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# The Founders' Constitution

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# The Founders' Constitution

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Edited by  
Philip B. Kurland  
and  
Ralph Lerner

VOLUME TWO  
Preamble through Article 1,  
Section 8, Clause 4



Liberty Fund  
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This book is published by Liberty Fund, Inc., a foundation established to encourage study of the ideal of a society of free and responsible individuals.



The cuneiform inscription that serves as our logo and as the design motif for our endpapers is the earliest-known written appearance of the word “freedom” (*amagī*), or “liberty.” It is taken from a clay document written about 2300 B.C. in the Sumerian city-state of Lagash.

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To Mary Jane

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# Note on References

References to documents follow a consistent pattern both in the cross-references (in the detailed tables of contents) and in the indexes. Where a document in volume 1 is being cited, reference is to chapter and document number; thus, for example, ch. 15, no. 23. Where the document is to be found in one of the subsequent volumes, which are organized by Constitutional article, section, and clause, or by amendment, reference is in this mode: 1.8.8, no. 12; or, Amend. I (religion), no. 66. Each document heading consists of its serial number in that particular chapter; an author and title (or letter writer and addressee, or speaker and forum); date of publication, writing, or speaking; and, where not given in the first part of the heading, an identification of the source of the text being reprinted. These sources are presented in short-title form, the author of the source volume being presumed (unless otherwise noted) to be the first proper name mentioned in the document heading. Thus, for example, in the case of a letter from Alexander Hamilton to Governor George Clinton, "Papers 1:425–28" would be understood to refer

to the edition fully described under "Hamilton, Papers" in the list of short titles found at the back of each volume.

A somewhat different form has been followed in the case of the proceedings of the Constitutional Convention that met in Philadelphia from late May to mid-September of 1787. As might be expected, we have included many extracts from the various records kept by the participants while they were deliberating over the shape and character of a new charter of government. For any particular chapter or unit, those extracts have been grouped as a single document, titled "Records of the Federal Convention," and placed undated in that chapter's proper time slot. The bracketed note that precedes each segment within that selection of the "Records" lists the volume and opening page numbers in the printed source (Max Farrand's edition), the name of the participant whose notes are here being reproduced (overwhelmingly Madison, but also Mason, Yates, others, and the Convention's official Journal), and the month and day of 1787 when the reported transaction took place.

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# Preamble

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

- |   |   |
|---|---|
| 1. John Locke, Second Treatise, § 131 (1689)  | 13. Alexander Hamilton, Federalist, no. 84, 28 May 1788   |
| 2. William Blackstone, Commentaries 1:157 (1765), in vol. 1, ch. 3, no. 3           | 14. Patrick Henry, Virginia Ratifying Convention, 4 June 1788   |
| 3. Virginia Declaration of Rights, secs. 2–3, 12 June 1776, in vol. 1, ch. 1, no. 3 | 15. Debate in North Carolina Ratifying Convention, 24 July 1788   |
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| 5. Vermont Constitution of 1777, Preamble   | 17. House of Representatives, Amendments to the Constitution, 14 Aug. 1789  |
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| 7. Records of the Federal Convention  | 19. <i>McCulloch v. Maryland</i> , 4 Wheat. 316 (1819)  |
| 8. James Wilson, Pennsylvania Ratifying Convention, 11 Dec. 1787                    | 20. James Monroe, Views of the President of the United States on the Subject of Internal Improvements, 4 May 1822 |
| 9. Luther Martin, Genuine Information, 1788, in vol. 1, ch. 8, no. 32               | 21. Joseph Story, Commentaries on the Constitution (1833)   |
| 10. James Madison, Federalist, no. 37, 11 Jan. 1788                                 |   |
| 11. Charles Pinckney, South Carolina House of Representatives, 16 Jan. 1788         |   |
| 12. Brutus, no. 12, 7 Feb. 1788   |   |

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## 1

JOHN LOCKE, SECOND TREATISE, § 131  
1689

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131. But though Men when they enter into Society, give up the Equality, Liberty, and Executive Power they had in the State of Nature, into the hands of the Society, to be so far disposed of by the Legislative, as the good of the Society shall require; yet it being only with an intention in every one the better to preserve himself his Liberty and Property; (For no rational Creature can be supposed to change his condition with an intention to be worse) the

power of the Society, or *Legislative* constituted by them, *can never be supposed to extend farther than the common good*; but is obliged to secure every ones Property by providing against those three defects above-mentioned, that made the State of Nature so unsafe and uneasy. And so whoever has the Legislative or Supreme Power of any Common-wealth, is bound to govern by establish'd *standing Laws*, promulgated and known to the People, and not by Extemporary Decrees; by *indifferent* and upright *Judges*, who are to decide Controversies by those Laws; And to employ the force of the Community at home, *only in the Execution of such Laws*, or abroad to prevent or redress Foreign Injuries, and secure the Community from Inroads and Invasion. And all this to be directed to no other *end*, but the *Peace, Safety*, and *publick good* of the People.

