-98n; and William Nelson, Jr., to William Short, 12 July, and James Monroe to Thomas Jefferson, 12 July, both in V above.

APPENDIX I

Speculation About the Prospects for the Ratification of the Constitution in Virginia 23 October 1787–7 July 1788

Soon after the Constitutional Convention adjourned in September 1787, Americans privately and publicly speculated on the prospects for ratification in every one of the states. For several reasons, Virginia was among those receiving the most attention. Virginia was the largest, wealthiest, and most populous state; it was home to some of America's most influential politicians, including George Washington, Patrick Henry, James Madison, and George Mason; its ratifying convention, slated to meet in early June 1788, was among the last conventions scheduled; most people believed that its ratification would have a favorable impact upon the New York and North Carolina conventions which would convene even later; and, when the ratifying convention finally met, eight states had ratified the Constitution giving that body the opportunity to make Virginia number nine—the necessary number for ratification.

Most public and private commentators expected Virginia to ratify the Constitution despite a strong opposition that advocated prior amendments. Their estimates of the size of the expected majority in favor of ratification varied widely, ranging from a narrow to an overwhelming one. They also commented upon the views of many of the state's prominent politicians, some of whom were also national political leaders. As the documents printed below attest, speculation about ratification was greatest just before and during the meeting of the Virginia Convention, when that body's actions were being closely scrutinized by out-of-state newspapers and many persons representing a diversity of economic and political interests. For other documents commenting on the prospects for ratification in Virginia, see Mfm:Va.

Nicholas Gilman to John Langdon New York, 23 October (excerpt)¹

... From all accounts there is the greatest probability that the New Constitution will be generally adopted—Accounts from General Washington and other Eminent Characters in Virginia are much in favor of it—and all reports agree that the conduct of Mason & Randolph has made them very unpopular in their State.²...

1. RC, Langdon/Elwyn Papers, New Hampshire Historical Society.
2. For other attacks on George Mason and Edmund Randolph as non-signers of the Constitution, see RCS:Va., 69–70. The *Pennsylvania Herald*, 3 November, reported “that, notwithstanding what has been said respecting the conduct of Gov. Randolph and Mr. Mason, there is great reason to expect Virginia will be one of the dissenting states on that important question” (CC: Vol. 1, p. 587).

Philadelphia Freeman’s Journal, 21 November (excerpt)¹

Extract of a letter from Queen Anne’s county,
(Maryland) *November 12.*

“... Every body I see from Virginia, informs me, that all is going against us all over that state, and they tell me, that there has been a trial of the proposed plan in a court-house there; when the business of the court was over, the lawyers divided themselves for and against, judges and jury were appointed, when, after several hours debating on both sides, before hundreds of people, the jury, without going out of court, gave their verdict against it unanimously.”

1. Printed: CC:278. Reprinted: *New York Packet*, 27 November; *Salem Mercury*, 4 December; *Baltimore Maryland Gazette*, 7 December; *Boston American Herald*, 10 December; *Poughkeepsie Country Journal*, 12 December.

Boston American Herald, 17 December¹

We are sorry to find, by a Gentleman of information in Virginia, that there is but little prospect of the Constitution being adopted in that State, *without* amendments.

1. Reprinted: *Providence Gazette*, 5 January. On 21 November 1787 Henry Knox wrote Nathan Dane that “Virginia will be strenuously for amendments and alterations” (CC:275).

Pennsylvania Herald, 19 December¹

A respectable character from Virginia, has assured us, that there is but a *mere chance* of obtaining the assent of that state to the proposed constitution.

1. Reprinted: *New York Morning Post*, 25 December; *Salem Mercury*, 1 January; *State Gazette of South Carolina*, 10 January.

Roger Alden to Samuel William Johnson New York, 31 December (excerpt)¹

... Parties are very high in Virginia, headed by the first Characters of sense and property—they are very much divided and it is not probable that they will subscribe to the measure. ...

1. RC, William Samuel Johnson Papers, DLC. Printed: CC:396. Alden (1754–1836), from Stratford, Conn., was deputy secretary of Congress. His brother-in-law, Samuel William Johnson (1761–1846) of Connecticut, was at this time living in St. George's, Bermuda.

Unitas

Trenton Mercury, 1 January 1788 (excerpt)¹

... In the ancient dominion of Virginia, there is the appearance of very considerable opposition to the new constitution; but it is expected, that our illustrious WASHINGTON, will condescend to labour still for the public good, by appearing in the convention of that state. . . .

1. Printed: RCS:N.J., 194–95. This excerpt was transcribed from the *Pennsylvania Mercury*, 5 January, which indicated that "Unitas" was first printed in the *Trenton Mercury*, 1 January (not extant).

