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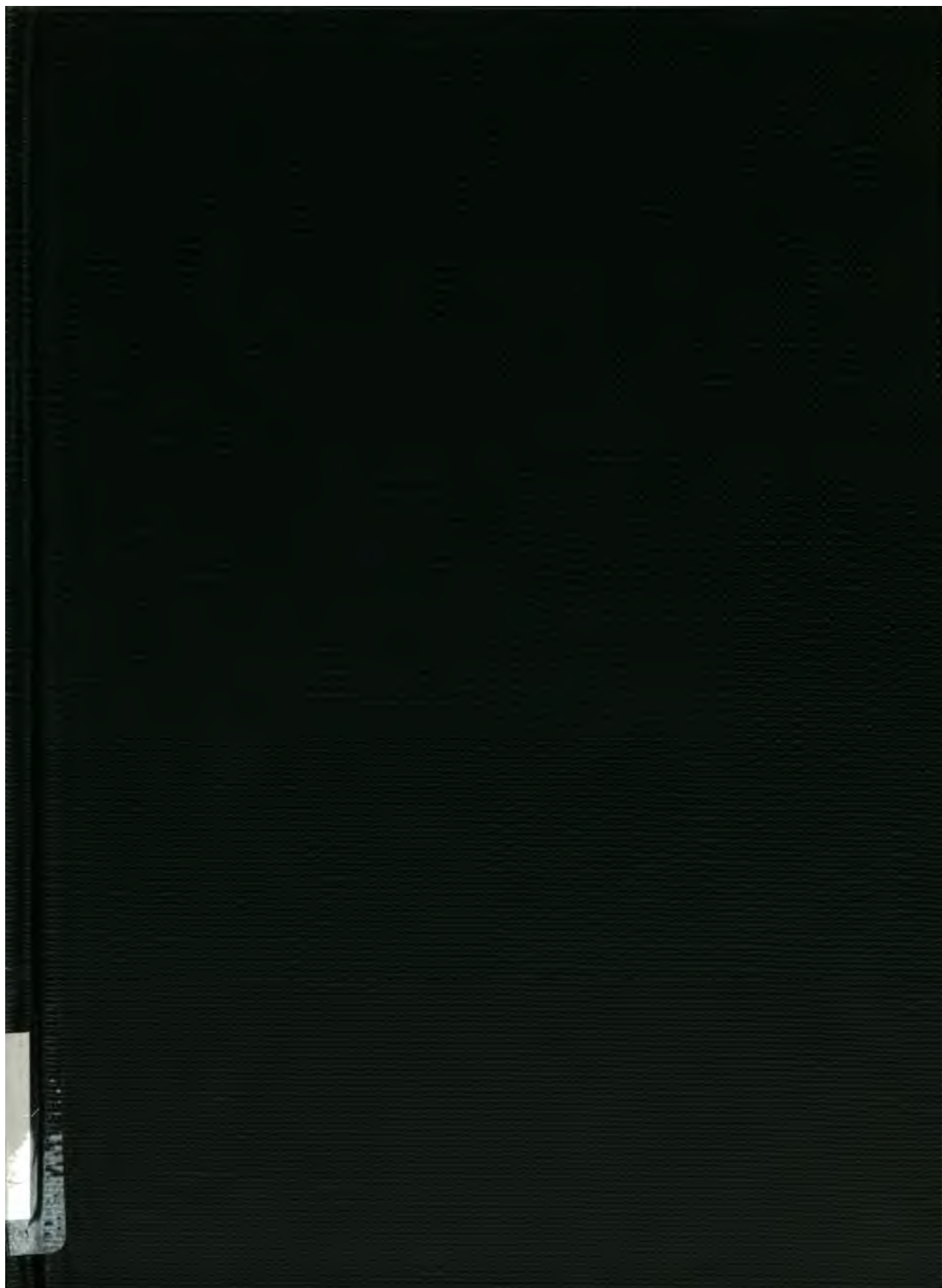
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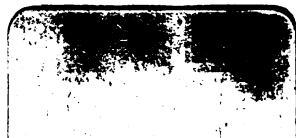
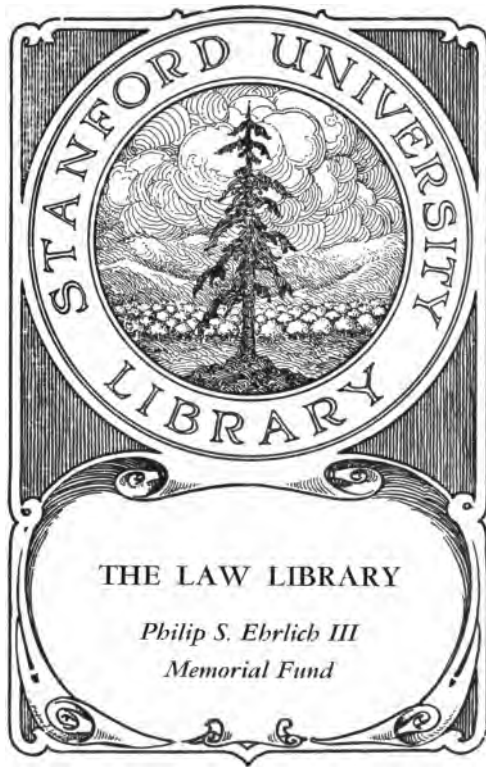
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THE REAL  
AUTHORSHIP OF  
THE CONSTITUTION OF  
THE UNITED STATES  
EXPLAINED



JAMES MADISON AND PELATIAH WEBSTER DEFENDED BY  
HANNIS TAYLOR AGAINST ATTACKS CONTAINED  
IN SENATE DOCUMENT NO. 402, SIXTY-  
SECOND CONGRESS, SECOND  
SESSION, ENTITLED :

“PELATIAH WEBSTER AND THE CONSTITUTION,  
an article prepared by Gaillard Hunt and published in the Nation of  
December 28, 1911.”

*Hannis Taylor* 

“History is studied from documents. Documents are the traces which have been left  
by the thoughts and actions of men of former times. There is no substitute for docu-  
ments: no documents, no history.”—*Ch.-V. Langlois.*



PRESENTED BY MR. SMITH OF GEORGIA  
JUNE 5, 1912.—Ordered to be printed





## THE REAL AUTHORSHIP OF THE CONSTITUTION OF THE UNITED STATES EXPLAINED.\*

JAMES MADISON AND PELATIAH WEBSTER, DEFENDED BY HANNIS TAYLOR AGAINST  
ATTACKS CONTAINED IN SENATE DOCUMENT NO. 402, SIXTY-SECOND CONGRESS,  
SECOND SESSION, ENTITLED: "PELATIAH WEBSTER AND THE CONSTITUTION, AN  
ARTICLE PREPARED BY GAILLARD HUNT AND PUBLISHED IN THE NATION OF  
DECEMBER 28, 1911."

THE article in question, which appeared in the Nation of December 28, 1911, was republished in full in the Evening Post, of New York, on the 30th of the same month. As the primary purpose of that article was to undermine and discredit a notable statement as to the work of Pelatiah Webster, made by Madison and published in his famous "Papers" by Gilpin in 1841, its author was tempted, in the execution of his design, to make two gravely indefensible statements. The first was embodied in the assertion that Madison's testimony in favor of Webster was not intended or prepared for posthumous publication, a fact Mr. Hunt could not possibly have known; the second was embodied in the pointed insinuation that, in any event, such testimony is not entitled to credence because given by Madison "in extreme old age," when he was really a dotard. As these assaults upon the fame of Madison and Webster were contained in an article largely devoted to criticisms of what the undersigned had written upon the same subject, he deemed it his duty to defend both. He therefore sent to the Evening Post, on January 5, 1912, the

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\* The full text of Pelatiah Webster's epoch-making document of February 16, 1783, is contained in the Appendix.

4           **Authorship of the Constitution of the United States.**

following reply to Mr. Hunt's article published as Senate Document No. 402:

TO THE EDITOR OF THE EVENING POST.

SIR: In your issue of December 30, Mr. Gaillard Hunt, who writes pleasantly on popular history, has made an ungenerous attack upon Madison in order to injure the fame of Pelatiah Webster. He begins by warming over an old story originated by Bancroft, who denied the truth of the following statement made by Madison in his famous Papers published by Gilpin in 1841: "In a pamphlet published in May, 1781, at the seat of Congress, Pelatiah Webster, an able though not conspicuous citizen, after discussing the fiscal system of the United States and suggesting, among other remedial provisions one including a national bank, remarks that 'the authority of Congress at present is very inadequate to perform their duties; and this indicates the necessity of their calling a *Continental Convention* for the express purpose of ascertaining, defining, enlarging, and limiting the duties and powers of their Constitution.'"

Mr. Hunt tells us that "Madison's sketch, in which the error of attributing the pamphlet to Webster occurred, was written by him in extreme old age and was not one of the papers which he prepared for posthumous publication." The imputation of dotage thus made against Madison is, however, really less vicious than another recent assault made by Mr. Hunt on that peerless patriot in a book entitled the *Life of James Madison*, in which, in speaking of the "Virginia Plan," he says: "It contains the features of Madison's ideas of government as outlined in his letters to Randolph and Washington, *but it was Randolph's hand that actually drew up the resolutions known in the convention as 'the Virginia plan.'*" The only authority given in support of that indefensible assertion is Rowland's *Life of George Mason*, ii, 101, where we find a letter written by George Mason from Philadelphia, May 20, 1787, to George Mason, jr., saying that "the Virginia deputies (who are all here) meet and confer together two or three hours every day in order to form a proper correspondence of sentiments, and for form's sake to see what new deputies are arrived and to grow into some acquaintance with each other we regularly meet

every day at 3 o'clock." Not the slightest reference is made in Mr. Hunt's only authority to Randolph or to any part taken by him in the drafting of the Virginia plan. Nothing can be found anywhere to give color to such a statement. We know that for nearly a year Madison had been specially engaged upon that work. (See Preparation of Madison for labors of Federal convention in Rives, *Life and Times of James Madison*, ii, 208.)

The internal evidence is all in Madison's favor; the style is manifestly his. It is the deliberate and finished product of a careful hand that has spared no pains. There is no evidence whatever of any such preliminary labor upon the part of Randolph. There is positive evidence to the contrary in Madison's letter to Randolph of April 8, 1787, in which he says: "*My despair of your finding the necessary leisure as signified in one of your letters, as to the probability that some leading propositions at least would be expected from Virginia had engaged me in a closer attention to the subject than I would otherwise have given.*" Randolph really disclaimed authorship of the resolutions when, in the opening words of his speech, "He expressed his regret that it should fall to him, rather than those who were of longer standing in life and political experience, to open the great subject of their mission. But as the convention had originated from Virginia, and his colleagues supposed that some proposition was expected from them, they had imposed that task on him." There is no intimation that the task of drafting the resolutions had in any way been imposed on him; as governor of Virginia he was simply made the spokesman of the delegation. And here the very important fact should be noted that Randolph's speech is inserted entirely in Randolph's hand, while the Virginia plan is spread upon the journal in Madison's hand. There can be no doubt that Madison was the draftsman of the Virginia plan. It was undoubtedly his production both as to form and substance, and has always been so considered. And yet without the slightest evidence to support his attribution to Randolph, Mr. Hunt has made a flippant attempt to deprive Madison of the honor, just as he has attempted to deprive Pelatiah Webster of Madison's testimony by the intimation that when he gave it he was a dotard.

And yet as an historical critic Mr. Hunt is really a more reliable witness than Bancroft, whose well known assault upon Madison he has attempted to revive. For a quarter of a century Bancroft misled students of the Constitution by making them believe that, next in importance to the Virginia plan, was his pipe dream called the "Connecticut plan," prepared, he says, at Philadelphia by Roger Sherman before the 19th of June, and supported by the entire Connecticut delegation. I have demonstrated from the records long ago that the so-called "Connecticut plan" had no existence outside of Bancroft's imagination; that no such plan was ever offered by Roger Sherman in the convention, or supported therein by the delegates from Connecticut. The paper that misled Bancroft was one drawn many years before by Roger Sherman while he was a member of the Continental Congress, as amendments then to be proposed to the Articles of Confederation. But he never offered the paper anywhere; it was simply an unused memorandum found among Sherman's papers after his death by his executors. [See "A Bancroftian invention," Yale Law Journal, Dec., 1908.] I put these facts in evidence in order to show the character of the witnesses who undertake to say that Madison spoke falsely when he made the statement as to Pelatiah Webster's authorship of the paper published in the summer of 1781, proposing the calling for the first time of "a *Continental Convention* for the express purpose of ascertaining, defining, enlarging, and limiting the duties and powers of their Constitution."

But what I really object to is Mr. Hunt's disingenuous attempt to make it appear that I have attached vital importance to the announcement which Madison says Pelatiah Webster made in the summer of 1781 as to the calling of a "Continental Convention." In my recent work I said: "No attention should be paid to Bancroft's vain attempt to discredit Madison's statement. (History of the Constitution, 1, 25, note 3.) Apart from Madison's great accuracy and Bancroft's well-known inaccuracy stands the fact that the call of 1781 was a natural part of Pelatiah Webster's initiative as now understood. Madison was on the ground and knew the facts; Bancroft's inference is based on flimsy hearsay nearly a century after the event. Bancroft never grasped the importance of Webster's work." In commenting on that state-

ment Mr. Hunt has said: "Here he welds the pamphlets of 1781 and 1783 together more strongly than ever before, so that when one falls the other must have a precarious standing." That is one of Mr. Hunt's many bungling inventions. He attempts to make it appear, without any basis of fact whatever, that I have made the pamphlet of 1783, as to whose authenticity there is no possible question, hang upon a few comparatively unimportant lines in the pamphlet of 1781. The plain answer is I have done nothing of the kind. There was no motive for such a contention on my part. The epoch-making paper of 1783 is just as important, just as authentic, even if it should be proven that the comparatively unimportant paper of 1781 never existed.

When we pass to Mr. Hunt's attempt to analyze the epoch-making paper of February 16, 1783, in which Pelatiah Webster announced to the world, as his invention, "the great discovery in modern political science," now embodied in our existing Constitution, it is hard not to wonder why one who writes pleasantly on popular history should enter the more difficult field of constitutional law without the necessary equipment as jurist or publicist. The critic of our complex Constitution who does not understand that the history of the single States that compose the substructure, is one thing, and that the history of the two Federal constitutions that have held them together is quite another thing, is lost. The moment such a critic jumbles the two distinct histories together, as Mr. Hunt does, clear thinking is impossible. The starting point is the fact that no federal government that ever existed prior to February 16, 1783, had ever possessed the power to levy a penny of taxes. For that reason all such federal governments had been failures. The framers of the Articles of Confederation perfectly understood that fact, as we know from John Adams, who tells us in his inaugural address that "the Confederation which was early felt to be necessary was prepared from the models of the Batavian and Helvetic Confederacies, the only examples which remain with any detail and precision in history and certainly the only ones which the people at large had ever considered. But reflecting on the striking difference in so many particulars between this country and most where a courier may go from the seat of government to the frontier in a single day, *it was certainly fore-*

*seen by some who assisted in the Congress at the formation of it that it could not be durable."*

Dr. Franklin, who made the first draft of the Articles of Confederation (it survives in his handwriting), had just as good an opportunity to create a new Federal system as Pelatiah Webster. But, genius as he was, he was perfectly sterile, because the question to be solved was one of finance, and he was not a financier. Webster was; and in that way he conceived of a new Federal creation armed, for the first time in the world's history, with the power to tax. No schoolboy should be guilty of this statement which Mr. Hunt makes: "It contains only two features which also appear in the Constitution—the power of Federal taxation and the bicameral legislature—and there were no two principles of government better understood in the States at the time Webster wrote than these." Nothing could be more absurd. People in the States understood how *single* States, like England and Virginia, had the power to tax; how *single* States could have a bicameral legislature; but no one had dreamed of a *Federal* State with the independent power of taxation; no one had dreamed of a *Federal* legislature divided into two chambers; no one had dreamed of a *Federal* State divided into three departments—executive, legislative, and judicial. It was the application of those conceptions to a *Federal* State that constituted the invention.

Webster made all possible when he conceived of a new Federal system armed with the independent power to tax. That fundamental concept involved the creating of a distinct and self-sustaining Federal Government such as had never existed. In order to accomplish that result, Webster proposed (1) the division of a Federal State into three departments—executive, legislative, and judicial—the organization of each of which he worked out; (2) he proposed for the first time the organization of a Federal assembly with two chambers; (3) he outlined the existing judicial system of the United States, based on the supremacy of Federal law; (4) he provided that the new Federal creation should be one of delegated powers, the residuum of power remaining in the States.