2

WILLIAM BLACKSTONE, COMMENTARIES 1:157  
1765

(See vol. 1, ch. 3, no. 3)

3

VIRGINIA DECLARATION OF RIGHTS, SECS. 2–3  
12 June 1776

*Mason Papers 1:287*

(See vol. 1, ch. 1, no. 3)

4

DECLARATION OF INDEPENDENCE  
4 July 1776

*Tansill 22*

(See vol. 1, ch. 1, no. 5)

5

VERMONT CONSTITUTION OF 1777, PREAMBLE

*Thorpe 6:3737*

Whereas, all government ought to be instituted and supported, for the security and protection of the community, as such, and to enable the individuals who compose it, to enjoy their natural rights, and the other blessings which the Author of existence has bestowed upon man; and whenever those great ends of government are not obtained, the people have a right, by common consent, to change it, and take such measures as to them may appear necessary to promote their safety and happiness.

6

VERMONT CONSTITUTION OF 1786, PREAMBLE

*Thorpe 6:3751*

Therefore it is absolutely necessary, for the welfare and safety of the inhabitants of this State, that it should be henceforth a free and independent State, and that a just, permanent, and proper form of government should exist

in it, derived from and founded on the authority of the people only, agreeable to the direction of the honourable American Congress.

We the Representatives of the freemen of Vermont, in General Convention met, for the express purpose of forming such a government—confessing the goodness of the great Governor of the universe (who alone knows to what degree of earthly happiness mankind may attain by perfecting the arts of government) in permitting the people of this State, by common consent, and without violence, deliberately to form for themselves such just rules as they shall think best, for governing their future society; and being fully convinced, that it is our indispensable duty to establish such original principles of government as will best promote the general happiness of the people of this State, and their posterity, and provide for future improvements, without partiality for, or prejudice against, any particular class, sect, or denomination of men whatever; do, by virtue of authority vested in us by our constituents, ordain, declare and establish the following Declaration of Rights, and Frame of Government, to be the Constitution of this Commonwealth, and to remain in force therein forever unaltered, except in such articles as shall hereafter on experience be found to require improvement, and which shall, by the same authority of the people, fairly delegated, as this Frame of Government directs, be amended or improved, for the more effectual obtaining and securing the great end and design of all government, herein before mentioned.

7

RECORDS OF THE FEDERAL CONVENTION

[1:20; *Madison, 29 May*]

Resolutions proposed by Mr Randolph in Convention.

1. Resolved that the articles of Confederation ought to be so corrected & enlarged as to accomplish the objects proposed by their institution; namely. “common defence, security of liberty and general welfare.”

[1:30; *Journal, 30 May*]

It was then moved by Mr Randolph and seconded by Mr. G Morris to substitute the following resolution in the place of the first resolution

Resolved that an union of the States, merely foederal, will not accomplish the objects proposed by the articles of confederation, namely “common defence, security of liberty, and general welfare.

It was moved by Mr Butler seconded by Mr Randolph to postpone the consideration of the said resolution in order to take up the following resolution submitted by Mr Randolph namely

Resolved that a national government ought to be established consisting of a supreme legislative, judiciary and executive.



[1:242; *Madison, 15 June*]

The propositions from N. Jersey moved by Mr. Patterson were in the words following.

1. Resd. that the articles of Confederation ought to be so revised, corrected & enlarged, as to render the federal Constitution adequate to the exigences of Government, & the preservation of the Union.

[4:37; *Committee of Detail, IV*]

In the draught of a fundamental constitution, two things deserve attention:

1. To insert essential principles only; lest the operations of government should be clogged by rendering those provisions permanent and unalterable, which ought to be accomodated to times and events: and
2. To use simple and precise language, and general propositions, according to the example of the constitutions of the several states.

1. A preamble seems proper. Not for the purpose of designating the ends of government and human polities—This display of theory, howsoever proper in the first formation of state governments, is unfit here; since we are not working on the natural rights of men not yet gathered into society, but upon those rights, modified by society, and interwoven with what we call the rights of states—Nor yet is it proper for the purpose of mutually pledging the faith of the parties for the observance of the articles—This may be done more solemnly at the close of the draught, as in the confederation—But the object of our preamble ought to be briefly to declare, that the present foederal government is insufficient to the general happiness; that the conviction of this fact gave birth to this convention; and that the only effectual mode which they can devise, for curing this insufficiency, is the establishment of a supreme legislative executive and judiciary—Let it be next declared, that the following are the constitution and fundamentals of government for the United States—

[2:565; *Committee of Style, 10 Sept.*]

We the People of the States of New-Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, do ordain, declare and establish the following Constitution for the Government of Ourselves and our Posterity.