From Thomas Hutchins

New York, 10 January (excerpt)¹

... The Lees in Virginia lead a very powerful party in opposition to the New constitution.—But General Washington and his party who are both powerful respectable and numerous and friends to it will it is thought prevail but many Months will very probably first elapse.—which will no doubt be the case with such of the other states that now evidence every disposition to prevent its adoption. . . .

1. FC, Hutchins Papers, PHI. Printed: *Pennsylvania Magazine of History and Biography*, XXXI (1907), 116–18. For a longer excerpt, see CC:431. The addressee is unknown, but the contents of the complete letter indicate that it was probably written to someone in England. Hutchins (1730–1789) was geographer to the United States, 1781–89.

Thomas Hartley to Tench Coxe

York, Pa., 11 January (excerpt)¹

... I have seen some Gentlemen from Virginia The People are generally with us there: but the Nabobs and some intire Counties there are against us: I received this last Knowledge from a Distance it must not be so perfect. . . .

1. RC, Coxe Papers, Series II, Correspondence and General Papers, PHI.

Charles Carroll of Carrollton to Wallace, Johnson, and Muir Annapolis, 8 February (excerpt)¹

... I fear we shall experience Much Confusion & distress in this Country Unless the New federal Govt. is adopted by Nine States; if some of the principal States, should Reject it, Altho it should be

adopted by 9 States; I shall Not expect Much good from such An adoption—It is said to be very doubtful whether Virga. & Massachusets will Ratify the New federal Govt. . . .

1. FC, Carroll Letterbook, 1771–1833, Arents Tobacco Collection, NN. Wallace, Johnson, and Muir was a London mercantile firm.

Pierpont Edwards to Philip Burr Bradley
Danbury, Conn., 12 February (excerpt)¹

. . . In Virginia the opposition is Dying fast. . . .

1. RC, Miscellany, Beinecke Library, Yale University. Edwards (1750–1826), a New Haven lawyer, and Bradley (1738–1821), a Ridgefield merchant, voted to ratify the Constitution in the Connecticut Convention in January 1788.

New Hampshire Spy, 21 March

We continue to receive very favourable accounts from Virginia—the new Constitution gains ground there—Governour Randolph speaks in favour of it, and as he has much influence, it is pretty certain that it will not only be adopted, but by a very respectable majority. North-Carolina follows of course.¹ The amiable conduct of the minority of the Massachusetts Convention has had a very pleasing effect upon the minds of many people opposed to the new constitution in these states, and there is little doubt but the Grand Federal Edifice will be happily completed.

1. The sentences on Randolph and North Carolina are similar to those in an extract of a 24 February Richmond letter that was printed in the *Massachusetts Centinel*, 19 March (CC:627).

Rufus King to John Sullivan
New York, 16 April (excerpt)¹

. . . South Carolina will adopt the constitution—North Carolina will be governed by Virginia, and the struggle in the last mentioned state will be between parties nearly equal, and both respectable—the probability seems to be that Virginia will accede to the System. . . .

1. RC, King Family Papers, Cincinnati Historical Society.

Nathan Dane to George Thatcher
New York, 20 April (excerpt)¹

. . . We have now collected the accounts of the elections for the Virginia Convention—it is impossible to say, with certainty, whether the Constitution in that State will be adopted or not—however, I think, appearances are rather in favor of its being adopted. . . .

1. RC, Foster Autograph Collection, MHi. Thatcher (1754–1824), a Biddeford, Maine, lawyer, represented Massachusetts in Congress from 1787 to 1789.

New York Daily Advertiser, 21 April¹

Extract of a letter from Philadelphia, dated April 16.

“Our advices from Maryland and Virginia, are very favorable, with respect to the adoption of the Federal Government. In the Convention of Maryland, 5–6ths of the members will concur, and in Virginia, a considerable majority is already attained, and will be increased, by the influence which the ratification of Maryland will naturally be attended with. I hope your State will not be so unwise, as to continue to oppose the general sentiment of the Union.”

1. Reprinted: *Connecticut Journal*, 30 April; *New Hampshire Spy* and *Massachusetts Gazette*, 2 May; *Massachusetts Spy* and *Providence United States Chronicle*, 8 May. The *Massachusetts Spy* omitted the last sentence.

**John Montgomery to William Irvine
Carlisle, Pa., 27 April (excerpt)¹**

... there is no Doubt of verginia we are well assure that there will be a prety Large Majoroty in that State in favr of the Constution as also in South Carolina

1. RC, Irvine Papers, PHi. For the entire letter, see Mfm:Pa. 662. Montgomery (1722–1808) was a Pennsylvania delegate to Congress, 1782–84.

Massachusetts Spy, 1 May¹

Accounts from the southward assure, that there is the greatest probability of Maryland and Virginia adopting the Federal Constitution. Virginia it is supposed will recommend in the ratification similar amendments to those adopted by this Commonwealth.