I do not intend that Mr. Hunt shall by garbled extracts misrepresent what Webster did in outlining our Federal judicial

system. As he is not a jurist it may be that his blunders result from honest ignorance. An important count in Webster's indictment against the Articles of Confederation was that "they could institute no general judiciary powers." That difficulty he proposed to remove by creating a supreme court and such inferior courts of law and equity as the necessities of the country might require. He outlined the Supreme Court, with jurisdiction both original and appellate, in these terms: "That the supreme authority should be vested with powers to terminate and finally decide controversies arising between different States, I take it, will be universally admitted, but I humbly apprehend that an appeal from the first instance of trial ought to be admitted in causes of great moment on the same reasons that such appeals are admitted in all the States of Europe. It is well known to all men versed in courts that the first hearing of a cause rather gives an opening to that evidence and reason which ought to decide it than such a full examination and thorough discussion, as should always precede a final judgment in causes of national consequence. A detail of reasons might be added, which I deem it unnecessary to enlarge on here." Thus emerged the splendid conception of the Supreme Court of the United States as it now exists, armed not only with original jurisdiction "to terminate and finally decide controversies arising between different States," but also with an appellate jurisdiction "in causes of great moment on the same reasons that such appeals are admitted in all the States of Europe." As to the organization of the inferior Federal courts, Webster contented himself with this declaration: "To these I would add judges of law and chancery; but I fear they will not be very soon appointed—the one supposes the existence of law, the other of equity—and when we shall be altogether convinced of the absolute necessity of the real and effectual existence of both of these we shall probably appoint proper heads to preside in these departments." But the marvel of it all is that Webster should have provided for the complete supremacy of Federal law. In that way he paved the way for Marshall's great judgment in *Cohens v. Virginia*. He said that the laws of his new Federal creation should be supreme and enforceable against the opposition of the States. His words are: "Further, I propose that if the execution of any act or order of the



supreme authority shall be opposed by force in any of the States (which God forbid) it shall be lawful for Congress to send into such State a sufficient force to suppress it. On the whole, I take it that the very existence and use of our Union essentially depends on the full energy and final effect of the laws made to support it, and therefore I sacrifice all other considerations to this energy and effect, and if our Union is not worth this purchase we must give it up—the nature of the thing does not admit of any other alternative.”

It is really very strange that even Mr. Hunt should not understand Webster's quaint yet lucid English when he describes, in his marvelous essay of October 12, 1787, the three coordinate powers that are to take part, under his novel scheme, in the enactment of Federal legislation. Under the Confederation all legislation was enacted by a one-chamber assembly without the concurrence of an executive. Under Webster's plan, now in force, Federal legislation is enacted by three powers or bodies—the Executive, the House of Representatives, and the Senate. If Mr. Hunt were a jurist he would understand that the President of the United States is a part of the lawmaking power. That is what Webster said; no more, no less. It is hardly worth while to prick such bubbles thrown off by a critic who thus exposes himself to ridicule in his frantic effort to misrepresent the work of one of the greatest characters in American history.

As Mr. Hunt lives in the National Library in the midst of documents, he should believe Ch.-V. Langlois, who has told us that “History is studied from documents. Documents are the traces which have been left by the thoughts and actions of men of former times. There is no substitute for documents; no documents, no history.” He can put his hand every day upon an original copy of the epoch-making document of February 16, 1783, of 47 printed pages, and read it just as it was issued from the press of T. Bradford, who sold it within a few blocks of the doors of the Continental Congress in which Madison and Hamilton were sitting on the day of its publication and in which Charles Pinckney took his place not long afterwards. If Mr. Hunt were a more careful student of documents, he would understand that it was the contents of the

great document of February 16, 1783, that was presented to the Federal Convention of 1787 in the three "plans," so called, offered therein by Madison, Pinckney, and Hamilton. In the light of that fact, how amusing it is to have anyone say that the work of Webster was ignored by the convention. It was the basis of its proceedings. Webster's invention was presented to the convention on the very first day it met for real business in the "plans" offered on that day by Randolph and Pinckney. From May 29 to the close the single question before the secret conclave, which worked only 86 days, was as to the form in which the great invention of February 16, 1783, should be adapted to then existing conditions as a working system of government.

HANNIS TAYLOR.

WASHINGTON, D. C., *January 5, 1912.*



### A RESTATEMENT OF THE SUBJECT.

For personal reasons of its own the Nation undertook to suppress some of the criticisms contained in the foregoing reply of the undersigned, without his knowledge or permission. In the *De Oratore* Cicero has said:

Who does not know that it is the first and fundamental law of history that it should neither dare to say anything that is false, nor fear to say anything that is true, nor give any just suspicion of partiality on the one hand or of personal animosity on the other.

Certainly under that rule there should be no publication of an assault upon the fame of any of the fathers of the Republic in a public document, without the publication, in the same form, of the entire answer made at the time to such assault. I can not therefore doubt that the Senate will order the publication of the foregoing reply made to Mr. Hunt's article, republished as Senate Document No. 402, so that the people of this country may hear both sides of the matter. Those who are giving special study to the subject know that we are now only upon the threshold of the inquiry into the real history of the origin of the wonderful Constitution under which we live. No great subject was ever so shamefully neglected as that has been.

The Federal Convention of 1787, which shrouded its proceedings in a secrecy as profound as that which incloses a Masonic lodge, sealed its records at the close and committed them to Washington with the injunction "that he retain the Journal and other papers subject to the order of Congress if ever formed under the Constitution." Not until 1818 did Congress partially break the seal of that secrecy by a joint resolution directing the publication of the "Journal \* \* \* and all acts and proceedings" of the conven-

tion in possession of the Government. But through that disclosure we received only a fragment, as the so-called Journal had been made up by an official secretary who, either through incompetency or neglect, kept what, according to Adams "were no better than the daily minutes from which the regular Journal ought to have been but never was made out." The real record of the proceedings of the convention, prepared by the semiofficial reporter, James Madison, and now embodied in the three volumes of his priceless "Papers," was not published by Gilpin until 1841. In that way 54 years passed by, after the adjournment of the convention, before the full report of its secret proceedings was given to the world.

Not until 67 years after the adjournment of the convention of 1787 did an American attempt to write the History of the Origin, Foundation, and Adoption of the Constitution of the United States. That attempt, made by Mr. George Ticknor Curtis in 1854, opens with the statement that "A special history of the origin and establishment of the Constitution of the United States has not yet found a place in our national literature." So little had been discovered, even at that late date, as to the history of the origin of the "wholly novel theory" distinctive of the Federal Government under which we now live, that Mr. Curtis could contribute to the subject nothing more definite than this misty platitude:

The Constitution of the United States was eminently the creature of circumstances; not of circumstances blindly leading the blind to an unconscious submission to an accident, but of circumstances which offered an intelligent choice of the means of happiness, and opened, from the experience of the past, the plain path of duty and success, stretching onward to the future.

During the half century of mystery and suppression that followed the adjournment of the Federal Convention it was that the mystical history of what actually took place in the secret

conclave crystallized into a series of nebulous and misleading impressions, so fixed in the minds of many that it is now difficult to dislodge them even with the aid of clear and explicit documentary evidence. It was that period of mystery that gave birth to what has happily been termed the "inspiration theory," which pretends that at some time during the 86 working days of the convention there was evolved through a process, probably supernormal, from the combined brains of eminently wise men, called by Jefferson "an assembly of demigods," the entirely new creation, fully armed, just as Pallas was evolved from the brain of Jove. Von Holst, with his critical and practical German mind, did not fail to perceive the absurdity, the childishness of what he well termed the "inspiration theory" by which he said "the American people, in their vanity and too great self-appreciation, are fond of forgetting the dreadful struggle of 1787 and 1788, or of employing it only as a name for the 'divine inspiration' which guided and enlightened the 'fathers' at Philadelphia. \* \* \* This is not a mere idle phrase; it is one of the standing formulas in which the self-complacency and pride of a people who esteem themselves special objects of the care of the Ruler of the Universe find expression. We reproduce one illustration of this out of a whole multitude. In the North American Review (1862, i, 160) we read: 'Such a government we regard as more than the expression of calm wisdom and lofty patriotism. It has its distinctively providential element. It was God's saving gift to a distracted and imperiled people. It was his creative fiat over a weltering chaos: 'Let a nation be born in a day.'" After ridiculing in that fashion the grotesque assumption he was the first to label the "inspiration theory," Van Holst adds:

"In Europe this view of the case has been generally accepted as correct."

And here it is so deeply embedded in the minds of many of our older jurists and statesmen, who have ceased to be receptive of

new facts, that they resent, sometimes angrily, any attempt to disturb the illusions of their earlier years. And yet such a condition of things should not excite wonder. Sir Leslie Stephen said long ago:

The ordinary mind is indifferent to the thoughts which occupy the philosopher, unless they promise an immediate material result. Mankind resents nothing so much as the intrusion upon them of a new and disturbing truth. The huge, dead weight of stupidity and indolence is always ready to smother audacious inquiries.

After a twentieth-century mind trained in the historical school has been sickened by that kind of historical literature represented by the "inspiration theory," whose medieval flavor suggests the "Faust-book" from which Goethe drew the supernormal parts of his immortal epic, the practical question recurs: Is there the slightest evidence that the "wholly novel theory," the "great discovery in modern political science," as Tocqueville has called it, was created or evolved after the Federal Convention of 1787 closed its doors and proceeded to business? The records answer with a very emphatic "No." The clear and explicit documentary evidence now available puts the fact beyond all question that the "great discovery" was not only made and published four years before the convention met, but that it was taken to Philadelphia carefully formulated in three prearranged plans, identical in all vital particulars, two of which were presented during the first moments of the first day the convention met for real business. On May 29, after a notable speech, Gov. Randolph presented the 15 resolutions embodying what is generally known as the Virginia plan, of which Madison was undoubtedly the draftsman. From his "Life" by Rives we can justly infer that for nearly a year beforehand Madison was at work on the Virginia plan. The moment Randolph concluded Charles Pinckney presented his plan or system. The event is thus recorded in the minutes of Yates: "Mr. C. Pinckney, a member from South Carolina, then added that

he had reduced his ideas of a new government to a *system*, which he then read." We know that Pinckney's plan or system was worked out by him at Charleston and described in his "Observations" months before his departure from that city for Philadelphia.

It is equally certain that Hamilton, with even greater care, elaborated his plan beforehand. From his "Life" by his son we learn that, "In the course of his speech (which occupied five hours) he read his plan of government, not the propositions which are found in the printed Journal, but 'a full plan, so prepared that it might have gone into immediate effect if it had been adopted.' This plan consisted of 10 articles, each article being divided into sections." An inspection of the three pre-arranged plans, drafted so carefully by Madison, Pinckney, and Hamilton, months before the convention met, at once fixes the fact that they are identical in every vital particular, because each embodied in its own way every element of "the great invention," which consisted of a proposal (1) of a Federal Government, armed, for the first time in the world's history, with the independent power of taxation; (2) of a Federal Government, divided, for the first time in the world's history, into three departments—legislative, executive, and judicial; (3) of a Federal Legislature, divided, for the first time in the world's history, into two chambers; (4) of a supreme Federal judiciary, armed, for the first time in the world's history, with the power to put the stamp of nullity on a national law; (5) of a Federal Government, operating, for the first time in the world's history, not on States as corporate bodies, but directly on individuals.

It may safely be assumed that no student of the Constitution will ever hereafter have the hardihood to attempt to uphold the "inspiration theory" by contending that the "great discovery in modern political science" was made after the convention assembled. The records fix the fact that the "great discovery" was



made before the convention met, and that it was therein presented in three "plans," so called, formulated beforehand by Madison, Pinckney, and Hamilton. The New Jersey plan is not to be considered, because it did not embody the "great discovery." It simply proposed amendments of the Articles of Confederation. The so-called "Connecticut plan," invented by Bancroft, never existed, as the records show, outside of his imagination. There were but three plans, all carefully formulated before the convention met, each embodying in a clear and positive form the five new principles whose combination constituted the "great discovery."

Senator Lodge, who has not yet opened his eyes to the new evidence, has lately restated what remains of the old theory in an address delivered in North Carolina on November 28, 1911, in this way:

The first conception of our Constitution as an instrument of popular government, so long held unquestioned, was derived from the framers of the Constitution themselves.

But the Senator does not assert that "the first conception" was drawn from "the framers," after the convention met for business. As Madison, Pinckney, and Hamilton, the draftsmen of the three plans, were all "framers of the Constitution," we must give the Senator the benefit of the doubt, and assume that he meant to say that "the first conception" came from their "plans," so carefully formulated beforehand. But one question remains. Were the three plans, identical in every vital particular, drawn from a common source; or were their authors, working in isolation and far apart, inspired at or about the same moment, to make an identical invention for which the world had been waiting for centuries? If such a miracle actually happened, it is far more startling than that involved in the turning of water into wine.

It is not necessary, however, for us to rely either upon the "inspiration theory" or upon the "miraculous theory" for the

simple and commonplace reason that on February 16, 1783, the "great discovery" was published to the world, *as his invention*, by Pelatiah Webster in a tract of 47 printed pages, entitled "A Dissertation on the Political Union and Constitution of the Thirteen United States of North America, which is necessary to their preservation and happiness; humbly offered to the public by a citizen of Philadelphia." That publication came from the well-known press of "T. Bradford, in Front Street, three doors below the Coffee House," situated about four blocks from Independence Hall, in which the Continental Congress was then sitting. At the very moment Madison, then 32, and Hamilton, then 26, were actually present in Philadelphia as Members of the Congress, in which Charles Pinckney, then 25, took his place not long afterwards. Only the blind or infatuated will contend that these vigilant and ambitious young statesmen, intent upon improving conditions then crying out for a remedy, did not read and master the contents of the great document, the first to propose the construction of a new federal system, published "at the seat of government," under their very eyes, by Pelatiah Webster on February 16, 1783.

Certainly this ripe financier and trained political economist of 57 was far better equipped to solve a problem in its essence financial and commercial than either Madison, Pinckney, or Hamilton could have been at that time. The relations that existed between the mature man of contemplation and the younger men of action were just what they should have been. He formulated, in the light of his experience, the novel principles which they were to translate into a working system of government. The effect of Webster's initiative on Hamilton was almost instantaneous. On April 1, 1783, just six weeks after the publication of the great document, Hamilton expressed in Congress, *for the first time*, his desire "to see a general convention take place, and that he would soon, in pursuance of instructions from his constituents, propose to Congress a plan for that

purpose; the object would be to strengthen the Federal Constitution." In the month preceding Pelatiah Webster and Hamilton were acting together in another matter of grave public moment. When, in July, 1782, a petition was to be presented to Congress in behalf of "the deranged officers of the lines of Massachusetts and Connecticut," Webster, a native of the State last named, was appealed to for his influence. In a petition drawn in the noblest style and signed "Pelatiah Webster, William Judd," he presented the case, which was finally referred to a special committee, composed of Mr. Peters, Mr. Hamilton, and Mr. Dyer. The report, *which survives, in the handwriting of Alexander Hamilton, is dated March 6, 1783, just 18 days after the publication of the great paper of February 16 of that year.* These facts I have extracted from the MS. Records of the Continental Congress, No. 19, volume 6, folios 489-493, for the printing of which, unfortunately, no provision has yet been made. By these records the fact is fixed that as a public man Webster was as well known to Hamilton as he was to Madison.

Who was Pelatiah Webster? He was one of the famous New England family which probably settled first in Massachusetts, and then sent one offshoot into New Hampshire, where Daniel was born at Salisbury in 1782, and another into Connecticut, where Pelatiah was born at Lebanon in 1726, and Noah, the lexicographer, at Hartford in 1758. Pelatiah graduated at Yale College in 1746, and in 1755 he settled at Philadelphia, where he became a prosperous merchant, meeting with such success as to earn ample leisure for study and writing. During the British occupation of the city in February, 1778, on account of his ardor in the patriotic cause he was arrested at night, probably by order of Gen. Howe, and closely confined in the city prison for four months, a large part of his property being confiscated to the King's stores. By the grandson of his beloved daughter Ruth

the undersigned has lately been given an extract from a letter written by Pelatiah Webster while in prison, in which he says:

I don't know nor have the least intimation for what I am confined or how long I am to continue. I am your father and surest friend.

P. WEBSTER.

He had a son, Pelatiah Webster, jr., who was in the Continental Army. From the same source I have received an extract from a letter written by him on September 10, 1777, in which he says:

Our armies have begun to fight below; there is much, very much, depending on which side the victory may turn. We are all big with anxiety and flatter ourselves that our prospects of success are now much greater than they have been since the war first commenced. Some think Howe will get to the city. We most generally think he will get a much more severe drubbing than ever he had. God only knows what the event may be.

As early as October, 1776, Pelatiah Webster began to write on the currency, and three years later he began the publication of the famous series of "Essays on free trade and finance," of which seven numbers were issued in 1785. In the next year appeared "An essay on credit: Reasons for repealing the act of the legislature revoking the charter of the Bank of North America." Finally, in 1791, he republished his various papers in a work entitled "Political Essays on the Nature and Operation of Money, Public Finances, and other Subjects Published During the American War and Continued up to the Present Year." That volume, which displays a marvelous mastery of the subject to which it is devoted, continues as the leading authority upon the finances of that period.

If any proof of that assertion is required, it may be found in the great work of Prof. Sumner, entitled "*The Financier and the Finances of the American Revolution*," which quotes Webster very

often. Prof. Sumner explains how it was that Webster and Hamilton made Robert Morris possible, when he says:

In February, 1780, Pelatiah Webster urged the appointment of a financier—that is, of a competent single officer—to take charge of the finances in place of the committees or boards who had hitherto been intrusted with them. In September of the same year Alexander Hamilton *urged the same view*, that there should be single responsible heads of great departments; “Mr. Robert Morris would have many things in his favor for the department of finance.”