#### *Article I.*

The stile of this Government shall be, “The United States of America.”

#### *II.*

The Government shall consist of supreme legislative, executive and judicial powers.

[2:590; *Committee of Style, 12 Sept.*]

We, the People of the United States, in order to form a more perfect union, to establish justice, insure domestic

tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

## 8

JAMES WILSON, PENNSYLVANIA RATIFYING  
CONVENTION  
11 Dec. 1787  
*McMaster 384–85*

This, Mr. President, is not a government founded upon compact; it is founded upon the power of the people. They express in their name and their authority, “*We the People do ordain and establish,*” &c., from their ratification, and their ratification alone it is to take its constitutional authenticity; without that it is no more than *tabula rasa*.

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

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

If we go a little further on this subject, I think we see that the doctrine of original compact cannot be supported consistently with the best principles of government. If we admit it, we exclude the idea of amendment; because a contract once entered into between the governor and governed becomes obligatory, and cannot be altered but by the mutual consent of both parties. The citizens of United America, I presume, do not wish to stand on that footing, with those to whom, from convenience, they please to delegate the exercise of the general powers necessary for sustaining and preserving the Union. They wish a principle established, by the operation of which the legislatures may feel the direct authority of the people. The people possessing that authority, will continue to exercise it by amending and improving their own work. This constitu-

tion may be found to have defects in it; amendments hence may become necessary; but the idea of a government founded on contract, destroys the means of improvement. We hear it every time the gentlemen are up, "Shall we violate the confederation, which directs every alteration that is thought necessary to be established by the State legislatures only?" Sir, those gentlemen must ascend to a higher source; the people fetter themselves by no contract. If your State legislatures have cramped themselves by compact, it was done without the authority of the people, who alone possess the supreme power.

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

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## 9

LUTHER MARTIN, GENUINE INFORMATION  
1788

(See vol. 1, ch. 8, no. 32)

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## 10

JAMES MADISON, FEDERALIST, NO. 37,  
233-39  
11 Jan. 1788

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. . . many allowances ought to be made for the difficulties inherent in the very nature of the undertaking referred to the Convention.

The novelty of the undertaking immediately strikes us. It has been shewn in the course of these papers, that the existing Confederation is founded on principles which are fallacious; that we must consequently change this first foundation, and with it, the superstructure resting upon it. It has been shewn, that the other confederacies which could be consulted as precedents, have been viciated by the same erroneous principles, and can therefore furnish no other light than that of beacons, which give warning of the course to be shunned, without pointing out that which ought to be pursued. The most that the Convention could do in such a situation, was to avoid the errors suggested by the past experience of other countries, as well as of our own; and to provide a convenient mode of rectifying their own errors, as future experience may unfold them.

Among the difficulties encountered by the Convention, a very important one must have lain, in combining the requisite stability and energy in Government, with the inviolable attention due to liberty, and to the Republican form. Without substantially accomplishing this part of their undertaking, they would have very imperfectly fulfilled the object of their appointment, or the expectation of the public: Yet, that it could not be easily accomplished, will be denied by no one, who is unwilling to betray his ignorance of the subject. Energy in Government is essential to that security against external and internal danger, and to that prompt and salutary execution of the laws, which enter into the very definition of good Government. Stability in Government, is essential to national character, and to the advantages annexed to it, as well as to that repose and confidence in the minds of the people, which are among the chief blessings of civil society. An irregular and mutable legislation, is not more an evil in itself, than it is odious to the people; and it may be pronounced with assurance, that the people of this country, enlightened as they are, with regard to the nature, and interested, as the great body of them are, in the effects of good Government, will never be satisfied, till some remedy be applied to the vicissitudes and uncertainties, which characterize the State administrations. On comparing, however, these valuable ingredients with the vital principles of liberty, we must perceive at once, the difficulty of mingling them together in their due proportions. The genius of Republican liberty, seems to demand on one side, not only that all power should be derived from the people; but, that those entrusted with it should be kept in dependence on the people, by a short duration of their appointments; and, that, even during this short period, the trust should be placed not in a few, but in a number of hands. Stability, on the contrary, requires, that the hands, in which power is lodged, should continue for a length of time, the same. A frequent change of men will result from a frequent return of electors, and a frequent change of measures, from a frequent change of men: whilst energy in Government requires not only a certain duration of power, but the execution of it by a single hand. How far the Convention may have succeeded in this part of their work, will better appear on a more accurate view of it. From the cursory view, here taken, it must clearly appear to have been an arduous part.