1. Reprinted: Portsmouth *New Hampshire Spy*, 6 May.

New York Daily Advertiser, 1 May¹

Extract of a letter from a gentleman of information, on the Frontiers of Virginia, to his friend in this city, dated 19th March, 1788.

“I have lately been informed, that favorable proposals have been made to the Kentuckians, by Great-Britain, in order to induce them to quit our Confederacy.—With respect to the new Constitution, it will be adopted by Virginia, fully, in the first instance; and some amendments may probably afterwards be proposed.”

1. This item was reprinted in the *Virginia Centinel*, 21 May; *Winchester Virginia*

Gazette, 21 May (excerpt); *Kentucky Gazette*, 2 August; and in twenty-one out-of-state newspapers by 7 June: N.H. (1), Mass. (5), R.I. (2), N.Y. (4), Pa. (5), Md. (2), N.C. (1), S.C. (1).

New York Daily Advertiser, 3 May (excerpt)¹

Extract of a letter from Baltimore, April 28.

... "There is no longer a doubt but Virginia will adopt it by a considerable majority."

1. Reprinted eight times by 22 May: Mass. (2), R.I. (1), Conn. (4), N.Y. (1).

Samuel A. Otis to Benjamin Lincoln

New York, 8 May (excerpt)¹

... I presume from what intelligence is stirring that No Carolina will follow the lead of Virginia *where* the opposition has gained no ground of late, & will be weakened by the unanimity of Maryland. Virginia remains doubtful however—Yet I can hardly suppose She will refuse to adopt, as, I am informed, upon the plan of Massachusetts. . . .

1. RC, J. S. H. Fogg Autograph Collection, Maine Historical Society.

Henry Knox to George Washington

New York, 25 May (excerpt)¹

... Much will depend on Virginia—Her conduct will have a powerful influence on this state and North Carolina . . .

1. RC, Washington Papers, DLC.

From William Duer

New York, June (excerpt)¹

... Our News from Virginia is highly favorable—an Intelligent Friend of mine, at Richmond (who is more Conversant with the Members of the Convention than most men) assures me that, there is "no Doubt the Constitution will pass; and perhaps without any proposed Amendments"—This is Confirmed by Similar Opinions from Mr. Madison; and other Gentlemen in that Quarter. . . .

1. RC, Andrew Craigie Papers, American Antiquarian Society, Worcester, Mass. Duer (1747–1799), a speculator in land and securities, was secretary of the Confederation Board of Treasury.

Baltimore Maryland Gazette, 3 June¹

As to Virginia, the ancient dominion is so conscious of her dignity, and of the importance of the measure, that her disposition for the ratification becomes hourly more conspicuous, and we have no doubt

a few days will inform us of the ninth pillar being added to the new federal temple.

North-Carolina will doubtless follow the example.

1. Reprinted: *Carlisle Gazette*, 11 June.

Abraham Baldwin to Seaborn Jones
New York, 5 June (excerpt)¹

. . . Virginia is now in session, we feel very doubtful about them. . . .

1. RC, Stokes Autograph Collection, Yale University. Baldwin (1754–1807), a lawyer and a Connecticut native who had moved to Georgia in 1784, was a member of Congress, 1785, 1787–88. He attended the Constitutional Convention, where he signed the Constitution. Jones (c. 1758–1815), a lawyer, was a member of the Georgia Assembly, 1787, 1789–90 (speaker, 1789–90).

Nathaniel Hazard to Mathew Carey
New York, 5 June (excerpt)¹

. . . Of the Members of our State Convention, two to one are [Anti?],² however, if Virginia adopts it, it will go here, I have no Doubt, as matter of *Expedience*.

1. RC, Lea and Febiger Collection, PHI. Hazard, a New York City merchant, was an agent for Carey (1760–1839), the Philadelphia printer and bookseller who published the *American Museum*.

2. The manuscript is torn here.

Rufus King to John Langdon
Boston, 10 June (excerpt)¹

. . . Virginia undoubtedly will accede—the Opposition is greatly weakened, their session will be lengthy, but the constitution will be ratified probably in the manner of Massachusetts. . . .

1. RC, King Papers, NHi.

Hugh Williamson to James Iredell
New York, 11 June (excerpt)¹

The public Papers have not for many days afforded us any News, all Expectation is turned towards Virginia, We take for granted, I do at least, that N Carolina will follow Virginia in adopting or rejecting. I confess that my Hopes are not sanguine, but of this I do not consider myself bound to say all that I think. . . .

1. RC, Iredell Papers, Duke University. A longer excerpt is printed in Griffith J. McRee, *Life and Correspondence of James Iredell* . . . (2 vols., New York, 1857–1858), II,

226. On 22 January William R. Davie had informed Iredell that "The great deference this State [North Carolina] has been accustomed to pay to the political opinions of the Old Dominion will I believe have a very bad effect on the Determination of this great question, this circumstance added to the opposition already formed, in my opinion renders its adoption in this State extremely doubtful" (*ibid.*, 217-18).