Webster was the American Adam Smith of that epoch, with his eyes fixed as an expert on all the great questions touching economics and the currency. He was thus the first to see that the management of the finances of the Revolution should be taken away from the irresponsible boards or committees of Congress in order to be placed in the responsible hands of a minister of finance. After Webster had thus virtually created the new office, Hamilton found for it its first incumbent, Robert Morris. Is it strange that such a man, living at the seat of government, should have been consulted by Congress as to the resources of the country? From Dexter's Yale *Biographies and Annals*, ii, 97 to 102, which enumerate 27 of Webster's publications, we learn that “it is a matter of tradition that Members of Congress, especially the Connecticut delegates, were in the habit of passing the evenings with him, to consult him upon financial and political concerns.”

Will any practical man of affairs, unaffected by illusions, find it hard to believe, when aided by clear and explicit documentary evidence, that the very grave financial and commercial problems pending in February, 1783, were solved by the greatest economist and financier of that epoch, who, at that moment, was devoting his life to the task? What were the financial and commercial problems pressing upon the country at that time? The cessation of hostilities with Great Britain, followed as it was by the signing of the preliminary articles of peace at Paris, January 20, 1783, had

brought the financiers of the Revolution face to face with the mighty problem of providing, without any visible means, for the debts that represented the cost of victory. In estimating that cost Congress said:

The amount of these debts, as far as they can now be ascertained, is \$42,000,375. \* \* \* The amount of the annual interest is computed to be \$2,415,956. Funds, therefore, which will certainly and punctually produce this sum at least must be provided. [See Madison Papers, Gilpin; 1 Appendix, VI.]

No Federal Government that had existed anywhere in the world down to that time had ever been armed with the power to levy a penny of taxes on its own account. The Continental Congress like all its predecessors from the days of the Greek Leagues did not possess to the slightest extent the taxing power. It was entirely dependent on the old quota system through which it could only draw voluntary contributions from the States as States. Since February 3, 1781, Congress had been imploring the States so to amend the Articles of Confederation as to permit it to levy a tax on imports for the term of 25 years in such a way as to produce about one million a year. That prayer would have been granted had it not been for the action of Rhode Island, whose assembly on November 1, 1782, unanimously refused to concede to Congress the right to levy a tax on imports in any form. From that attitude Rhode Island never receded, despite Washington's circular letter to the governors of all the States, urging the necessity of granting to Congress some power to provide a national revenue, and despite Congress's frantic appeal to the States, in the final resolution of April 18, 1783, for power to levy specific duties on certain enumerated articles, and 5 per cent on others.

The selfish motive that prompted Rhode Island's refusal leads us from the financial to the commercial question. Rhode Island had a customhouse, and she possessed the power to levy a tariff of her own. The maritime States had a great advantage in that

24      **Authorship of the Constitution of the United States.**

regard. More than half the goods consumed in New Jersey, Connecticut, Vermont, and in the western parts of Massachusetts were brought to New York, with her splendid harbor, so capable of a world-wide commerce, and with rivers flowing directly to the sea, to Delaware and Chesapeake Bays, to the Mississippi, and to the watercourse of the St. Lawrence. Each State was attempting to regulate commerce on its own account and in its own interest. Thus the country was distracted by commercial conflicts which made it imperative that Congress should be armed with adequate power to regulate trade. Something had to be done to prevent the enactments of one State to the injury of the trade of the other and to establish a system intelligible to foreigners trading with this country. The British ambassador at Paris, when he was notified by the American commissioners in 1784 that they had full power to negotiate a commercial treaty with Great Britain, replied, after consulting with English merchants trading with North America, that "the apparent determination of the respective States to regulate their own separate interests renders it absolutely necessary toward forming a permanent system of commerce that my court should be informed how far the commissioners can be duly authorized to enter into any engagements with Great Britain which it may not be in the power of any one of the States to render totally fruitless and ineffectual." In 1785 New York laid a double duty on all goods whatever imported in British ships, and in the same year Pennsylvania passed the first of a series of tariff acts designed to tax the whole community for the benefit of a few manufacturers.

As an economist and financier it was Pelatiah Webster's dream to create an entirely new system of Federal Government—armed, first, with the independent power of Federal taxation; second, with the power to regulate trade between the States and with foreign nations. In order to make way for his new system he knew

it was absolutely necessary to wipe out as a whole the Articles of Confederation. In denouncing that impotent league (it was not a government) he said:

But on trial of it in practice it was found to be extremely weak, defective, totally inefficient, and altogether inadequate to its great ends and purposes, for—

1. *It blended the legislative and executive powers together in one body.*

2. This body, viz, Congress, consisted of but one house, without any check upon their resolutions.

3. The powers of Congress in very few instances were definitive and final; in the most important articles of government they could do no more than recommend to the several States, the consent of every one of which was necessary to give legal sanction to any act so recommended.

4. *They could assess and levy no taxes.*

5. They could institute and execute no punishments except in the military department.

6. They had no power of deciding or controlling the contentions and disputes of different States with each other.

7. *They could not regulate the general trade; or*

8. Even make laws to secure either public treaties with foreign states, or the persons of public ambassadors, or to punish violations or injuries done to either of them.

9. *They could institute no general judiciary powers.*

10. *They could regulate no public roads, canals, or inland navigation.*

Impelled by such convictions, which are the best index to his work, completed two years later, Webster, as early as 1781—*when no one else had dreamed of anything beyond amendments of the Articles of Confederation*—proposed, as Madison tells us in his record of events, the entire abolition of the then existing Constitution. As Webster himself tells us at a little later time: “I was then pretty much at leisure and was fully of opinion (*though the sentiment at that time would not very well bear*) that it would be ten times easier



to form a new constitution than to mend the old one." Thus, in the year in which the battle of Yorktown was won—a victory that marked the real end of the War of the Revolution—Pelatiah Webster, "after discussing the fiscal system of the United States, and suggesting, among other remedial provisions, one including a national bank," was the first to indicate "the necessity of their calling a *Continental Convention* for the express purpose of ascertaining, defining, enlarging, and limiting the duties and powers of their Constitution." Having thus proposed in 1781, in advance of anyone else, the calling of the "*Continental Convention*" that finally met at Philadelphia in May, 1787, he set himself to work to devise and submit to the American people an entirely new scheme of federal government as a substitute for the hopeless failure under which they were then living.

On February 16, 1783, Pelatiah Webster published to the world at Philadelphia, through the press of T. Bradford, in a pamphlet of 47 pages, the "great discovery in modern political science" now embodied in the existing Constitution of the United States. He perfectly understood that he was putting forth a new creation, because he has told us, in express terms, that it was his purpose to construct an entirely new constitution as a systematic whole. His words are these:

As the fate then of all governments depends much upon their political constitutions, they become an object of mighty moment to the happiness and well-being of society; and *as the framing of such a constitution* requires great knowledge of the rights of men and societies, as well as of the interests, circumstances, and even prejudices of the several parts of the community or commonwealth, for which it is intended; it becomes a very complex subject and of course requires steadiness and comprehension of thought, as well as great knowledge of men and things, to do it properly. *I shall, however, attempt with my best abilities, and hope from the candor of the public to escape censure, if I can not merit praise.* \* \* \* I

have not the vanity to imagine that my sentiments may be adopted; I shall have all the reward I wish or expect if my dissertation shall throw any light on the great subject, shall excite an emulation of inquiry, *and animate some abler genius to form a plan of greater perfection, less objectionable, and more useful.* \* \* \*

I hope the reader will please consider that these are the original thoughts of a private individual, dictated by the nature of the subject only, *long before the important theme became the great object of discussion in the most dignified and important assembly which ever sat or decided in America.*

That assertion is supported by the entire body of contemporaneous history. The silly statement often made that about that time (Feb. 16, 1783) such a scheme of government as Webster proposed was "in the air" is simply mendacious. There is not a scintilla of contemporaneous evidence to support such a Münchhausen story. It was years afterwards before any proposals at all like it were made. Prior to Webster's publication there is no trace of any other plan or project of a new Constitution that can be placed in contrast or rivalry with his "wholly novel theory." Thus the great architect stands alone and isolated from all rivals in the solitude of his own originality. The epoch-making document in question is so systematic, so lucid, with every thought worked out in detail, that it is easy to follow the mental processes through which the "great discovery in modern political science" was evolved from the brain of the daring innovator who was at once statesman, economist, and financier. The overshadowing practical difficulty to be removed was that involved in the fact that the one-chamber Congress then existing possessed no power to tax. To use Webster's own words: "They could assess and levy no taxes." No Federal Government that had ever existed had been armed with the power to tax. Webster's fundamental concept, without a precedent in the history of the world, was a Federal Government armed with complete and self-executing

taxing power. As a financier he argued out his novel proposal at length. He said:

I begin with my first and great principle, viz: That the Constitution must vest powers in every department sufficient to secure and make effectual the ends of it.

The supreme authority must have power of making war and peace, of appointing armies and navies, of appointing officers both civil and military, of making contracts, of emitting, coining, and borrowing money, of regulating trade, of making treaties with foreign powers, of establishing post offices, and in short of doing everything which the well-being of the commonwealth may require, and which is not compatible to any particular State, all of which require money and can not possibly be made effectual without it. *They must therefore of necessity be vested with power of taxation. I know this is a most important and weighty truth, a dreadful engine of oppression, tyranny, and injury when ill used; yet, from the necessity of the case, it must be admitted. \* \* \**

To make all these payments dependent on the votes of 13 popular assemblies, who will judge of the propriety of every contract and every occasion of money, and grant or withhold supplies, according to their opinions, whilst at the same time the operations of the whole may be stopped by the vote of a single one of them, is absurd. \* \* \* *This tax can be laid by the supreme authority much more conveniently than by the particular assemblies, and would in no case be subject to their repeals or modifications, and of course the public credit would never be dependent on or liable to bankruptcy by the humors of any particular assembly.*

Out of that brilliant and daring proposal to arm a Federal assembly with "the supreme authority" to levy all kinds of Federal taxes, regardless of the "repeals or modifications" of the States composing the Union, arose the existing Constitution of the United States. The moment it was settled that such a supreme Government was to be established it followed that such a Government must be completely organized, with the authority to execute its own laws and decrees directly upon individuals through machinery adequate to that end. From the original

concept necessarily resulted a completely organized Government "with the usual branches, legislative, executive, and judicial; with the direct power of taxation and the other usual powers of a Government; with its Army, its Navy, its civil service, and all the usual apparatus of a Government, all bearing directly upon every citizen of the Union without any reference to the governments of the several States." (Freeman, History of Federal Government, ii, 11.)

The moment Webster saw that his new creation must be a strictly organized and self-sustaining government, he proposed to divide it into three departments—legislative, executive, and judicial—as that partial division then existed in the State constitutions. There never had been a Federal Government so divided in the world's history. There was no such division in the Government created by the Articles of Confederation. To use again Webster's words: "It [the confederation] blended the legislative and executive powers together in one body" [the Continental Congress]. It follows, therefore, that Webster's second proposal to divide a *Federal* Government into three departments—legislative, executive, and judicial—was but little less bold than his first, which involved the arming of such a creation with the independent power of taxation. And yet some superficial critics have not had the acumen to draw the distinction between the dividing of the government of a single State like England or Virginia into three departments, and the dividing of a *Federal* State into three departments. The division of the Government of a *single* State in that way had long been known. It was Webster who first conceived the idea involved in the application of such a division to a Federal system, an innovation that resulted in momentous consequences.

As the Articles of Confederation did not provide for an executive of any kind, the people of this country had never heard of a President of the United States, much less of a President surrounded by a Cabinet council. Webster was the first to provide for both. He

proposed that the executive power should be vested in a President, surrounded by a Cabinet or council composed of the "great ministers of state," such President to be elected by Congress, as the President of France is now elected. "The financier manages the whole subject of revenues and expenditures, the Secretary of State takes knowledge of the general policy and internal government, the minister of war presides in the whole business of war and defense, and the minister of foreign affairs regards the whole state of the Nation, as it stands related to, or connected with, all foreign powers." Later on he says the "great ministers of state shall superintend all the executive departments and appoint all executive officers, who shall ever be accountable and removable for just cause by them or Congress, i. e., either of them."

Just at the State constitutions admonished Webster to split the new Federal Government into three departments, executive, legislative, and judicial, so the bicameral State legislatures admonished him to split the one-chamber Congress of the Confederation into two chambers, an upper and a lower House. As the draftsman of the Articles of Confederation, Franklin was content to follow a model 2,000 years old. All Federal assemblies down to that time had consisted of a single chamber. Therefore Franklin made the Continental Congress to consist of only one chamber. In criticizing Franklin's work Webster said: "This body, viz, Congress, consisted of but one House, without any check upon their resolution." As an improvement he proposed "that Congress shall consist of *two chambers*, an upper and a lower House, or Senate and Commons, with the concurrence of both necessary to every act, and that every State send one or more delegates to each House. This will subject every act to two discussions before two distinct chambers of men equally qualified for the debate, equally masters of the subject, and of equal ambitions in the decision. These two Houses will be governed by the same natural motives and interests, viz, the good of the Commonwealth and

the approbation of the people." In commenting upon the manner in which the Members should be chosen Webster said:

The delegates which are to form that august body, *which are to hold and exercise the supreme authority*, ought to be appointed by the States in any manner they please, in which they should not be limited by any restrictions; their own dignity and the weight they will hold in the great public council will always depend on the abilities of the persons they appoint to represent them there.

Finally he said:

It is necessary that Congress should have all usual and necessary powers of self-preservation and order, e. g., to imprison for contempt, insult, or interruption, etc., and to expel their own Members for due causes, among which I would rank that of nonattendance on the House, or partial attendance without such excuse as shall satisfy the House.

In thus defining the constitution of the American Congress as it exists to-day Webster provided even for details. Never before had the world heard of a Federal assembly of two chambers instead of one. And yet the American Congress thus brought into being has never so far recognized the existence of its creator. It has "carved not a line, it has raised not a stone; it has left him alone in his glory."

An important count in Webster's indictment against the Articles of Confederation was that "they could institute no general judiciary powers." That difficulty he proposed to remove in his new system by creating a Supreme Court, with jurisdiction original and appellate, and such inferior courts of law and equity as the necessities of the country might require. He outlined the Supreme Court, with jurisdiction both original and appellate, in these terms:

That the supreme authority should be vested with powers to terminate and finally decide controversies arising between different States, I take it, will be universally admitted, but I humbly apprehend that an appeal from the first instance of trial ought

to be admitted in causes of great moment, on the same reasons that such appeals are admitted in all the States of Europe. It is well known to all men versed in courts that the first hearing of a cause rather gives an opening to that evidence and reason which ought to decide it than such a full examination and thorough discussion as should always precede a final judgment in causes of national consequence. A detail of reasons might be added, which I deem it unnecessary to enlarge on here.

Thus emerged, for the first time, the splendid conception of the Supreme Court of the United States as it now exists, armed not only with original jurisdiction "to terminate and finally decide controversies arising between different States," but also with an appellate jurisdiction "in causes of great moment on the same reasons that such appeals are admitted in all the States of Europe." As to the inferior Federal courts, he concluded with this declaration:

To these I would add judges of law and chancery; but I fear they will not be very soon appointed—the one supposes the existence of law, the other of equity—and when we shall be altogether convinced of the absolute necessity of the real and effectual existence of both of these, we shall probably appoint proper heads to preside in these departments.

When our Federal judicial system, as thus designed by Webster, found a real expounder in Marshall, one of the gravest tasks he was called upon to perform was that involved in the establishment of the constitutional supremacy of the Supreme Court over judgments of State courts denying Federal rights. In the great case of *Cohens v. Virginia* (6 Wheat., 264), presenting the solemn refusal of the Virginia Court of Appeals to obey the mandate of the Supreme Court of the United States, the ultimate question involved was the supremacy of Federal law. It is hard not to marvel when we see how perfectly Webster anticipated and provided for that very contingency when he said:

(1) No laws of any State whatever, which do not carry in them a force which extends to their effectual and final execution, can

afford a certain or sufficient security to the subject. This is too plain to need any proof. (2) Laws or ordinances of any kind (especially of august bodies of high dignity and consequence) which fail of execution, are much worse than none. They weaken the government, expose it to contempt, destroy the confidence of all men, native and foreigners, on it, and expose both aggregate bodies and individuals who have placed confidence in it to many ruinous disappointments which they would have escaped had no law or ordinance been made; therefore, (3) To appoint a Congress with powers to do all acts necessary for the support and uses of the Union, and at the same time to leave all the States at liberty to obey them or not with impunity is, in every view, the greatest absurdity. Further I propose *that if the execution of any act or order of the supreme authority shall be opposed by force in any of the States* (which God forbid), it shall be lawful for Congress to send into such State a sufficient force to suppress it. On the whole, I take it that the very existence and use of our Union essentially depends on the full energy and final effect of the laws made to support it, and therefore I sacrifice all other considerations to this energy and effect, and if our Union is not worth this purchase, we must give it up—the nature of the thing does not admit of any other alternative.

That splendid appeal for the supremacy of Federal law under the new system was the inevitable corollary of the primary concept of a self-sustaining Federal government with the independent power of taxation. What eyes save those of a seer could have thus foreseen all that was to come?