Virginia Journal, 12 June¹

Extract of a letter from a member of Convention now sitting at Richmond, to his friend in this town, dated the 4th instant.

"I sincerely congratulate you on the fair prospect we have of the proposed plan of government being ratified by this state."

1. Because the *Virginia Journal* for 12 June is not extant, this item is transcribed from the *Maryland Journal* of 17 June, which reprinted it under the dateline: "Alexandria, June 12." The extract was reprinted five more times by 3 July: N.J. (1), Pa. (3), S.C. (1).

Rufus King to Henry Knox Boston, 16 June (excerpt)¹

... We yet hear nothing from Virginia; my hopes overbalance my fears,—and I sincerely wish that I may not be disappointed. . . .

1. RC, Knox Papers, MHi.

Philip Richard Fendall to Christopher Richmond Alexandria, 19 June (excerpt)¹

... It is expected that the grand question will be put in our Convention tomorrow, it is generally thought that it will be carried in favour of the proposed Government by a Small majority.

1. RC, McGregor Collection, ViU. This letter was postmarked at Alexandria on 23 June and addressed to Christopher Richmond in Annapolis, who docketed this letter as answered on 15 July. Fendall (b. 1734), a native of Maryland, had moved by 1784 to Alexandria, where he was apparently a merchant. Richmond, a former Continental Army officer, was auditor general of Maryland.

Robert Gilmor and Company to Nicholas Low Baltimore, 20 June (excerpt)¹

... Our Accounts from Virginia are Very Unfavorable. It is difficult to say on which Side the Majority Will be each Claims it. Yet if we might hazard an Opinion founded on the best information We can collect. It will be on the Side for Adopting—Should it be Otherwise We apprehend the Worst of Consequences will follow. . . .

1. RC, Low Papers, DLC. Gilmor (1748–1822) was a Baltimore merchant. Low (1739–1826), a New York City merchant and a director of the Bank of New York, voted to ratify the Constitution in the New York Convention in July 1788.

James Cogswell Diary

Scotland Parish, Windham, Conn., 21 June (excerpt)¹

... Govr Randolph has declared strongly for adopting the Constitution, it will probably be acceptd in Virginia. if so it will be an important Period to our Nation. ...

1. MS, Connecticut Historical Society. Cogswell (1720–1807) was pastor of the Congregational church in Scotland Parish, Windham, Conn.

Mark Pringle to John Holker

Baltimore, 21 June (excerpt)¹

... The Convention of Virginia was sitting, but the Event is very doubtful—I hope however they will adopt the new Governmt. as I foresee nothing but Anarchy if they do not—

1. RC, Franklin Collection, Holker Papers, Yale University. Pringle (Baltimore) and Holker (Philadelphia) were both merchants.

Massachusetts Centinel, 21 June (excerpt)¹

Extract of a letter from a gentleman of the first distinction, at New-York, received in the last mail, dated June 15, 1788.

“The accession of Virginia to confederation ceases to be a matter of doubt, and we are in daily expectation of hearing that the ninth pillar is raised. ...”

1. Reprinted: Providence *United States Chronicle*, 26 June; *New Hampshire Gazette*, 3 July.

Royal Flint to Andrew Craigie

New York, 22 June (excerpt)¹

... There seems to be a variety of opinions respecting the adoption of the new constitution in Virginia. The parties in their convention carry on their debates with great abuse & animosity; and neither side calculates upon a strong majority. Colo. Henry Lee writes Platt,² that he considers the event as a matter of doubt, and that both parties seem afraid to try each others strength. Mr. Madison writes by the last post to a friend in this city, “*Be of good cheer all will go well*”.³ Other gentlemen write & give different opinions. Some say without reserve the constitution will be adopted; while others with as little hesitation

say it will either be suspended or rejected. From this diversity of information, you will form your own opinion on the subject.

At any rate, the doubtful appearance of things has checked the rise of securities. There are not at this moment many buyers who will give more than $3/6$ for final settlements. . . .

1. RC, Craigie Papers, American Antiquarian Society, Worcester, Mass. Flint (1754–1797), Continental Assistant Commissary of Purchases during the Revolution, was U.S. Commissioner to Settle Continental Accounts with the Eastern States. Craigie (1743–1819) was a wealthy New York City apothecary. Both men speculated in land and public securities.

2. Colonel Richard Platt of New York City.

3. This quotation is not in any extant James Madison letter.

Henry Knox to Jeremiah Wadsworth New York, 22 June (excerpt)¹

. . . The business in Virginia is critical indeed! so nearly balanced that neither side can determine which has the majority—but this is independent of the Kentucky members amounting to 14—These Gentlemen will determine the fate of America—Grayson and Monroe who have been in Congress are said to have alarmed their fears respecting the Mississippi Navigation—To counteract this poison Mr Brown the delegate in Congress on whom the Kentucky members rely much has written to them and they have received the letter,² in the strongest terms pressing them to adopt the constitution and gives his opinion that the Mississippi business will more probably be ensured by the new constitution than by any other means—A letter from Richmond of the 13th (the last date) states that Mr Browns letter to the Kentucky members was to have been considered by them on the evening of the 12th and that if he advises the constitution it will be well—if not all will be lost—Thus you see my dear friend on what a slender therad [thread] depends the future happiness of America . . .

1. RC, Wadsworth Papers, Connecticut Historical Society.

2. See From John Brown, 5 June (V above).

Peter Van Schaack to Henry Van Schaack Kinderhook, N.Y., 22 June (excerpt)¹

. . . Virginia, Virginia! if She adopts, all will be well, and I believe She will. . . .

1. RC, Henry Van Schaack Scrapbook, Newberry Library, Chicago. A longer excerpt is printed in Henry C. Van Schaack, *The Life of Peter Van Schaack* . . . (New York, 1842), 159. Peter Van Schaack (1747–1832) left New York during the Revolution after refusing to take the loyalty oath. He returned in 1785 and soon after resumed his law practice.

His brother Henry (1733–1823), a gentleman farmer, remained neutral during the Revolution and after the war settled in Pittsfield, Mass.

William Duer to James Madison
New York, 23 June (excerpt)¹

... The Conduct of your Convention will influence in a very great Degree ours; if you adjourn without doing any thing, we shall do the same—but if you do not, there is still some Prospect that we may adopt with proposed Amendments.² . . .

1. RC, Madison Papers, DLC. Printed: Rutland, *Madison*, XI, 168–69.

2. Writing from the New York Convention in Poughkeepsie on 25 June, Hamilton informed Madison that “Our chance of success here is infinitely slender, and none at all if you go wrong.” On about 2 July, Hamilton added: “There is more and more reason to believe that our conduct will be influenced by yours” (*ibid.*, XI, 179, 185).

Pennsylvania Packet, 23 June

Extract of a letter from Petersburg, Virginia, June 12.

“A few days will determine the fate of the new constitution. We have no doubt but our state will adopt it in spite of all the declamation and reasoning of a Henry and a Mason. It meets with powerful support in the Governor, Maddison and Innes.”¹

Extract of a letter from Richmond, dated June 15.

“Our convention is still sitting, and I fear for the constitution, as the division will be a very nice one when the question is put.”²

1. This extract from a Petersburg letter was reprinted ten times by 4 July: Mass. (1), Conn. (2), N.Y. (6), Pa. (1).

2. This extract from a Richmond letter was reprinted in the June issue of the Philadelphia *Columbian Magazine* and in eight newspapers by 5 July: R.I. (1), Conn. (2), N.Y. (2), N.J. (1), Pa. (2).

Ebenezer Hazard to George Washington
New York, 24 June (excerpt)¹

... in my Opinion much depends upon the Conduct of Virginia, for whose Decision we wait with anxious Impatience:—should that be favorable, New York will have no Supporter, in Case of a Rejection, but Rhode Island, and the Union will have but little to apprehend from either the Politics or Power of both.—

1. RC, Washington Papers, DLC. Hazard (1744–1817) was postmaster general of the United States from 1782 to 1789.

**Tench Coxe to Timothy Pickering
Philadelphia, 25 June (excerpt)¹**

... The prospect on the Constitution in Virga. is critical tho I hope we shall have it adopted there—The Majority will be within six as Mr. Maddison writes me.² Governor Randolph is of the same Opinion. The people of Kentucke 10 in number³ hold the balance, it is expected they will divide, in which case we shall have a Majority of six. A dreadful situation for the enlightened, populous & wealthy countries on the Atlantic coast—New Hampshire tis *confidently* said will adopt. North Carolina will do the same if Virginia does not reject—The last five are much more uncertain than the first eight, so that we have reason to be thankful for the order in which Providence has disposed the Conventions.⁴

1. RC, Pickering Papers, MHi. Pickering (1745–1829) was adjutant general of the Continental Army, 1777–78, and quartermaster general, 1780–85. He voted to ratify the Constitution in the Pennsylvania Convention in December 1787.

2. See James Madison to Rufus King, 18 June, note 1 (V above).

3. Kentucky had fourteen delegates.

4. A correspondent of the *New Hampshire Gazette*, 12 June, came to a similar conclusion: "It appears providential . . . that the Conventions of those states which appear the most opposed to the Federal Constitution, are not to meet until all the other states have discussed the subject; which will be a means of preventing any of them being guided by their decisions."