Webster was no more eager, however, to arm his new Federal creation with supremacy in the event that its laws or decrees should be defied by the States than he was to guard against intrusion such rights as the States reserved to themselves. Nothing could be more explicit on that subject than these declarations:

II. But now the great and most difficult part of this weighty subject remains to be considered, viz, how these supreme powers are to be constituted in such manner that they may be able to exercise with full force and effect the vast authorities committed



to them for the good and well being of the United States, and yet, be *so checked and restrained from exercising them to the injury and ruin of the States that we may with safety trust them with a commission of such vast magnitude* (the first definition of State rights)—and may Almighty Wisdom direct my pen in this arduous discussion. \* \* \* I propose further that the powers of Congress, and all the other departments acting under them, shall be restricted to such matters only of general necessity and utility to all the States as can not come within the jurisdiction of any particular State, or to which the authority of any particular State is not competent, *so that each particular State shall enjoy all sovereignty and supreme authority to all intents and purposes, excepting only those high authorities and powers by them delegated to Congress for the purposes of the general union.*

Here we have in advance, and in a more elaboratè form, the tenth amendment, which declares that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Nothing could be more clear and explicit than Webster’s declaration that his new Federal fabric was to be one of delegated and strictly limited powers, and yet one absolutely supreme within the limits of its jurisdiction as defined by its own tribunals.

Approaching his fundamental concept from the commercial side, Webster manifested an almost supernormal prescience as to future conditions, so far as they involved the need for uniformity of law in general and uniformity of congressional legislation affecting trade between the States in particular. He said:

Merchants must from the nature of their business certainly understand the interests and resources of the country the best of any men in it. \* \* \* I therefore humbly propose, if the merchants in the several States are disposed to send delegates from their body to meet and attend the sitting of Congress, that they shall be permitted to form a chamber of commerce, and their advice to Congress be demanded and admitted concerning all bills before Congress, *as far as the same may affect the trade*

*of the States.* Besides the benefits which Congress may receive from the institution, a chamber of commerce, composed of members from all trading towns in the States, if properly instituted and conducted, will prove very many, I might almost say innumerable, advantages of singular utility to all the States.

It will give dignity, uniformity, and safety to our trade.

That recommendation was the only basic part of Webster's plan which the convention rejected. But a century later his wisdom and foresight were vindicated by the creation of the Department of Commerce and Labor, which is now performing, in a general way, the functions which would have been performed by the National Chamber of Commerce outlined in the plan of February 16, 1783. It is certainly remarkable that at this very moment the newspapers of the country, under the head line, "United States Chamber of Commerce meets wide approval," are making this announcement:

Applications from the principal commercial and trade organizations of the country for membership in the Chamber of Commerce of the United States of America are being received daily at the Evans Building, headquarters here, by John Joy Edson. The 700 representatives of the various organizations invited here by President Taft, through Secretary Nagel, and the Bureau of Manufactures, Department of Commerce and Labor, are fulfilling their pledge, taken at the convention recently, to make the new national chamber a success, and to recommend to their organizations the adoption of the tentative plan, decided upon at the meeting, enabling them to become members. Already the necessary steps have been taken by the bodies in the large American cities. In order to participate, the New York Chamber of Commerce purposes amending its charter.

At last the cycle has come round—the wisdom and foresight of Pelatiah Webster has now been vindicated in every particular.

The statement has been made heretofore that on the very day on which the epoch-making paper of February 16, 1783, was published at the well-known press of T. Bradford, Philadelphia, within

about four blocks of Independence Hall, where the Congress was then sitting, Madison, then 32, and Hamilton, then 26, were in their places in that assembly in which Charles Pinckney, then 25, took his place not long afterwards. The "great discovery in modern political science" was thus given to these three youthful, vigilant, and patriotic statesmen as it was given to all the world, and it was their right and duty to reflect upon it and learn from it during the four eventful years that were to intervene before the meeting of the Federal Convention in May, 1787. An account has been given already of the drafting of the three "plans" so called, by Madison, Pinckney, and Hamilton, many months before the august assembly actually met. In the "plan" which each took with him to the convention the five new and basic principles that constitute the discovery were stated, with variations of detail, of course, in each. Ch.-V. Langlois has well said:

History is studied from documents. Documents are the traces which have been left by the thoughts and actions of men of former times. There is no substitute for documents; no documents, no history.

The problem involved in this matter can be solved, through a comparison of four documents, with almost the precision of a mathematical demonstration. The trained student has only to spread before him the original document of February 16, 1783, and then place, side by side, beneath it the three "plans," or rather paraphrases of it, taken to the convention by Madison, Pinckney, and Hamilton.

The conclusion thus becomes irresistible that the three "plans" were drawn from the common source, equally accessible to each draftsman, unless we substitute for that normal conclusion the impossible assumption that, *in some miraculous way*, the "great discovery" was revealed, during the few months preceding the meeting of the convention, to three youthful statesmen working in isolation and far removed from each other. And here let it be

remembered that no one of the three ever claimed to be the author of it. Such a claim upon the part of either would have put each at war with the other, a conflict that never existed. If they failed in any duty, it was in the negative one of declaring at the time that the work of each was based on a preexisting invention, to which no one of them made any personal claim whatever. It is about time for serious men, especially those who claim to be historical scholars, to cease beating their heads against the stone wall now made up of clear, explicit, and unimpeachable documents that relieve us of the absurdities imposed by the "inspiration theory" and the "miraculous theory." Such performances as that of Mr. Hunt only emphasize the declaration of Sir Leslie Stephen that "mankind resent nothing so much as the intrusion upon them of a new and disturbing truth. The huge, dead weight of stupidity and indolence is always ready to smother audacious inquiries." The inquiry in this case is, however, too obvious and easy to be called "audacious." The time has come for historical scholars worthy of the name to look with pity and disdain upon the "inspiration theory" and the "miraculous theory."

It is a comfort to know that there are a large number of sane people in this country, unlike the Abbé Vertot, who exclaimed, "My siege is finished," when offered new documents that stultified his narrative. The following may be given as specimens of the views of those who are willing to consider newly discovered evidence, even when it explodes old superstitions. Even *The Nation*, generally captious, always critical, has been frank enough to admit the truth. It has said:

The "entirely new plan" in question, that of a Federal Union with adequate financial powers, appears to have been first clearly set forth by Pelatiah Webster in a pamphlet entitled "A Dissertation on the Political Union and Constitution of the Thirteen United States of North America," printed at Philadelphia in February, 1783. The recent reprint of this interesting document and its wide dissemination through the pages of the *Congressional*

*Record* have called attention, virtually for the first time, to what is undoubtedly the most important single documentary anticipation of the Constitution and places Webster, hitherto known chiefly as a writer on finance, in the front rank of early American publicists. \* \* \* At any rate, the story of the origin of the Constitution must henceforth be told in the light of what Mr. Taylor very properly regards as a discovery, and for his own connection with that discovery he is entitled to hearty praise.

In speaking of Mr. Taylor's "*The Origin and Growth of the American Constitution*" the *Journal of Commerce*, generally regarded as a conservative publication, has said:

The distinctive value of the present volume lies in the fact that the author has discovered and here places in its true light, for the first time, the document out of which our Constitution grew—the Pelatiah Webster pamphlet.

The *New Orleans Picayune*, equally conservative, has said:

There is one fact which gives this volume a unique and important interest—the presentation of the Pelatiah Webster document recently discovered by Mr. Taylor, and undoubtedly the source of our Constitution.

In the *North Carolina Review* a fully equipped historical scholar, in the course of a very elaborate criticism, has said:

The principal object of his book is to present Pelatiah Webster as the true creator of our Federal Constitution, and thus he is able to introduce into his narrative a human element, which brings the reader into closer, more intimate contact with the whole drama performed at Philadelphia in 1787 than any other treatise which has preceded it. As this notable work presents the story of our Federal Constitution in a wholly new light, which will probably revolutionize methods of studying our constitutional history in the future, I shall examine the author's theory with some detail.

The conclusion reached is thus stated:

Whether Mr. Taylor has spoken the final word on the subject remains to be seen in the light of the historical criticism, both

favorable and unfavorable, which his book is certain to bring forth. At any rate, in a work of rare interest, he has placed the burden of proof on the critic who undertakes to reject his theory, and until this burden is successfully assumed by some scholar of equal attainments, Mr. Taylor may rest secure in his position as the discoverer of Pelatiah Webster, "the architect of our Federal Constitution."

Certainly in recent years no justice of the Supreme Court of the United States has stood higher as a critical student of the history of the Constitution than Mr. Justice Brown. After a careful examination of the question at issue, he has written as follows:

SUPREME COURT OF THE UNITED STATES,  
*Washington, January 26, 1912.*

MY DEAR DR. TAYLOR: I have not failed to recognize the great value of the services you have rendered the country in rescuing from oblivion the name of Pelatiah Webster, who is shown by your researches to have originated the idea of our Federal Government as subsequently developed in the Constitution of the United States. I think it entirely befitting that Congress should put itself on record as acknowledging the services thus rendered by Mr. Webster and embodying their views in some substantial tribute to his memory.

Very truly, yours,

H. B. BROWN.

HON. HANNIS TAYLOR,  
*Maryland Building.*

No just or comprehensive view of this great subject can be taken by anyone who fails to recognize the true relation in which Pelatiah Webster, the architect, stands to the master builders who, as members of the Federal Convention, transformed his dream into a reality. No critical mind should confuse the sphere that belongs to the bold innovator who made the great advance in modern political science by inventing, in 1783, an entirely new plan of Federal Government with the sphere that belongs to the practical statesmen who, in 1787, seized upon that plan and embodied it in a constitution. Each achievement, entirely distinct from

the other, is entitled to the honor of immortality. The records fix the fact that from May 27, when the plans were submitted, to the close, the single question before the secret conclave of 1787 was as to the form in which the great invention of February 16, 1783, should be adapted to then existing conditions as a working system of government. The practical result achieved, under the most difficult circumstances possible, was just as remarkable as the invention itself. The philosophers, statesmen, jurists, warriors, experienced men of affairs who composed the august assembly that wrought at Philadelphia in 1787 may be compared, as to genius and learning, with the master spirits of any age. No assembly so small—it numbered only 55 delegates—was ever dominated by so many men of the highest order. They need not strut in borrowed plumes; they need no fame that belongs to another. The most ardent worshiper of the master builders would only belittle their immortality if he fancied that it could be at all dimmed by the rendition of tardy justice to the great architect, the man of contemplation, who was their natural, perhaps their necessary, forerunner.

When we look back and view as a whole the entire procession of events, advancing in regular order from the time the tie that bound us to the mother country was severed until the present day, it appears that our constitutional history has been dominated by a great triumvirate—Washington, Pelatiah Webster, and John Marshall—whose achievements must be considered in connection with that of the Federal Convention of 1787. The great drama in the history of humanity that opened with the invention of the “wholly novel theory,” February 16, 1783, closed in triumph with its final acceptance as a working system of government by the last of the 13 States, May 29, 1790. Its first act was one of creation, proceeding from a single mind that wrought a revolution in political science by making an entirely new combination of political principles without a prototype in history. Its second

act was one of adaptation, proceeding from a deliberative body of marvelous men, at once so scientific and so practical as to be able to readjust a novel and highly complex political theory and then apply it as a working system of government under the most difficult of all circumstances. Its third act was one of coercion, proceeding from the combined pressure of compelling conditions backed by the driving force of an almost irresistible personality intent upon saving the States from anarchy by subjecting them to the yoke of an equitable and indestructible union. The most brilliant page in the history of Washington is that which records his almost superhuman efforts to force the States to accept the work of the convention—efforts that began with the unanimous ratification of loyal little Delaware on December 7, 1787, and closed with the sullen acceptance of disloyal little Rhode Island, coerced by the fear of isolation, on May 29, 1790. The intellectual side of the movement finds its source in a man of contemplation, who worked behind a curtain which, until now, has almost concealed him from the view of the world.

The material and political side of the movement finds its driving force in the Titanic form of a man of action, who without apparent effort, impressed all mankind from the outset with the grandeur of his achievements. Such is the relation in which Pelatiah Webster stands to Washington.

And yet Washington and Webster gave to their country only a marble Galatea which the hand of another genius had to quicken into life. The success of the American Constitution has resulted from its capacity to adapt itself rapidly to the changes that have followed each other like the pictures in a panorama during the very short period in which the 13 scattered communities that fringed our Atlantic seaboard toward the close of the eighteenth century have grown into an empire. In expanding with that expansion, in adapting itself to the changed relations resulting therefrom, the



American Constitution has developed an elasticity, a growing power entirely beyond the cumbersome process of amendment its terms provide. When the thirteenth, fourteenth, and fifteenth amendments, involving a single subject matter, are considered, as they should be, as a single transaction, the fact remains that the Constitution of the United States has been amended in a formal way only once since 1804, a period of 108 years. And yet during all that time it has been passing rapidly, despite its rigid and dogmatic form, through a marvelous process of unparalleled development, chiefly through the subtle agency of judge-made law ever flowing from a generous fountain—the Supreme Court of the United States. That fountain was unsealed by John Marshall, who, on February 4, 1801, took his place for the first time a Chief Justice, and as such sat in the midst of six associates for 34 years. Down to that time the judicial power, destined to become the main-spring of the new system, had proved a hopeless failure. During the first 11 years of its existence the latent powers of the Supreme Court were in eclipse. At the end of that time it was that Jay, on January 2, 1801, after his reappointment as Chief Justice, wrote to President Adams:

I left the bench perfectly convinced that under a system so defective it would not obtain the energy, weight, and dignity which was essential to its affording due support to the National Government nor acquire the public confidence and respect which, as a last resort of the justice of the Nation, it should possess. Hence I am induced to doubt both the propriety and expediency of my returning to the bench under the present system. (Pellew's *Life of Jay*, p. 339.)

That despairing cry with which Jay abandoned the headship of our Federal judicial system upon the assumption that it was impotent was a bugle call to Marshall, who became at once not only the dominating mind of the court but its mouthpiece in a sense in which no Chief Justice has ever been before or since. At

the moment of his accession the time was ripe for the advent of a jurist and statesman clear visioned enough to sweep the entire horizon of Federal power and bold enough to press each element of it to its logical conclusion. The ultimate success of his life work was assured by the manner in which he solved the problem of problems that awaited him. In *Marbury v. Madison* (1803) he announced for the first time that the Supreme Court possessed the right, as well as the power, to declare null and void an act of Congress in violation of the Constitution; in *Fletcher v. Peck* (1810) he declared that it likewise possessed the power to put the stamp of nullity upon any State law that conflicted with the Constitution. The invincible logic employed in both demonstrations rested, necessarily, on the admission that the august right in question was a mere deduction from the general nature of a system of government whose constitution did not undertake to grant it in express terms. When the time came for a judgment to be pronounced in *Cohens v. Virginia* (1821), involving the supremacy of Federal law over State law, Marshall, in defining the new and growing sense of nationality, said:

They maintain that the Constitution of the United States has provided no tribunal for the final construction of itself or of the laws or treaties of the Nation, but that this power may be exercised in the last resort by the courts of every State in the Union.

In putting such theories to flight, he said:

That the United States form, for many and for most important purposes, a single Nation has not yet been denied. In war we are one people. In making peace we are one people. In all commercial relations we are one and the same people. In many other respects the American people are one. And the Government which is alone capable of controlling and managing their interests in all these respects is the Government of the Union. It is their Government, and in that character they have no other. America has chosen to be, in many respects and to many purposes, a Nation.

#### 44      **Authorship of the Constitution of the United States.**

In that great judgment we hear not only of the complete supremacy of Federal law, but of the "American people" as the "Nation." In *McCulloch v. Maryland* (4 Wheat., 316) we hear of "the American Constitution." Of the complete supremacy of Federal law we have heard long before in the prophetic words of the great architect, who foresaw everything, provided for everything. Pelatiah Webster, in defining the supremacy of Federal law, made John Marshall's career possible.

Since the Constitution was adopted it has been construed by the Supreme Court in about 1,400 cases, which, if printed separately in the official form, would fill about 15 volumes of the reports. Of that great mass of judge-made law, which determines what the Constitution really is, Marshall was the founder. Pelatiah Webster was potent in raising the framework of the new building; John Marshall was potent in bracing it and giving it its final form. All have been honored, all have been rewarded, except the great architect who made everything possible. While the priceless legacy bequeathed by the immortal document of February 16, 1783, has become the heritage of swelling millions, an humble and neglected grave at Philadelphia has been the only recompense so far received by its author. Every drummer boy, every foreigner, who rendered conspicuous service to the patriot cause during the Revolutionary era has been honored by a monument—only the architect of our Federal Constitution has been forgotten.

HANNIS TAYLOR.

A  
DISSERTATION

ON THE

POLITICAL UNION

AND

CONSTITUTION

OF THE

THIRTEEN UNITED STATES

OF

*NORTH AMERICA,*

*which is necessary to their Preservation and Happiness; humbly offered to the Public*

*By a Citizen of Philadelphia*

PHILADELPHIA

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**THE EPOCH-MAKING TRACT OF PELATIAH WEBSTER, OF FEBRUARY 16, 1783, IN WHICH IS EMBODIED THE FIRST DRAFT OF THE EXISTING CONSTITUTION OF THE UNITED STATES.**

I. The supreme authority of any State must have power enough to effect the ends of its appointment, otherwise these ends cannot be answered, and effectually secured; at best they are precarious. But at the same time,

II. The supreme authority ought to be so limited and checked, if possible, as to prevent the abuse of power, or the exercise of powers that are not necessary to the ends of its appointment, but hurtful and oppressive to the subject; but to limit a supreme authority so far as to diminish its dignity, or lessen its power of doing good, would be to destroy or at least to corrupt it, and render it ineffectual to its ends.