**Ebenezer Hazard to Jeremy Belknap
New York, 26 June (excerpt)¹**

... Our Accounts from Virginia are not very flattering: I suspect there will be but a bare Majority, & some seem doubtful even of that: however, I cannot but hope their Vote will be favorable, especially as nine States have agreed & the new political Machine will be set in Motion: should they join the nine, it is of little Importance to the Union how N.Y. votes. . . .

1. RC, Belknap Papers, MHi. Printed: "Correspondence between Jeremy Belknap and Ebenezer Hazard: Part II," Massachusetts Historical Society *Collections*, 5th series, III (Boston, 1877), 48–49. On 10 May Hazard informed Belknap that "The Maryland Majority has staggered them [i.e., the Antifederalists] very much:—So. Carolina will repeat the Blow, & I think Virginia will give them the *coup de Grace*" (CC:Vol. 4, p. 592). Belknap (1744–1798) was a Congregational minister in Boston.

New Haven Gazette, 26 June

It is reported that Mr. Mason of Virginia, has written to his friends in New-York, that he believes the ancient dominion will adopt the Federal constitution.

New York Journal, 26 June¹

It is not possible to form an adequate idea of the political situation of the state of Virginia, as it respects the new proposed constitution, and this arises from the great variety of accounts which are in circulation; their purports are as various as their numbers. The latest, viz. the 15th, say, that if the constitution be carried in the convention, it will be but by a very small majority. This is said both by federals and anti-federals.

1. Reprinted: *Connecticut Courant*, *Hartford American Mercury*, and *Middletown, Conn., Middlesex Gazette*, 30 June; *Newport Herald*, 3 July.

Pennsylvania Packet, 27 June¹

Extract of a letter from Richmond, dated June 20.

“It is supposed there will be a majority of two or three only, for the adoption of the proposed federal constitution—both parties are very violent.”

1. Reprinted in the June issue of the *Philadelphia Columbian Magazine* and in five newspapers by 4 July: *Mass.* (1), *Pa.* (4).

Maryland Journal, 27 June

Extract of a Letter from a Gentleman at Richmond, to his Friend in this Town, dated the 20th Instant.

“Our Convention has been sitting three Weeks. The Numbers on each Side are so nearly divided, that both Parties count on a small Majority *pro* and *con*. It is, however, supposed the Federalists will carry their Point next Week, or an Adjournment may take place.”

Abraham Bancker to Evert Bancker**Poughkeepsie, N.Y., 28 June (excerpt)¹**

. . . From Virginia, in all probability in about 4 days, Accots. will be received of the Convention of that State deciding in it's favor How much a Measure of that kind will influence the proceedings of this Convention, I will not undertake to determine, but am of Opinion, it will rather lead to an Adjournment than to an Adoption of the Constitution . . .

1. RC, Bancker Papers, NHi. The letter was docketed as received on 1 July. Abraham Bancker (1760–1832) represented Richmond County in the New York Convention, where he voted to ratify the Constitution in July. His uncle, Evert (1721–1803), was a retired New York City merchant.

Massachusetts Centinel, 28 June

[New York,] JUNE 21.
Of VIRGINIA.

The letters from Virginia, dated as late as the 11th are numerous—and agree in the following articles:—That the discussion of the Constitution was carried on with uncommon spirit:—That Mr. *Patrick Henry*, Mr. *Mason* (who thinks Virginia a match for the whole union, and capable of supporting its *own independence*) are the principal speakers, opposed to the Constitution:—That their declamations are answered by Gov. *Randolph*, Mr. *Maddison*, Col. *Lee*, &c. and the Constitution most ably and argumentatively defended:—That it is the general opinion, that the Constitution WILL BE RATIFIED:—That this opinion was formed, from the following, among other circumstances, *the laborious and indefatigable exertions of the leaders of the opposition—the temper which they discover—and from the hints and whispers for an adjournment*:—That a Mr. Jackson,¹ a Kentucky delegate, and several others, men of influence, in the back counties, who were thought to be opposed to the Constitution, had warmly joined the federal party:—That *twenty* majority, is the least spoken of, in favour of the Constitution—but that it will be discussed a long time before the question is taken:—And this is the substance of all the letters we have seen, and we believe may be depended on.²

BOSTON, *Saturday*, June 28.

Late news from VIRGINIA.

Yesterday Capt. Hendrick, in a Schooner, arrived here, in 9 days from Richmond, Virginia.

By this vessel we have received the following intelligence, which is seven days later than by mail,

Extract of a letter, dated York-Town, Virginia, June 17, 1788.

“Our Convention are still sitting—they appear to be very much divided.—The grand question, whether they will receive the plan of government, or not, is to be put this day, or tomorrow. From the best information I can get, there will not be more than ten majority in its favour. You may see how averse our leaders are to sacrifice a little self-interest to the general good. I am persuaded that at least three fourths of the people are in favour of the Constitution.”

By the above vessel we learn that it was the general sentiment at Richmond that the Constitution would be ratified by a handsome majority.