III. A number of sovereign States uniting into one Commonwealth, and appointing a supreme power to manage the affairs of the Union, do necessarily and unavoidably part with and transfer over to such supreme power, so much of their own sovereignty as is necessary to render the ends of the union effectual, otherwise their confederation will be an union without bands of union, like a cask without hoops, that may and probably will fall to pieces, as soon as it is put to any exercise which requires strength.

In like manner, every member of civil society parts with many of his natural rights, that he may enjoy the rest in greater security under the protection of society.

The Union of the Thirteen States of America is of mighty consequence to the security, sovereignty, and even liberty of each of them, and of all the individuals who compose them; united under a natural, well adjusted, and effectual Constitution, they are a strong, rich, growing power, with great resources and means of defence, which no foreign power will easily attempt to invade or insult; they may easily command respect.

As their exports are mostly either raw materials or provisions, and their imports mostly finished goods, their trade becomes a

capital object with every manufacturing nation of Europe, and all the southern colonies of America; their friendship and trade will of course be courted, and each power in amity with them will contribute to their security.

Their union is of great moment in another respect: they thereby form a superintending power among themselves, that can moderate and terminate disputes that may arise between different States, restrain intestine violence, and prevent any recourse to the dreadful decision of the sword.

I do not mean here to go into a detail of all the advantages of our union; they offer themselves on every view, and are important enough to engage every honest, prudent mind, to secure and establish that union by every possible method, that we may enjoy the full benefit of it, and be rendered happy and safe under the protection it affords.

This union, however important, cannot be supported without a Constitution founded on principles of natural truth, fitness, and utility. If there is one article wrong in such Constitution, it will discover itself in practice, by its baleful operation, and destroy or at least injure the union.

Many nations have been ruined by the errors of their political constitution. Such errors first introduce wrongs and injuries, which soon breed discontents, which gradually work up into mortal hatred and resentments; hence inveterate parties are formed, which of course make the whole community a house divided against itself, which soon falls either a prey to some enemies without, who watch to devour them, or else crumble into their original constituent parts, and lose all respectability, strength and security.

It is as physically impossible to secure to civil society, good cement of union, duration, and security without a Constitution founded on principles of natural fitness and right, as to raise timbers into a strong, compact building, which have not been framed upon true geometric principles; for if you cut one beam a foot too long or too short, not all the authority and all the force of all the carpenters can ever get it into its place, and make it fit with proper symmetry there.

As the fate then of all governments depends much upon their political constitutions, they become an object of mighty moment

to the happiness and well-being of society; and as the framing of such a Constitution requires great knowledge of the rights of men and societies, as well as of the interests, circumstances, and even prejudices of the several parts of the community or commonwealth, for which it is intended; it becomes a very complex subject, and of course requires great steadiness and comprehension of thought, as well as great knowledge of men and things, to do it properly. I shall, however, attempt it with my best abilities, and hope from the candor of the public to escape censure, if I cannot merit praise.

I begin with my first and great principle, viz.: That the Constitution must vest powers in every department sufficient to secure and make effectual the ends of it. The supreme authority must have the power of making war and peace—of appointing armies and navies—of appointing officers both civil and military—of making contracts—of emitting, coining, and borrowing money—of regulating trade—of making treaties with foreign powers—of establishing post-offices—and in short of doing everything which the well-being of the Commonwealth may require, and which is not compatible to any particular State, all of which require money, and cannot possibly be made effectual without it.

They must therefore of necessity be vested with power of taxation. I know this is a most important and weighty truth, a dreadful engine of oppression, tyranny, and injury, when ill used; yet, from the necessity of the case it must be admitted.

For to give a supreme authority a power of making contracts, without any power of payment—of appointing officers civil and military, without money to pay them—a power to build ships, without any money to do it with—a power of emitting money, without any power to redeem it—or of borrowing money, without power to make payment, etc., etc.—such solecisms in government are so nugatory and absurd that I really think to offer further argument on the subject would be to insult the understanding of my readers.

To make all these payments dependent on the votes of thirteen popular assemblies, who will undertake to judge of the propriety of every contract and every occasion of money, and grant or withhold supplies, according to their opinion, whilst at the same time the operations of the whole may be stopped by the vote of a



single one of them, is absurd; for this renders all supplies so precarious and the public credit so extremely uncertain, as must in its nature render all efforts in war, and all regular administration in peace, utterly impracticable, as well as most pointedly ridiculous. Is there a man to be found who would lend money, or render personal services, or make contracts on such precarious security? Of this we have a proof of fact, the strongest of all proofs, a fatal experience, the surest tho' severest of all demonstration, which renders all other proof or argument on this subject quite unnecessary.

The present broken state of our finances—public debts and bankruptcies—enormous and ridiculous depreciation of public securities—with the total annihilation of our public credit—prove beyond all contradiction the vanity of all recourse to the particular Assemblies of the States. The recent instance of the duty of 5 per cent on imported goods, struck dead, and the bankruptcies which ensued on the single vote of Rhode Island, affords another proof of what is certain may be done again in like circumstances.

I have another reason why a power of taxation or of raising money, ought to be vested in the supreme authority of our commonwealth, viz.: the monies necessary for the public ought to be raised by a duty imposed on imported goods, not a bare 5 per cent or any other per cent on all imported goods indiscriminately, but a duty much heavier on all articles of luxury or mere ornament, and which are consumed principally by the rich or prodigal part of the community, such as silks of all sorts, muslins, cambricks, lawns, superfine cloths, spirits, wines, etc., etc.

Such an impost would ease the husbandman, the mechanic, and the poor; would have all the practical effects of a sumptuary law; would mend the economy, and increase the industry of the community; would be collected without the shocking circumstances of collectors and their warrants; and make the quantity of tax paid always depend on the choice of the person who pays it.

This tax can be laid by the supreme authority much more conveniently than by the particular Assemblies, and would in no case be subject to their appeals or modifications and, of course, the public credit would never be dependent on, or liable to bankruptcy by

the humors of any particular Assembly. In an Essay on Finance, which I design soon to offer to the public, this subject will be treated more fully. (See my Sixth Essay on Free Trade and Finance, p. 229.)

The delegates which are to form that august body, which are to hold and exercise the supreme authority, ought to be appointed by the States in any manner they please; in which they should not be limited by any restrictions; their own dignity and the weight they will hold in the great public councils, will always depend on the abilities of the persons they appoint to represent them there; and if they are wise enough to choose men of sufficient abilities and respectable characters, men of sound sense, extensive knowledge, gravity and integrity, they will reap the honor and advantage of such wisdom.

But if they are fools enough to appoint men of trifling or vile characters, of mean abilities, faulty morals, or despicable ignorance, they must reap the fruits of such folly, and content themselves to have no weight, dignity, or esteem in the public councils; and what is more to be lamented by the Commonwealth, to do no good there.

I have no objection to the States electing and recalling their delegates as often as they please, but think it hard and very injurious both to them and the Commonwealth that they should be obliged to discontinue them after three years' service, if they find them on that trial to be men of sufficient integrity and abilities; a man of that experience is certainly much more qualified to serve in the place than a new member of equal good character can be; experience makes perfect in every kind of business—old, experienced statesmen of tried and approved integrity and abilities are a great blessing to a State—they acquire great authority and esteem as well as wisdom, and very much contribute to keep the system of government in good and salutary order; and this furnishes the strongest reason why they should be continued in the service, on Plato's great maxim that "the man best qualified to serve, ought to be appointed."

I am sorry to see a contrary maxim adopted in our American counsels; to make the highest reason that can be given for continuing a man in the public administration, assigned as a consti-

tutional and absolute reason for turning him out, seems to me to be a solecism of a piece with many other reforms, by which we set out to surprise the world with our wisdom.

If we should adopt this maxim in the common affairs of life, it would be found inconvenient, e. g., if we should make it a part of our Constitution, that a man who has served a three years' apprenticeship to the trade of a tailor or shoemaker should be obliged to discontinue that business for the three successive years, I am of opinion the country would soon be cleared of good shoemakers and tailors. Men are no more born statesmen than shoemakers or tailors. Experience is equally necessary to perfection in both.

It seems to me that a man's inducement to qualify himself for a public employment and make himself master of it must be much discouraged by this consideration, that let him take whatever pains to qualify himself in the best manner he must be shortly turned out, and, of course, it would be of more consequence to him to turn his attention to some other business which he might adopt when his present appointment should expire; and by this means the Commonwealth is in danger of losing the zeal, industry and shining abilities as well as services of their most accomplished and valuable men.

I hear that the State of Georgia has improved on this blessed principle and limited the continuance of their governors to one year; the consequence is, they have already the ghosts of departed governors stalking about in every part of their State and growing more plenty every year; and as the price of everything is reduced by its plenty I can suppose governors will soon be very low there.

This doctrine of rotation was first proposed by some sprightly geniuses of brilliant politics with this cogent reason: that by introducing a rotation in the public offices we should have a great number of men trained up to public service, but it appears to me that it will be more likely to produce many jacks at all trades, but good at none.

I think that frequent elections are a sufficient security against the continuance of men in public office whose conduct is not approved, and there can be no reason for excluding those whose conduct is approved, and who are allowed to be better qualified than any men who can be found to supply their places.

Another great object of government is the apportionment of burdens and benefits; for if a greater quota of burdens or a less quota of benefits than is just and right be allotted to any State, this ill apportionment will be an everlasting source of uneasiness and discontent. In the first case, the overburdened State will complain; in the last case, all the States whose quota of benefit is under-rated will be uneasy; and this is a case of such delicacy that it cannot be safely trusted to the arbitrary opinion or judgment of any body of men however august.

Some natural principles of confessed equity, and which can be reduced to a certainty, ought, if possible, to be found and adopted; for it is of the highest moment to the Commonwealth to obviate and, if possible, wholly to take away such a fruitful and common source of infinite disputes as that of apportionment of quotas has ever proved in all States of the earth.

The value of lands may be a good rule, but the ascertainment of that value is impracticable. No assessment can be made which will not be liable to exception and debate. To adopt a good rule in anything which is impracticable is absurd, for it is physically impossible that anything should be good for practice which cannot be practised at all; but if the value of lands was capable of certain assessment, yet to adopt that value as a rule of apportionment of quotas and at the same time to except from valuation large tracts of sundry States of immense value, which have all been defended by the joint arms of the whole Empire, and for the defence of which no additional quota of supply is to be demanded of those States to whom such lands are secured by such joint efforts of the States, is in its nature unreasonable, and will open a door for great complaint.

It is plain without argument that such States ought either to make grants to the Commonwealth of such tracts of defended territory or sell as much of them as will pay their proper quota of defence, and pay such sums into the public treasury. And this ought to be done, let what rule of quota soever be adopted with respect to the cultivated part of the United States, for no proposition of natural right and justice can be plainer than this, that every part of valuable property which is defended, ought to contribute its quota of supply for that defence.

If then the value of cultivated lands is found to be an impracticable rule of apportionment of quotas we have to seek for some other, equally just and less exceptionable.

It appears to me that the number of living souls or human persons of whatever age, sex or condition will afford us a rule or measure of apportionment which will forever increase and decrease with the real wealth of the States, and will, of course, be a perpetual rule, not capable of corruption by any circumstances of future time, which is of vast consideration in forming a constitution which is designed for perpetual duration, and which will in its nature be as just as to the inhabited parts of each State as that of the value of lands or any other that has or can be mentioned.

Land takes its value not merely from the goodness of its soil, but from innumerable other relative advantages, among which the population of the country may be considered as principal; as lands in a full settled country will always (*cæteris paribus*) bring more than lands in thin settlements. On this principle, when the inhabitants of Russia, Poland, etc., sell real estate, they do not value them as we do by the number of acres, but by the number of people who live on them.

Where any piece of land has many advantages many people will crowd there to obtain them, which will create many competitors for the purchase of it, which will, of course, raise the price. Where there are fewer advantages there will be fewer competitors and, of course, a less price; and these two things will forever be proportionate to each other, and, of course, the one will always be a sure index of the other.

The only considerable objection I have ever heard to this is that the quality of inhabitants differs in the different States, and it is not reasonable that the black slaves in the Southern States should be estimated on a par with the white freemen in the Northern States. To discuss this question fairly, I think it will be just to estimate the neat value of the labor of both, and if it shall appear that the labor of the black person produces as much neat wealth to the Southern States as the labor of the white person does to the Northern State, I think it will follow plainly, that they are equally useful inhabitants in point of wealth, and therefore in the case before us should be estimated alike.

And if the amazing profits which the Southern planters boast of receiving from the labor of their slaves on their plantations are real, the Southern people have greatly the advantage in this kind of estimation, and as this objection comes principally from the southward, I should suppose that the gentlemen from that part would blush to urge it any farther.

That the supreme authority should be vested with powers to terminate and finally decide controversies arising between different States, I take it, will be universally admitted, but I humbly apprehend that an appeal from the first instance of trial ought to be admitted in causes of great moment, on the same reasons that such appeals are admitted in all the States of Europe. It is well known to all men versed in courts that the first hearing of a cause rather gives an opening to that evidence and reason which ought to decide it, than such a full examination and thorough discussion, as should always precede a final judgment in causes of national consequence. A detail of reasons might be added, which I deem it unnecessary to enlarge on here.

The supreme authority ought to have a power of peace and war, and forming treaties and alliances with all foreign powers; which implies a necessity of their also having sufficient powers to enforce the obedience of all subjects of the United States to such treaties and alliances; with full powers to unite the force of the States; and direct its operations in war; and to punish all transgressors in all these respects; otherwise, by the imprudence of a few the whole Commonwealth may be embroiled with foreign powers, and the operations of war may be rendered useless or fail much of their due effect.

All these I conceive will be easily granted, especially the latter, as the power of Congress to appoint and direct the army and navy in war, with all departments thereto belonging, and punishing delinquents in them all is already admitted into practice in the course of the present unhappy war in which we have been long engaged.

II. But now the great and most difficult part of this weighty subject remains to be considered, viz., how these supreme powers are to be constituted in such manner that they may be able to exercise with full force and effect the vast authorities committed

to them for the good and well-being of the United States, and yet be so checked and restrained from exercising them to the injury and ruin of the States that we may with safety trust them with a commission of such vast magnitude—and may Almighty Wisdom direct my pen in this arduous discussion.

I. The men who compose this important council must be delegated from all the States, and, of course, the hope of approbation and continuance of honors will naturally stimulate them to act rightly and to please. The dread of censure and disgrace will naturally operate as a check to restrain them from improper behavior; but, however natural and forcible these motives may be, we find by sad experience they are not always strong enough to produce the effects we expect and wish from them.

It is to be wished that none might be appointed that were not fit and adequate to this weighty business; but a little knowledge of human nature and a little acquaintance with the political history of mankind will soon teach us that this is not to be expected.

The representatives appointed by popular elections are commonly not only the legal, but real, substantial representatives of their electors, *i. e.*, there will commonly be about the same proportion of grave, sound, well-qualified men, trifling, desultory men—wild or knavish schemers—and dull, ignorant fools in the delegated assembly as in the body of electors.

I know of no way to help this. Such delegates must be admitted as the States are pleased to send, and all that can be done is when they get together to make the best of them.

We will suppose then they are all met in Congress, clothed with that vast authority which is necessary to the well-being and even existence of the union, that they should be vested with. How shall we empower them to do all necessary and effectual good, and restrain them from doing hurt? To do this properly I think we must recur to those natural motives of action, those feelings and apprehensions which usually occur to the mind at the very time of action; for distant consequences however weighty are often too much disregarded.

Truth loves light and is vindicated by it. Wrong shrouds itself in darkness and is supported by delusion. An honest well-qualified man loves light, can bear close examination and critical

inquiry and is best pleased when he is most thoroughly understood. A man of corrupt design, or a fool of no design, hates close examination and critical inquiry. The knavery of the one and the ignorance of the other are discovered by it and they both usually grow uneasy before the investigation is half done. I do not believe that there is a more natural truth in the world than that divine one of our Savior, "he that doeth truth, cometh to the light." I would therefore recommend that mode of deliberation which will naturally bring on the most thorough and critical discussion of the subject previous to passing any act; and for that purpose humbly propose,

2. That the Congress shall consist of two chambers, an upper and a lower house, or senate and commons, with the concurrence of both necessary to every act; and that every State send one or more delegates to each house. This will subject every act to two discussions before two distinct chambers of men equally qualified for the debate, equally masters of the subject, and of equal authority in the decision.

These two houses will be governed by the same natural motives and interests, viz., the good of the Commonwealth, and the approbation of the people. Whilst at the same time the emulation naturally arising between them will induce a very critical and sharp-sighted inspection into the motives of each other. Their different opinions will bring on conferences between the two houses in which the whole subject will be exhausted in arguments pro and con, and shame will be the portion of obstinate, convicted error.

Under these circumstances a man of ignorance or evil design will be afraid to impose on the credulity, inattention or confidence of his house by introducing any corrupt or indigested proposition which he knows he must be called on to defend against the severe scrutiny and poignant objections of the other house. I do not believe the many hurtful and foolish legislative acts which first or last have injured all the States on earth have originated so much in corruption as indolence, ignorance, and a want of a full comprehension of the subject which a full, prying and emulous discussion would tend in a great measure to remove: this naturally rouses the lazy and idle who hate the pain of close thinking; ani-



mates the ambitious to excel in policy and argument; and excites the whole to support the dignity of their house and vindicate their own propositions.

I am not of opinion that bodies of elective men, which usually compose Parliaments, Diets, Assemblies, Congresses, etc., are commonly dishonest; but I believe it rarely happens that there are not designing men among them; and I think it would be much more difficult for them to unite their partisans in two houses, and corrupt or deceive them both, than to carry on their designs where there is but one unalarmed, unapprehensive house to be managed; and as there is no hope of making these bad men good, the best policy is to embarrass them and make their work as difficult as possible.

In these assemblies are frequently to be found sanguine men, upright enough indeed, but of strong, wild projection, whose brains are always teeming with Utopian, chimerical plans, and political whims very destructive to society. I hardly know a greater evil than to have the supreme council of a nation played off on such men's wires; such baseless visions at best end in darkness, and the dance, though easy and merry enough at first, rarely fails to plunge the credulous, simple followers into sloughs and bogs at last.

Nothing can tend more effectually to obviate these evils, and to mortify and cure such maggoty brains than to see the absurdity of their projects exposed by the several arguments and keen satire which a full, emulous and spirited discussion of the subject will naturally produce. We have had enough of these geniuses in the short course of our politics both in our national and provincial councils, and have felt enough of their evil effects to induce us to wish for any good method to keep ourselves clear of them in future.

The consultations and decisions of national councils are so very important that the fate of millions depends on them, therefore no man ought to speak in such assemblies without considering that the fate of millions hangs on his tongue, and of course a man can have no right in such august councils to utter indigested sentiments, or indulge himself in sudden, unexamined flights of thought; his most tried and improved abilities are due to the State who have trusted him with their most important interests.

A man must therefore be most inexcusable who is either absent during such debates, or sleeps, or whispers, or catches flies during the argument, and just rouses when the vote is called to give his yea or nay to the weal or woe of a nation. Therefore it is manifestly proper that every natural motive that can operate on his understanding or his passions to engage his attention and utmost efforts should be put in practice, and that his present feelings should be raised by every motive of honor and shame to stimulate him to every practicable degree of diligence and exertion to be as far as possible useful in the great discussion.

I appeal to the feelings of every reader, if he would not (were he in either house) be much more strongly and naturally induced to exert his utmost abilities and attention to any question which was to pass through the ordeal of a spirited discussion of another house, than he would do if the absolute decision depended on his own house without any further inquiry or challenge on the subject.

As Congress will ever be composed of men delegated by the several States, it may well be supposed that they have the confidence of their several States and understand well the policy and present condition of them. It may also be supposed that they come with strong local attachments and habits of thinking limited to the interests of their particular States. It may therefore be supposed that they will need much information in order to their gaining that enlargement of ideas and great comprehension of thought which will be necessary to enable them to think properly on that large scale which takes into view the interests of all the States.

The greatest care and wisdom is therefore requisite to give them the best and surest information, and of that kind that may be the most safely relied on to prevent their being deluded or prejudiced by partial representations made by interested men who have particular views.

This information may perhaps be best made by the great ministers of state, who ought to be men of the greatest abilities and integrity. Their business is confined to their several departments, and their attention engaged strongly and constantly to all the several parts of the same, the whole arrangement, method and order of which are formed, superintended and managed

in their offices, and all information relative to their department centre there.

These ministers will of course have the best information and most perfect knowledge of the state of the nation, as far as it relates to their several departments, and will, of course, be able to give the best information to Congress in what manner any bill proposed will affect the public interest in their several departments which will nearly comprehend the whole.

The financiers manage the whole subject of revenues and expenditures, the Secretary of State takes knowledge of the general policy and internal government, the Minister of War presides in the whole business of war and defence, and the Minister of Foreign Affairs regards the whole state of the nation as it stands related to or connected with all foreign powers.

I mention a Secretary of State because all other nations have one, and I suppose we shall need one as much as they, and the multiplicity of affairs which naturally fall into his office will grow so fast that I imagine we shall soon be under the necessity of appointing one.

To these I would add Judges of Law, and Chancery; but I fear they will not be very soon appointed—the one supposes the existence of law, the other of equity—and when we shall be altogether convinced of the absolute necessity of the real and effectual existence of both of these we shall probably appoint proper heads to preside in those departments. I would therefore propose,

3. That when any bill shall pass the second reading in the house in which it originates, and before it shall be finally enacted, copies of it shall be sent to each of the said ministers of state, in being at the time, who shall give said house in writing the fullest information in their power, and their most explicit sentiments of the operation of the said bill on the public interest, as far as relates to their respective departments, which shall be received and read in said house and entered on their minutes before they finally pass the bill; and when they send the bill for concurrence to the other house they shall send therewith the said informations of the said ministers of state, which shall likewise be read in that house before their concurrence is finally passed.

I do not mean to give these great ministers of state a negative on Congress, but I mean to oblige Congress to receive their advices before they pass their bills, and that every act shall be void that is not passed with these forms; and I further propose that either house of Congress may, if they please, admit the said ministers to be present and assist in the debates of the house, but without any right of vote in the decision.

It appears to me that if every act shall pass so many different corps of discussion before it is completed, where each of them stake their characters on the advice or vote they give, there will be all the light thrown on the case which the nature and circumstances of it can admit, and any corrupt man will find it extremely difficult to foist in any erroneous clause whatever; and every ignorant or lazy man will find the strongest inducements to make himself master of the subject that he may appear with some tolerable degree of character in it; and the whole will find themselves in a manner compelled, diligently and sincerely, to seek for the real state of the facts and the natural fitness and truths arising from them, *i. e.*, the whole natural principles on which the subject depends, and which alone can endure every test, to the end that they may have not only the inward satisfaction of acting properly and usefully for the States, but also the credit and character which is or ought ever to be annexed to such a conduct.

This will give the great laws of Congress the highest probability, presumption and means of right, fitness and truth that any laws whatever can have at their first enactment, and will of course afford the highest reason for the confidence and acquiescence of the States and all their subjects in them, and being grounded in truth and natural fitness, their operations will be easy, salutary and satisfactory.

If experience shall discover error in any law (for practice will certainly discover such errors, if there be any), the legislature will always be able to correct them by such repeals, amendments, or new laws as shall be found necessary, but as it is much easier to prevent mischiefs than to remedy them, all possible caution, prudence and attention should be used to make the laws right at first.

4. There is another body of men among us whose business of life, and whose full and extensive intelligence, foreign and domestic, naturally make them more perfectly acquainted with the sources of our wealth, and whose particular interests are more intimately and necessarily connected with the general prosperity of the country than any other order of men in the States. I mean the merchants; and I could wish that Congress might have the benefit of that extensive and important information which this body of men are very capable of laying before them.

Trade is of such essential importance to our interests and so intimately connected with all our staples, great and small, that no sources of our wealth can flourish and operate to the general benefit of the community without it. Our husbandry, the great staple of our country, can never exceed our home consumption without this: it is plain at first sight that the farmer will not toil and sweat through the year to raise great plenty of the produce of the soil if there is no market for his produce when he has it ready for sale, *i. e.*, if there are no merchants to buy it.

In like manner the manufacturer will not lay out his business on any large scale if there is no merchant to buy his fabrics when he has finished them; a vent is of the most essential importance to every manufacturing country. The merchants, therefore, become the natural negotiators of the wealth of the country who take off the abundance and supply the wants of the inhabitants; and as this negotiation is the business of their lives and the source of their own wealth they, of course, become better acquainted with both our abundance and wants, and are more interested in finding and improving the best vent for the one, and supply of the other, than any other men among us, and they have a natural interest in making both the purchase and supply as convenient to their customers as possible, that they may secure their custom and thereby increase their own business.

It follows, then, that the merchants are not only qualified to give the fullest and most important information to our supreme legislature concerning the state of our trade, the abundance and wants, the wealth and poverty of our people, *i. e.*, their most important interests, but are also the most likely to do it fairly and truly, and to forward with their influence every measure

which will operate to the convenience and benefits of our commerce, and oppose with their whole weight and superior knowledge of the subject any wild schemes which an ignorant or arbitrary legislature may attempt to introduce, to the hurt and embarrassment of our intercourse both with one another and with foreigners.

The States of Venice and Holland have ever been governed by merchants, or at least their policy has ever been under the great influence of that sort of men. No States have been better served, as appears by their great success, the ease and happiness of their citizens, as well as the strength and riches of their Commonwealths. The one is the oldest, and the other the richest State in the world of equal number of people. The one has maintained sundry wars with the Grand Turk, the other has withstood the power of Spain and France; and the capitals of both have long been the principal marts of the several parts of Europe in which they are situated. And the banks of both are the best supported and in the best credit of any banks in Europe, though their countries or territories are very small and their inhabitants but a handful when compared with the great States in their neighborhood.

Merchants must from the nature of their business certainly understand the interests and resources of their country, the best of any men in it; and I know not of any one reason why they should be deemed less upright or patriotic than any other rank of citizen whatever.

I therefore humbly propose, if the merchants in the several States are disposed to send delegates from their body to meet and attend the sitting of Congress, that they shall be permitted to form a chamber of commerce, and their advice to Congress be demanded and admitted concerning all bills before Congress as far as the same may affect the trade of the States.

I have no idea that the continent is made for Congress. I take them to be no more than the upper servants of the great political body, who are to find out things by study and inquiry as other people do, and therefore I think it necessary to place them under the best possible advantages for information, and to require them to improve all those advantages, to qualify themselves in the best manner possible for the wise and useful discharge of the vast trust

and mighty authority reposed in them; and as I conceive the advice of the merchants to be one of the greatest sources of mercantile information which is anywhere placed within their reach it ought by no means to be neglected, but so husbanded and improved that the greatest possible advantages may be derived from it.

Besides this I have another reason why the merchants ought to be consulted. I take it to be very plain that the husbandry and manufactures of the country must be ruined if the present rate of taxes is continued on them much longer, and, of course, a very great part of our revenue must arise from imposts on merchandise which will fall directly within the merchants' sphere of business, and of course, their concurrence and advice will be of the utmost consequence, not only to direct the properest mode of levying those duties, but also to get them carried into quiet and peaceable execution.

No men are more conversant with the citizens, or more intimately connected with their interests than the merchants, and therefore their weight and influence will have a mighty effect on the minds of the people. I do not recollect an instance in which the Court of London ever rejected the remonstrances and advices of the merchants and did not suffer severely for their pride. We have some striking instances of this in the disregarded advices and remonstrances of very many English merchants against the American war, and their fears and apprehensions we see verified almost like prophecies by the event.

I know not why I should continue this argument any longer, or indeed why I should have urged it so long, inasmuch as I cannot conceive that Congress or anybody else will deem it below the dignity of the supreme power to consult so important an order of men in matters of the first consequence which fall immediately under their notice, and in which their experience and, of course, their knowledge and advice are preferable to those of any other order of men.

Besides the benefits which Congress may receive from this institution, a chamber of commerce composed of members from all trading towns in the States, if properly instituted and conducted, will produce very many, I might almost say, innumerable advan-

tages of singular utility to all the States. It will give dignity, uniformity and safety to our trade, establish the credit of the bank, secure the confidence of foreign merchants, prove in very many instances a fruitful source of improvement of our staples and mutual intercourse, correct many abuses, pacify discontents, unite us in our interests, and thereby cement the general union of the whole Commonwealth, will relieve Congress from the pain and trouble of deciding many intricate questions of trade which they do not understand by referring them over to this chamber, where they will be discussed by an order of men, the most competent to the business of any that can be found and most likely to give a decision that shall be just, useful and satisfactory.

It may be objected to all this that the less complex and the more simple every constitution is the nearer it comes to perfection. This argument would be very good and afford a very forcible conclusion if the government of men was like that of the Almighty, always founded on wisdom, knowledge and truth; but in the present imperfect state of human nature, where the best of men know but in part and must recur to advice and information for the rest, it certainly becomes necessary to form a constitution on such principles as will secure that information and advice in the best and surest manner possible.

It may be further objected that the forms herein proposed will embarrass the business of Congress and make it at best slow and dilatory. As far as this form will prevent the hurrying a bill through the house without due examination the objection itself becomes an advantage. At most these checks on the supreme authority can have no further effect than to delay or destroy a good bill, but cannot pass a bad one; and I think it much better in the main to lose a good bill than to suffer a bad one to pass into a law. Besides it is not to be supposed that clear, plain cases will meet with embarrassment, and it is most safe that untried, doubtful, difficult matters should pass through the gravest and fullest discussion before the sanction of the law is given to them.

But what is to be done if the two houses grow jealous and ill-natured, and after all their information and advice grow out of humor and insincere, and no concurrence can be obtained? I answer, sit still and do nothing until they get into a better humor.



I think this is much better than to pass laws in such a temper and spirit as the objection supposes.

It is, however, an ill compliment to so many grave personages to suppose them capable of throwing aside their reason and giving themselves up like children to the control of their passion; or, if this should happen for a moment that it should continue any length of time, is hardly to be presumed of a body of men placed in such high stations of dignity and importance, with the eyes of all the world upon them. But if they should, after all, be capable of doing this, I think it madness to set them to making laws during such fits. It is best when they are in no condition to do good to keep them from doing hurt, and if they do not grow wiser in reasonable time I know of nothing better than to be ashamed of our old appointments, and make new ones.

But what if the country is invaded, or some other exigency happens so pressing that the safety of the State requires an immediate resolution? I answer, what would you do if such a case should happen where there was but one house, unchecked, but equally divided, so that a legal vote could not be obtained. The matter is certainly equally difficult and embarrassed in both cases. But in the case proposed I know of no better way than that which the Romans adopted on the like occasion, viz., that both houses meet in one chamber and choose a dictator who should have and exercise the whole power of both houses till such time as they should be able to concur in displacing him, and that the whole power of the two houses should be suspended in the mean time.

5. I further propose that no grant of money whatever shall be made without an appropriation, and that rigid penalties (no matter how great, in my opinion the halter would be mild enough) shall be inflicted on any person, however august his station, who should give order, or vote for the payment, or actually pay one shilling of such money to any other purpose than that of its appropriation, and that no order whatever of any superior in office shall justify such payment, but every order shall express what funds it is drawn upon and what appropriation it is to be charged to, or the order shall not be paid.

This kind of embezzlement is of so fatal a nature that no measures or bounds are to be observed in curing it. When ministers

will set forth the most specious and necessary occasions for money, and induce the people to pay it in full tale, and when they have gotten possession of it, to neglect the great objects for which it was given, and pay it, sometimes squander it away, for different purposes, oftentimes for useless, yea, hurtful ones, yea often even to bribe and corrupt the very officers of government, to betray their trust and contaminate the State even in its public offices—to force people to buy their own destruction and pay for it with their hard labor, the very sweat of their brow, is a crime of so high a nature that I know not any gibbet too cruel for such offenders.

6. I would further propose that the aforesaid great ministers of state shall compose a Council of State, to whose number Congress may add three others, viz., one from New England, one from the Middle States and one from the Southern States, one of which to be appointed President by Congress, to all of whom shall be committed the supreme executive authority of the States (all and singular of them ever accountable to Congress) who shall superintend all the executive departments and appoint all executive officers, who shall ever be accountable to and removable for just cause by them or Congress, *i. e.*, either of them.

7. I propose further that the powers of Congress, and all the other departments acting under them, shall all be restricted to such matters only of general necessity and utility to all the States as cannot come within the jurisdiction of any particular State, or to which the authority of any particular State is not competent, so that each particular State shall enjoy all sovereignty and supreme authority to all intents and purposes, excepting only those high authorities and powers by them delegated to Congress for the purposes of the general union.

There remains one very important article still to be discussed, viz., what methods the Constitution shall point out to enforce the acts and requisitions of Congress through the several States, and how the States which refuse or delay obedience to such acts and requisitions shall be treated. This, I know, is a particular of greatest delicacy, as well as of the utmost importance, and therefore, I think, ought to be decidedly settled by the Constitution in our coolest hours, whilst no passions or prejudices exist which may

be excited by the great interests or strong circumstances of any particular case which may happen.

I know that supreme authorities are liable to err as well as subordinate ones. I know that courts may be in the wrong as well as the people; such is the imperfect state of human nature in all ranks and degrees of men. But we must take human nature as it is—it cannot be mended—and we are compelled both by wisdom and necessity to adopt such methods as promise the greatest attainable good, though perhaps not the greatest possible, and such as are liable to the fewest inconveniences, though not altogether free of them.

This is a question of such magnitude that I think it necessary to premise the great natural principles on which its decision ought to depend. In the present state of human nature all human life is a life of chances; it is impossible to make any interest so certain, but there will be a chance against it, and we are in all cases obliged to adopt a chance against us in order to bring ourselves within the benefit of a greater chance in our favor; and that calculation of chances which is grounded on the great natural principles of truth and fitness is of all others the most likely to come out right.

1. No laws of any State whatever, which do not carry in them a force which extends to their effectual and final execution, can afford a certain or sufficient security to the subject. This is too plain to need any proof.

2. Laws or ordinances of any kind (especially of august bodies of high dignity and consequence), which fail of execution, are much worse than none. They weaken the government, expose it to contempt, destroy the confidence of all men, natives and foreigners, in it, and expose both aggregate bodies and individuals who have placed confidence in it to many ruinous disappointments which they would have escaped had no law or ordinance been made; therefore,

3. To appoint a Congress with powers to do all acts necessary for the support and uses of the union; and at the same time to leave all the States at liberty to obey them or not with impunity, is, in every view, the grossest absurdity, worse than a state of nature without any supreme authority at all, and at best a ridiculous effort of childish nonsense; and of course,

4. Every State in the Union is under the highest obligation to obey the supreme authority of the whole, and in the highest degree amenable to it, and subject to the highest censure for disobedience. Yet all this notwithstanding, I think the soul that sins shall die, *i. e.*, the censure of the great supreme power ought to be so directed if possible as to light on those persons who have betrayed their country and exposed it to dissolution, by opposing and rejecting that supreme authority which is the band of our union and from whence proceeds the principal strength and energy of our government.