We also learn that the question was urged to a decision by the federal

members—and that the persons opposed to the Constitution, with much anger and acrimony endeavoured to procrastinate it.³

Extract of a letter from New-York, June 22.

“The last advices from Virginia mention, that the adoption of the Constitution there will take place without the smallest doubt, but with many dissenting voices. The antifeds acknowledge themselves fairly beaten, and many have turned warm federalists. I fear much from the obstinacy of this State, but hope New-Hampshire will come to a decision early enough to influence it.”⁴

1. The Virginia Convention did not have a delegate named Jackson. The reference is to Zachariah Johnston. (See John Vaughan to John Langdon, 16 June, note 4, V above.)

2. This material under the New York, 21 June, dateline was reprinted in the *New Hampshire Spy*, 1 July; *Portland Cumberland Gazette*, 3 July; and *Providence United States Chronicle*, 3 July.

3. This material under the Boston, 28 June, dateline was reprinted in whole or in part eleven times within a week: N.H. (1), Mass. (6), R.I. (4).

4. This extract of a New York letter was reprinted in the *New Hampshire Spy*, 1 July; *Salem Mercury*, 1 July; and *Portland Cumberland Gazette*, 3 July.

New York Journal, 30 June

Accounts from Richmond of the 20th in letters to different persons, seem to agree in the *uncertainty* that exists with respect to the *majority* in convention, whether on the federal or antifederal side; it was expected, that the final question would be taken on the 25th viz. last Wednesday; if it was then taken we shall have accounts by to-morrow evening at farthest.

Pennsylvania Packet, 30 June¹

Extract of a letter from Richmond, June 23, 10 o'clock, P.M.

“The convention finished the last clause of the constitution this day. To-morrow or next day the final question will be put. It is expected there will be a majority of two or three for its adoption. The next mail will bring you something decisive I hope.”

1. Reprinted: *Pennsylvania Mercury*, 1 July; and *New York Daily Advertiser*, *New York Independent Journal*, and *New York Journal*, 2 July.

New York American Magazine, June¹

The Convention of Virginia is now sitting, and a favorable decision of the Great Question of ratifying the Constitution is hourly expected.

1. This sentence appears under the dateline “New-York, June 30.”

William Hooper to James Iredell
Hillsborough, N.C., 2 July (excerpt)¹

We are kept in a state of anxious ignorance and suspence as to what may be the final result of the Virginia deliberations upon the New Constitution. To day we are flattered with a report of its being embraced by a large majority, to morrow we may possibly be mortified with accounts of its fate being in doubt or that it is utterly rejected. . . .

1. RC, Charles E. Johnson Collection, North Carolina Division of Archives and History. Printed: Griffith J. McRee, *Life and Correspondence of James Iredell* . . . (2 vols., New York, 1857–58), II, 229–30. Hooper (1742–1790), a lawyer, was a member of Congress, 1774–77, and signed the Declaration of Independence. He supported ratification of the Constitution but failed in his attempt to be elected a delegate to the Hillsborough Convention of July–August 1788.

Vermont Gazette, 7 July¹

In all probability, next week, at farthest, we shall be enabled to present our readers with the important news of the ratification of the Federal Constitution, by the state of Virginia; an event many are wishing for—expecting it will add Majestic Honor to the Federal Cause.

We are informed that the important State of Virginia have adopted the Federal Constitution. We have not yet received the account by the papers but from the directness of our information we have no doubt of its authenticity.

1. These two paragraphs were the first and last of the five items under the Bennington, 7 July, dateline.

Virginia Cumulative Index

Explanatory Note

This cumulative index covers Volumes VIII–X of *The Documentary History of the Ratification of the Constitution*. Because these three Virginia volumes are paginated continuously, volume numbers do not appear in this index. Volume VIII consists of pages i–lviii, 1–558; Volume IX, 559–1176; and Volume X, 1177–1794.

The names of Virginians in this index are followed by the county of residence placed in parentheses. Occasionally, two counties are listed for those individuals who lived in one county, but represented another in the Virginia Convention. In addition to the place of residence, delegates to the Virginia Convention are identified as voting in favor of ratification (Y) or as opposing ratification (N) on the vote that took place on 25 June 1788. The two delegates who were absent on that date are indicated by an “A.” Nonresidents of Virginia are identified by either their state or country of residence.

To aid the reader, compilations of similar items have been grouped under a common main entry. Such compilations are included below. In addition to the grouping under Pseudonyms, pseudonymous items printed in these three volumes are indexed individually. The author's name is placed in parentheses after the pseudonym. Some entries in this index are so unusual that they deserve to be highlighted. The reader should be particularly aware of these entries which are listed below.