I therefore propose that every person whatever, whether in public or private character, who shall by public vote or overt act disobey the supreme authority, shall be amenable to Congress, shall be summoned and compelled to appear before Congress and, on due conviction, suffer such fine, imprisonment, or other punishment as the supreme authority shall judge requisite.

It may be objected here that this will make a Member of Assembly accountable to Congress for his vote in Assembly. I answer, it does so in this only case, *viz.*, when that vote is to disobey the supreme authority; no Member of Assembly can have right to give such a vote, and therefore ought to be punished for so doing. When the supreme authority is disobeyed the government must lose its energy and effect, and of course the Empire must be shaken to its very foundation.

A government which is but half executed, or whose operations may all be stopped by a single vote, is the most dangerous of all institutions. See the present Poland and ancient Greece buried in ruins in consequence of this fatal error in their policy. A government which has not energy and effect can never afford protection or security to its subjects, *i. e.*, must ever be ineffectual to its own ends.

I cannot therefore admit that the great ends of our Union should lie at the mercy of a single State, or that the energy of our government should be checked by a single disobedience, or that such disobedience should ever be sheltered from censure and punishment; the consequence is too capital, too fatal to be admitted. Even though I know very well that a supreme authority with all its dignity and importance is subject to passions like other lesser

powers, that they may be and often are heated, violent, oppressive and very tyrannical, yet I know also that perfection is not to be hoped for in this life, and we must take all institutions with their natural defects or reject them altogether. I will guard against these abuses of power as far as possible, but I cannot give up all government or destroy its necessary energy for fear of these abuses.

But to fence them out as far as possible, and to give the States as great a check on the supreme authority as can consist with its necessary energy and effect,

I propose that any State may petition Congress to repeal any law or decision which they have made, and if more than half the States do this, the law or decision shall be repealed, let its nature or importance be however great, excepting only such acts as create funds for the public credit, which shall never be repealed till their end is effected, or other funds equally effectual are substituted in their place; but Congress shall not be obliged to repeal any of these acts so petitioned against till they have time to lay the reason of such acts before such petitioning States and to receive their answer; because such petitions may arise from sudden heats, popular prejudices, or the publication of matters false in fact, and may require time and means of cool reflection and the fullest information before the final decision is made. But if after all more than half of the States persist in their demand of a repeal, it shall take place.

The reason is the uneasiness of a majority of States affords a strong presumption that the act is wrong, for uneasiness arises much more frequently from wrong than right. But if the act was good and right it would still be better to repeal and lose it than to force the execution of it against the opinion of a major part of the States; and lastly, if every act of Congress is subject to this repeal, Congress itself will have stronger inducement not only to examine well the several acts under their consideration, but also to communicate the reasons of them to the States than they would have if their simple vote gave the final stamp of irrevocable authority to their acts.

Further, I propose that if the execution of any act or order of the supreme authority shall be opposed by force in any of the

States (which, God forbid) it shall be lawful for Congress to send into such State a sufficient force to suppress it.

On the whole, I take it that the very existence and use of our Union essentially depends on the full energy and final effect of the laws made to support it, and therefore I sacrifice all other considerations to this energy and effect, and if our Union is not worth this purchase we must give it up—the nature of the thing does not admit of any other alternative.

I do contend that our Union is worth this purchase. With it every individual rests secure under its protection against foreign or domestic insult and oppression; without it we can have no security against the oppression, insult, and invasion of foreign powers; for no single State is of importance enough to be an object of treaty with them, nor if it was, could it bear the expense of such treaties or support any character or respect in a dissevered State, but must lose all respectability among the nations abroad.

We have a very extensive trade which cannot be carried on with security and advantage without treaties of commerce and alliance with foreign nations.

We have an extensive western territory which cannot otherwise be defended against the invasion of foreign nations bordering on our frontiers, who will cover it with their own inhabitants, and we shall lose it forever and our extent of empire be thereby restrained; and what is worse, their numerous posterity will in future time drive ours into the sea, as the Goths and Vandals formerly conquered the Romans in like circumstances, unless we have the force of the Union to repel such invasions. We have, without the Union, no security against the inroads and wars of one State upon another, by which our wealth and strength as well as our ease and comfort will be devoured by enemies growing out of our own bowels.

I conclude then that our Union is not only one of the most essential consequence to the well-being of the States in general, but to that of every individual citizen of them, and, of course, ought to be supported and made as useful and safe as possible by a Constitution which admits that full energy and final effect of government which alone can secure its great ends and uses.

In a dissertation of this sort I would not wish to descend to minutiae, yet there are some small matters which have important consequences and therefore ought to be noticed. It is necessary that Congress should have all usual and necessary powers of self-preservation and order, *e. g.*, to imprison for contempt, insult or interruption, etc., and to expel their own members for due causes, among which I would rank that of non-attendance on the house, or partial attendance without such excuse as shall satisfy the house.

Where there is such vast authority and trust devolved on Congress and the grand and most important interests of the Empire rest on their decisions, it appears to me highly unreasonable that we should suffer their august consultations to be suspended, or their dignity, authority and influence lessened by the idleness, neglect and non-attendance of its members; for we know that the acts of a thin house do not usually carry with them the same degree of weight and respect as those of a full house.

Besides, I think when a man is deputed a delegate in Congress and has undertaken the business, the whole Empire becomes, of course, possessed of a right to his best and constant services, which if any member refuses or neglects, the Empire is injured and ought to resent the injury, at least so far as to expel and send him home, so that his place may be better supplied.

I have one argument in favor of my whole plan, *viz.*: it is so formed that no men of dull intellects or small knowledge, or of habits too idle for constant attendance, or close and steady attention, can do the business with any tolerable degree of respectability, nor can they find either honor, profit or satisfaction in being there, and, of course, I could wish that the choice of the electors might never fall on such a man, or if it should, that he might have sense enough (of pain at least, if not of shame) to decline his acceptance.

For after all that can be done I do not think that a good administration depends wholly on a good Constitution and good laws, for insufficient or bad men will always make bad work and a bad administration, let the Constitution and laws be ever so good. The management of able, faithful and upright men alone can cause an administration to brighten, and the dignity and wisdom of an

Empire to rise into respect; make truth the line and measure of public decision; give weight and authority to the government, and security and peace to the subject.

We now hope that we are on the close of a war of mighty effort and great distress against the greatest power on earth, whetted into the most keen resentment and savage fierceness which can be excited by wounded pride, and which usually rises higher between brother and brother offended than between strangers in contest. Twelve of the Thirteen United States have felt the actual and cruel invasions of the enemy, and eleven of our capitals have been under their power, first or last, during the dreadful conflict, but a good Providence, our own virtue and firmness, and the help of our friends have enabled us to rise superior to all the powers of our adversaries and make them seek to be at peace with us.

During the extreme pressures of the war indeed many errors in our administration have been committed when we could not have experience and time for reflection to make us wise, but these will easily be excused, forgiven and forgotten if we can now, while at leisure, find virtue, wisdom, and foresight enough to correct them and form such establishments as shall secure the great ends of our Union and give dignity, force, utility and permanency to our Empire.

It is a pity we should lose the honor and blessings which have cost us so dear for want of wisdom and firmness in measures which are essential to our preservation. It is now at our option either to fall back into our original atoms or form such an union as shall command the respect of the world and give honor and security to our people.

This vast subject lies with mighty weight on my mind, and I have bestowed on it my utmost attention and here offer the public the best thoughts and sentiments I am master of. I have confined myself in this dissertation entirely to the nature, reason and truth of my subject without once adverting to the reception it might meet with from men of different prejudices or interests. To find the truth, not to carry a point, has been my object.

I have not the vanity to imagine that my sentiments may be adopted; I shall have all the reward I wish or expect if my disserta-



tion shall throw any light on the great subject, shall excite an emulation of inquiry and animate some abler genius to form a plan of greater perfection, less objectionable and more useful.

PHILADELPHIA, *February 16, 1783.*

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NOTES APPENDED BY PELATIAH WEBSTER TO THE REPLICATION MADE AT PHILADELPHIA IN 1791

NOTE I

Forming a plan of confederation or a system of general government of the United States engrossed the attention of Congress from the Declaration of Independence, July 4, 1776, till the same was completed by Congress, July 9, 1778, and recommended to the several States for ratification, which finally took place March 1, 1781, from which time the said confederation was considered as the grand constitution of the general government, and the whole administration was conformed to it.

And as it had stood the test of discussion in Congress for two years before they completed and adopted it, and in all the States for three years more before it was finally ratified, one would have thought that it must have been a very finished and perfect plan of government.

But on trial of it in practice it was found to be extremely weak, defective, totally inefficient, and altogether inadequate to its great ends and purposes, for

1. It blended the legislative and executive powers together in one body.

2. This body, viz.: Congress, consisted of but one house, without any check upon their resolutions.

3. The powers of Congress in very few instances were definitive and final; in the most important articles of government they could do no more than recommend to the several States, the consent of every one of which was necessary to give legal sanction to any act so recommended.

4. They could assess and levy no taxes.

5. They could institute and execute no punishments except in the military department.

6. They had no power of deciding or controlling the contentions and disputes of different States with each other.
7. They could not regulate the general trade; or,
8. Even make laws to secure either public treaties with foreign States, or the persons of public ambassadors, or to punish violations or injuries done to either of them.
9. They could institute no general judiciary powers.
10. They could regulate no public roads, canals, or inland navigation, etc., etc., etc.

And what caps all the rest was that (whilst under such an inefficient political constitution the only chance we had of any tolerable administration lay wholly in the prudence and wisdom of the men who happened to take the lead in our public councils) it was fatally provided by the absurd doctrine of rotation that if any member of Congress by three years' experience and application had qualified himself to manage our public affairs with consistency and fitness, that he should be constitutionally and absolutely rendered incapable of serving any longer till by three years' discontinuance he had pretty well lost the cue or train of the public counsels and forgot the ideas and plans which made his service useful and important and, in the mean time, his place should be supplied by a fresh man, who had the whole matter to learn, and when he had learned it was to give place to another fresh man, and so on to the end of the chapter.

The sensible mind of the United States by long experience of the fatal mischief of anarchy, or (which is about the same thing) of this ridiculous inefficient form of government, began to apprehend that there was something wrong in our policy which ought to be redressed and mended, but nobody undertook to delineate the necessary amendments.

I was then pretty much at leisure, and was fully of opinion (though the sentiment at that time would not very well bear) that it would be ten times easier to form a new constitution than to mend the old one. I therefore sat myself down to sketch out the leading principles of that political constitution which I thought necessary to the preservation and happiness of the United States of America, which are comprised in this Dissertation.

I hope the reader will please consider that these are the original thoughts of a private individual, dictated by the nature of the subject only, long before the important theme became the great object of discussion in the most dignified and important assembly which ever sat or decided in America.

## NOTE 2

At the time when this Dissertation was written (Feb. 16, 1783) the defects and insufficiency of the Old Federal Constitution were universally felt and acknowledged. It was manifest, not only that the internal police, justice, security and peace of the States could never be preserved under it, but the finances and public credit would necessarily become so embarrassed, precarious and void of support that no public movement which depended on the revenue could be managed with any effectual certainty; but though the public mind was under full conviction of all these mischiefs and was contemplating a remedy, yet the public ideas were not at all concentrated, much less arranged into any new system or form of government which would obviate these evils. Under these circumstances I offered this Dissertation to the public. How far the principles of it were adopted or rejected in the New Constitution, which was four years afterwards (Sept. 17, 1787) formed by the General Convention and since ratified by all the States, is obvious to every one.

I wish here to remark the great particulars of my plan which were rejected by the Convention.

1. My plan was to keep the legislative and executive departments entirely distinct; the one to consist of the two houses of Congress, the other to rest entirely in the Grand Council of State.

2. I proposed to introduce a Chamber of Commerce, to consist of merchants who should be consulted by the legislature in all matters of trade and revenue, and which should have the conducting the revenue committed to them.

The first of these the Convention qualified; the second they say nothing of, *i. e.*, take no notice of it.

3. I proposed that the great officers of state should have the perusal of all bills before they were enacted into laws, and should

be required to give their opinion of them as far as they affected the public interest in their several departments, which report of them Congress should cause to be read in their respective houses and entered on their minutes. This is passed over without notice.

4. I proposed that all public officers appointed by the executive authority should be amenable both to them and to the legislative power, and removable for just cause by either of them. This is qualified by the Convention.

And inasmuch as my sentiments in these respects were either qualified or totally neglected by the Convention, I suppose they were wrong. However, the whole matter is submitted to the politicians of the present age and to our posterity in future.

In sundry other things the Convention have gone into minutiae, *e. g.*, respecting elections of presidents, senators, and representatives in Congress, etc., which I proposed to leave at large to the wisdom and discretion of Congress and of the several States.

Great reasons may doubtless be assigned for their decision, and perhaps some little ones for mine. Time, the great arbiter of all human plans may, after a while, give his decision; but neither the Convention nor myself will probably live to feel either the exultation or mortification of his approbation or disapprobation of either of our plans.

But if any of these questions should in future time become objects of discussion, neither the vast dignity of the Convention, nor the low, unnoticed state of myself, will be at all considered in the debates; the merits of the matter and the interests connected with or arising out of it will alone dictate the decision.



**PELATIAH WEBSTER'S DEFENCE OF THE NEW CONSTITUTION, PUBLISHED OCTOBER 12, 1787, IN REPLY TO AN ATTACK MADE UPON IT BY SIXTEEN MEMBERS OF THE ASSEMBLY OF PENNSYLVANIA IN AN ADDRESS DATED SEPTEMBER 29, 1787.**

**REMARKS ON THE ADDRESS OF SIXTEEN MEMBERS OF THE ASSEMBLY OF PENNSYLVANIA TO THEIR CONSTITUENTS, DATED SEPTEMBER 29, 1787. WITH SOME STRICTURES ON THEIR OBJECTIONS TO THE CONSTITUTION RECOMMENDED BY THE LATE FEDERAL CONVENTION.<sup>1</sup> (FIRST PUBLISHED IN PHILADELPHIA, OCTOBER 12, 1787.)**

I am now to consider the objections of our sixteen members to the *New Constitution* itself, which is the most important part that lies on me.

1. Their first objection is that the government proposed will be too expensive. I answer that if the appointments of offices are not more and the compensations or emoluments of office not greater than is necessary, the expense will be by no means burdensome, and thus must be left to the prudence of Congress, for I know of no way to control supreme powers from extravagance in this respect. Doubtless many instances may be produced of many needless offices being created, and many inferior officers who receive far greater emoluments of office than the first president of the State.

2. Their next objection is against a *legislature consisting of three branches*.<sup>2</sup> This is so far from an objection that I consider it as an advantage. The most weighty and important affairs of the Union must be transacted in Congress; the most essential coun-

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<sup>1</sup> The pamphlet was first published by Eleazer Oswald at the Coffee House. It was subsequently republished by Webster, in a somewhat abridged form, in his *Essays*. He then appended this note: "When the *New Constitution* was laid before the Assembly of Pennsylvania, in *September, 1787*, a resolution passed the House (forty-three against nineteen) to call a *convention* to consider it, etc. Sixteen of the dissentients published an *address to their constituents, dated September 27, 1787*, stating their conduct and assigning the reasons of it; but as there was very little in all this affair that reflected *much honor* on the *dissenting members* or on the *State to which they belonged*, and *nothing* that could *affect* or *concern* anybody out of that State, I have here omitted my remarks on all of it but *their objections* to the *New Constitution itself*, which, being of general consequence to the States, inasmuch as that Constitution (with a few amendments since adopted) is the same which now exists in full establishment through the Union, I therefore here insert, I say, *their objections* and *my remarks* on them and leave out all the rest as matter of local concern at *that time*, but like to be little interesting to the public in general at this or any future time." It is the revised version that is reproduced here. The original text as published by Oswald may be found in the Library of Congress and in the Boston Athenæum.

<sup>2</sup> In speaking of "a legislature consisting of three branches" he includes, as he explains a little later, the President and his advisers as "a third House."

sels must be there decided, which must all go thro' several discussions in three different chambers (all equally competent to the subject and equally governed by the same motives and interests, viz, the good of the great Commonwealth and the approbation of the people) before any decision can be made; and when disputes are very high, different discussions are necessary, because they afford time for all parties to cool and reconsider.

This appears to me to be a very safe way and a very likely method to prevent any sudden and undigested resolutions from passing; and, tho' it may delay or even destroy a good bill, will hardly admit the passing of a bad one, which is by far the worst evil of the two. But if all this cannot stop the course of a bad bill, the negative of the President will at least give it further embarrassment, will furnish all the new light which a most serious discussion in a third House can give, and will make a new discussion necessary in each of the other two, where every member will have an opportunity to revise his opinion, to correct his arguments, and bring his judgment to the greatest maturity possible. If all this cannot keep the public decision within the bounds of wisdom, fitness, right, and convenience, it will be hard to find any efforts of human wisdom that can do it.

I believe it would be difficult to find a man in the Union who would not readily consent to have Congress vested with all the vast powers proposed by the New Constitution if he could be sure that those powers would be exercised with wisdom, justice, and propriety, and not be abused; and I do not see that greater precautions and guards against abuses can well be devised or more effectual methods used to throw every degree of light on every subject of debate, or more powerful motives to a reasonable and honest decision can be set before the minds of Congress, than are here proposed.

And if this is the best that can be obtained, it ought in all prudence to be adopted till better appears, rather than to be rejected merely because it is human, not perfect, and may be abused. At any rate, I think it very plain that our chance of a right decision in a Congress of three branches is much greater than in one single chamber; but, however all this may be, I cannot see the least tendency in a legislature of three branches to increase the bur-

dens or taxes of the people. I think it very evident that any proposition of extravagant expense would be checked and embarrassed in such an assembly more than in a single House.

Farther, the two Houses being by their election taken from the body of the States, and being themselves principal inhabitants, will naturally have the interest of the Commonwealth sincerely at heart; their principle must be the same, their differences must (if any) in the mode of pursuing it, or arise from local attachments; I say the great interest in their country and the esteem, confidence, and approbation of their fellow citizens must be strong governing principles in both Houses, as well as in the President himself.<sup>1</sup>

3. Another objection is that the Constitution proposed will *annihilate the State governments or reduce them to mere corporations*. I take it that this objection is thrown out (merely *invidiæ causa*) without the least ground for it; for I do not find *one article* of the Constitution proposed which vests Congress or *any of their officers or courts* with a power to *interfere in the least in the internal police or government of any one State* when the interests of *some other State or strangers or the Union* in general are not concerned; and in such cases it is absolutely and manifestly necessary that Congress should have a *controlling power*, otherwise there would be *no end of controversies and injuries between different States*, nor any *safety for individuals*, nor any possibility of *supporting the Union* with any tolerable degree of honour, strength, or security.

4. Another objection is against the *power of taxation vested in Congress*. But I answer this is absolutely necessary and unavoidable from the necessity of the case; I know it is a *tender point*, a *vast power*, and a *terrible engine of oppression and tyranny* when *wantonly, injudiciously, or wickedly used*, but *must be admitted*; for it is impossible to support the Union, or indeed any government, *without expense*—the Congress are the *proper judges* of that expense, the *amount* of it, and the *best means* of supplying it; the *safety* of the States *absolutely requires* that this power be lodged *somewhere*, and no *other body* can have the least preten-

<sup>1</sup> "Vide a Dissertation on the Political Union and Constitution of the Thirteen United States, published by a Citizen of Philadelphia, February 16, 1783, where the subject is taken up at large." Taken from the text of the original pamphlet.



sions to it; and *no part* of the resources of the States can, with any safety, be *exempt*, when the *exigencies* of the Union or Government require their *utmost exertion*.

The *stronger we make our Government the greater protection it can afford us* and the *greater will our safety be* under it. It is easy enough here to harangue on the *arts of a court* to create occasions for money, or the unbounded *extravagance* with which they can spend it; but all this notwithstanding, we must take our courts as we do our wives, *for better or for worse*. We hope the best of an *American Congress*, but if they disappoint us, we can not help it; it is in vain to try to form any plan of *avoiding the frailties* of human nature. Would any man choose a *lame horse* lest a *sound* one should run away with him, or will any man prefer a *small tent* to live in, before a *large house*, which may *fall down* and *crush him* in its ruins? No man has any right to find fault with this article till he can substitute a better in its room.

The sixteen members attempt to aggravate the horrors of this devouring power by suggesting the rigid severity with which Congress, with their *faithful soldiers*, will *exact and collect* the taxes. This picture, stripped of its *black drapery*, amounts to just this, viz, that whatever taxes are laid will be collected, without exception, from every person charged with them, which must look disagreeable, I suppose, to people who, by one shift or another, have avoided paying taxes all their lives.

But it is a plain truth, and will be obvious to anybody who duly considers it, that nothing can be more ruinous to a *state* or oppressive to *individuals* than a *partial and dilatory collection* of taxes, especially where the tax is an impost or excise, because the man who *avoids* the tax can *undersell*, and consequently *ruin*, him who *pays* it—*i. e.*, smuggling ruins the fair trader—and a *remedy* of this mischief, I can not suppose, will be deemed by our people in general such a *very awful judgment*, as the sixteen members would make us believe their constituents will consider it to be.

5. They object that the *liberty of the press* is not asserted in the Constitution. I answer neither are any of the *ten commandments*, but I do not think that it follows that it was the design of the convention to sacrifice either *the one* or *the other* to contempt or to leave them void of protection and effectual support.

6. It is objected farther that the Constitution contains *no declaration of rights*. I answer this is not true; the Constitution contains a declaration of many rights, and very important ones, *e. g.*, that people shall be obliged to *fulfil their contracts*, and *not avoid* them by *tenders* of anything less than the value stipulated; that no *ex post facto* laws shall be made, etc., but it was no part of the business of their appointment to make a *code of laws*; it was sufficient to *fix the Constitution right*, and that would pave the way for the most effectual security of the rights of the subject.

7. They further object that no provision is made against a *standing army in time of peace*. I answer that a standing army—*i. e.*, regular troops—are often necessary in time of peace, to prevent a war, to guard against sudden invasions, for garrison duty, to quell mobs and riots, as guards to Congress and perhaps other courts, etc., as military schools to keep up the knowledge and habits of military discipline and exercise, etc., and as the power of raising troops is rightfully and without objection vested in Congress, so they are the *properest and best judges* of the *number* requisite, and the *occasion, time, and manner* of employing them; if they are not wanted on military duty they may be employed in making *public roads, fortifications*, or any other *public works*; they need not be an *useless burden* to the States; and for all this the prudence of Congress must be trusted, and nobody can have a right to object to this till they can point out some way of doing better.

8. Another objection is that the new Constitution *abolishes trial by jury in civil causes*. I answer I do not see one word in the Constitution which, by any candid construction, can support even the remotest suspicion that this ever entered into the heart of one member of the convention; I therefore set down the suggestion for sheer malice, and so dismiss it.

9. Another objection is that the Federal *judiciary is so constructed as to destroy the judiciaries of the several States*, and that the *appellate jurisdiction, with respect to law and fact, is unnecessary*. I answer both the *original and appellate jurisdiction* of the Federal judiciary are manifestly necessary, where the cause of action affects the citizens of *different States*, the *general interest* of the Union, or *strangers* (and to cases of *these descriptions only*

does the *jurisdiction* of the Federal judiciary *extend*); I say these jurisdictions of the Federal judiciary are manifestly necessary for the reasons just now given under the third objection.

I do not see how they can avoid trying any issue joined before them, whether the thing to be decided is *law* or *fact*, but I think no doubt can be made that if the issue joined is *fact* it must be tried by jury.

10. They object that the *election of Delegates* for the House of Representatives *is for two years* and of Senators *for six years*. I think this a manifest *advantage* rather than an *objection*. Very great inconveniences must necessarily arise from a too frequent change of the members of large legislative or executive bodies, while the revision of every past transaction must be taken up, explained, and discussed anew for the information of the new Members where the settled rules of the House are little understood by them, etc., all which ought to be avoided if it can be with safety.

Further, it is plain that any man who serves in such bodies is better qualified the second year than he could be the first, because experience adds qualifications for every business, etc. The only objection is that long continuance affords danger of corruption, but for this the Constitution provides a remedy by impeachment and expulsion, which will be sufficient restraint unless a majority of the House and Senate should become corrupt, which is not easily presumable. In fine, there is a *certain mean* between too *long* and too *short* continuances of Members in Congress, and I can not see but it is judiciously fixed by the convention.

Upon the whole matter I think the sixteen Members have employed an *address writer* of great dexterity, who has given us a strong sample of *ingenious malignity and ill nature*—a masterpiece of *high colouring* in the *scarecrow* way. In his account of the conduct of the sixteen Members, by an unexpected openness and candour, he avows *facts* which he certainly can not expect to justify or even hope that their constituents will patronize or even approve, but he seems to lose all candour when he deals *in sentiments*; when he comes to point out the *nature* and *operation* of the *New Constitution* he appears to mistake the *spirit* and *true principles* of it very

much, or, which is worse, takes pleasure in showing it in the *worst light* he can paint it in.

I, however, agree with him in this: "That this is *the time for consideration and minute examination,*" and I think the great subject, when viewed seriously without passion or prejudice, will *bear and brighten under the severest examination* of the rational enquirer. If the *provisions* of the law or Constitution do not exceed the *occasions*, if the *remedies* are not extended beyond the *mischiefs*, the Government can not be justly charged with *severity*. On the other hand, if the provisions are not *adequate* to the occasions and the remedies *not equal* to the mischiefs, the Government must be *too lax* and not sufficiently operative to give the necessary *security* to the subject. To form a right judgment, we must compare these two things well together and not suffer our minds to dwell on one of them alone without considering it in *connection* with the other. By this means we shall easily see that the one makes the other necessary.

Were we to view only the *gaols and dungeons*, the *gallows and pillories*, the *chains and wheelbarrows* of any State we might be induced to think the Government *severe*; but when we turn our attention to the *murders and parricides*, the *robberies and burglaries*, the *piracies and thefts*, which merit these *punishments*, our idea of *cruelty* vanishes at once and we admire the *justice* and perhaps *clemency* of that Government which before *shocked* us as too severe. So when we fix our attention only on the *superlative authority* and *energetic force* vested in Congress and our Federal executive powers by the New Constitution we may at first sight be induced to think that we yield more of the *sovereignty of the States* and of *personal liberty* than is requisite to maintain the Federal Government; but when, on the other hand, we consider with full survey the *vast supports* which the Union requires and the *immense consequence* of that UNION to us all, we shall probably soon be convinced that the powers aforesaid, *extensive* as they are, are not *greater* than is necessary for our benefit; for

1. *No laws of any State which do not carry in them a force which extends to their effectual and final execution can afford a certain and sufficient security to the subject; for*

2. *Laws of any kind which fail of execution are worse than none, because they weaken the Government, expose it to contempt, destroy the confidence of all men, both subjects and strangers, in it, and disappoint all men who have confided in it.*

In fine, *our Union can never be supported without definite and effectual laws which are coextensive with their occasions and which are supported by authorities and powers which can give them execution with energy.* If admitting such powers into our Constitution can be called a *sacrifice*, it is a *sacrifice to safety*, and the only question is whether our UNION or Federal Government is worth this sacrifice.

*Our UNION, I say, under the protection of which every individual rests secure against foreign and domestic insult and oppression; but without it we can have no security against invasions, insults, and oppressions of foreign powers or against the inroads and wars of one State on another, or even against insurrections and rebellions arising within particular States, by which our wealth and strength, as well as ease, comfort, and safety, will be devoured by enemies growing out of our own bowels.*

It is *our UNION alone* which can give us *respectability abroad* in the eyes of foreign nations and secure to us all the advantages, both of *trade and safety*, which can be derived from *treaties with them.*

The thirteen States, all united and well cemented together, are a *strong, rich, and formidable* body not of *stationary*, matured power, but *increasing* every day in riches, strength, and numbers.

Thus circumstanced, we can demand the attention and respect of all foreign nations, but they will give us both in *exact proportion* to the *solidity of our union*; for if they observe our *union* to be *lax*, from *insufficient* principles of cement in our *Constitution*, or *mutinies* and *insurrections* of our own people (which are the direct consequence of an *insufficient cement of union*); I say, when foreign nations see either of these, they will immediately *abate* of their *attention* and *respect* to us, and *confidence* in us.

And as it appears to me, that the new Constitution does not vest Congress with *more* or *greater* powers than are necessary to support this *important union*, I wish it may be admitted in the most *cordial* and *unanimous* manner by all the States.

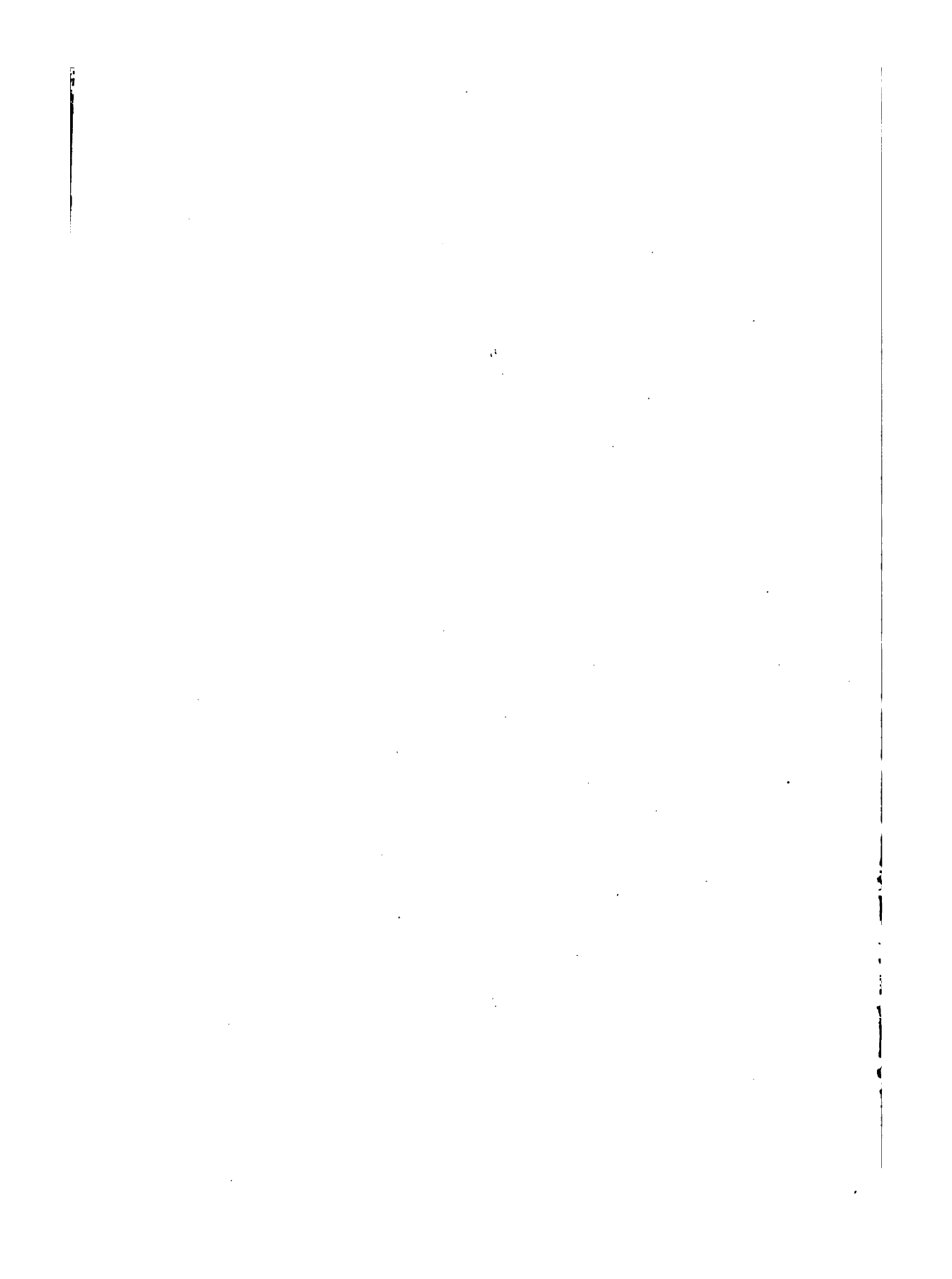
It is a *human* composition, and may have *errors* which future experience will enable us to discover and correct; but I think it is very plain, if it has faults, that the address writer of the sixteen members has not been able to find them; for he has all along either hunted down *phantoms of error*, that have no *real existence*, or, which is worse, *tarnished real excellencies* into *blemishes*.

I have dwelt the longer on these remarks of this writer, because I observe that all the scribblers in our papers against the new Constitution have taken their cue principally from him; all their lucubrations contain little more than *his ideas* dressed out in a great variety of forms; one of which colours so high as to make the new Constitution strongly resemble the *Turkish Government* (*vide Gazetteer*, of the 10th instant) which, I think, comes about as near the truth as any of the rest, and brings to my mind a sentiment in polemical divinity, which I have somewhere read, that there were once great disputes and different opinions among drones about the *mark which was set on Cain*, when one of them very gravely thought it was *born fully grown out on his forehead*. It is probable he could not think of a *worse mark* than that.

On the whole matter, there is no aid to extravagancies of the human fancy which are commonly dictated by *poignant feelings*, *disordered passions*, or *affecting interests*; but I could wish my fellow citizens, in the matter of vast importance before us, would divest themselves of bias, passion, and *little personal or local interests*, and consider the great subject with that dignity of reason, and independence of sentiment, which national interests ever require.

I have here given my sentiments with the most unbiased freedom, and hope they will be received with the most candid attention and unbiased discussion by the State in which I *live*, and in which I expect *to leave my children*.

I will conclude with one observation, which I take to be very capital, viz, that the distresses and oppressions, both of nations and individuals, often arise from the *powers of government* being *too limited* in their principle, *too indeterminate* in their definition, or *too lax* in their execution, and, of course, the safety of the citizens depends much on *full and definite* powers of government, and an *effectual execution* of them.













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