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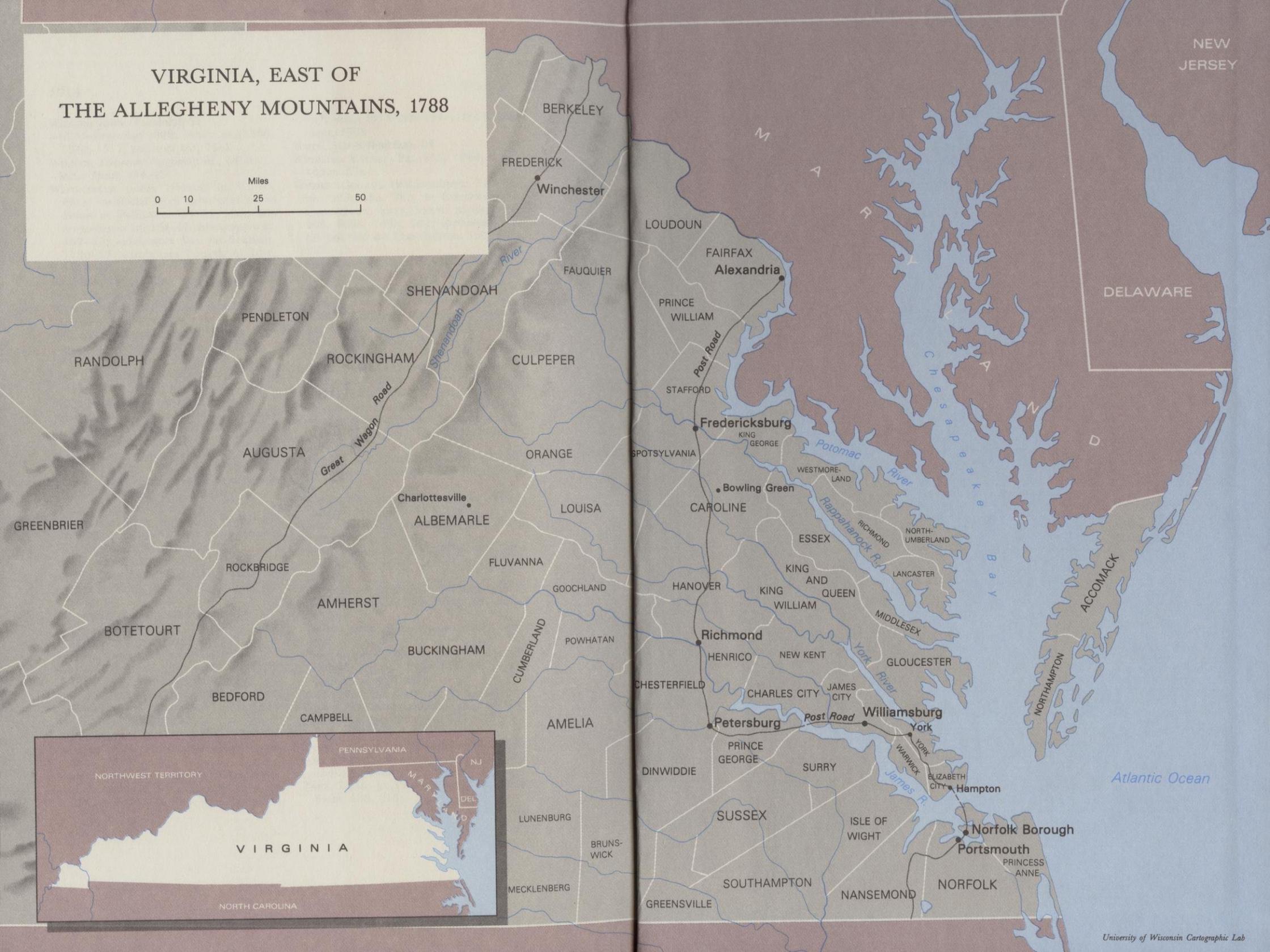
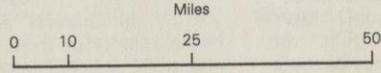
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VIRGINIA, EAST OF THE ALLEGHENY MOUNTAINS, 1788



try, consisting of parades, speeches, dances, fireworks, and dinners and toasts. Led by Patrick Henry, Antifederalists persisted in their opposition to the Constitution in the fall session of the Virginia legislature and obtained the passage of resolutions requesting that the first federal Congress call a second constitutional convention to propose amendments that would safeguard the rights and liberties of the people and the viability of the states.

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 - II Pennsylvania
 - III Delaware; New Jersey; Georgia; Connecticut
 - IV-VI Massachusetts
 - VII Maryland; South Carolina; New Hampshire
 - VIII-X Virginia
 - XI-XII New York
 - XVIII North Carolina
 - XIX Rhode Island

Commentaries on the Constitution: Public and Private

- XIII 21 February to 7 November 1787
- XIV 8 November to 1787
- XV 18 December 1787
- XVI 1 February to 1787
- XVII 1 April to 1787

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