Not less arduous must have been the task of marking the proper line of partition, between the authority of the general, and that of the State Governments. Every man will be sensible of this difficulty, in proportion, as he has been accustomed to contemplate and discriminate objects, extensive and complicated in their nature. The faculties of the mind itself have never yet been distinguished and defined, with satisfactory precision, by all the efforts of the most acute and metaphysical Philosophers. Sense, perception, judgment, desire, volition, memory, imagination, are found to be separated by such delicate shades, and minute gradations, that their boundaries have eluded the most subtle investigations, and remain a pregnant source of ingenious disquisition and controversy. The boundaries between the great kingdoms of nature, and still more, be-

tween the various provinces, and lesser portions, into which they are subdivided, afford another illustration of the same important truth. The most sagacious and laborious naturalists have never yet succeeded, in tracing with certainty, the line which separates the district of vegetable life from the neighboring region of unorganized matter, or which marks the termination of the former and the commencement of the animal empire. A still greater obscurity lies in the distinctive characters, by which the objects in each of these great departments of nature, have been arranged and assorted. When we pass from the works of nature, in which all the delineations are perfectly accurate, and appear to be otherwise only from the imperfection of the eye which surveys them, to the institutions of man, in which the obscurity arises as well from the object itself, as from the organ by which it is contemplated; we must perceive the necessity of moderating still farther our expectations and hopes from the efforts of human sagacity. Experience has instructed us that no skill in the science of Government has yet been able to discriminate and define, with sufficient certainty, its three great provinces, the Legislative, Executive and Judiciary; or even the privileges and powers of the different Legislative branches. Questions daily occur in the course of practice, which prove the obscurity which reigns in these subjects, and which puzzle the greatest adepts in political science. The experience of ages, with the continued and combined labors of the most enlightened Legislators and jurists, have been equally unsuccessful in delineating the several objects and limits of different codes of laws and different tribunals of justice. The precise extent of the common law, the statute law, the maritime law, the ecclesiastical law, the law of corporations and other local laws and customs, remain still to be clearly and finally established in Great-Britain, where accuracy in such subjects has been more industriously pursued than in any other part of the world. The jurisdiction of her several courts, general and local, of law, of equity, of admiralty, &c. is not less a source of frequent and intricate discussions, sufficiently denoting the indeterminate limits by which they are respectively circumscribed. All new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation, are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications. Besides the obscurity arising from the complexity of objects, and the imperfection of the human faculties, the medium through which the conceptions of men are conveyed to each other, adds a fresh embarrassment. The use of words is to express ideas. Perspicuity therefore requires not only that the ideas should be distinctly formed, but that they should be expressed by words distinctly and exclusively appropriated to them. But no language is so copious as to supply words and phrases for every complex idea, or so correct as not to include many equivocally denoting different ideas. Hence, it must happen, that however accurately objects may be discriminated in themselves, and however accurately the discrimination may be considered, the definition of them may be rendered inaccurate by the inaccuracy of the terms in which it is delivered. And this un-

avoidable inaccuracy must be greater or less, according to the complexity and novelty of the objects defined. When the Almighty himself condescends to address mankind in their own language, his meaning, luminous as it must be, is rendered dim and doubtful, by the cloudy medium through which it is communicated. Here then are three sources of vague and incorrect definitions; indistinctness of the object, imperfection of the organ of conception, inadequateness of the vehicle of ideas. Any one of these must produce a certain degree of obscurity. The Convention, in delineating the boundary between the Federal and State jurisdictions, must have experienced the full effect of them all.

To the difficulties already mentioned, may be added the interfering pretensions of the larger and smaller States. We cannot err in supposing that the former would contend for a participation in the Government, fully proportioned to their superior wealth and importance; and that the latter would not be less tenacious of the equality at present enjoyed by them. We may well suppose that neither side would entirely yield to the other, and consequently that the struggle could be terminated only by compromise. It is extremely probable also, that after the ratio of representation had been adjusted, this very compromise must have produced a fresh struggle between the same parties, to give such a turn to the organization of the Government, and to the distribution of its powers, as would increase the importance of the branches, in forming which they had respectively obtained the greatest share of influence. There are features in the Constitution which warrant each of these suppositions; and as far as either of them is well founded, it shews that the Convention must have been compelled to sacrifice theoretical propriety to the force of extraneous considerations.

Nor could it have been the large and small States only which would marshal themselves in opposition to each other on various points. Other combinations, resulting from a difference of local position and policy, must have created additional difficulties. As every State may be divided into different districts, and its citizens into different classes, which give birth to contending interests and local jealousies; so the different parts of the United States are distinguished from each other, by a variety of circumstances, which produce a like effect on a larger scale. And although this variety of interests, for reasons sufficiently explained in a former paper, may have a salutary influence on the administration of the Government when formed; yet every one must be sensible of the contrary influence which must have been experienced in the task of forming it.

Would it be wonderful if under the pressure of all these difficulties, the Convention should have been forced into some deviations from that artificial structure and regular symmetry, which an abstract view of the subject might lead an ingenious theorist to bestow on a Constitution planned in his closet or in his imagination? The real wonder is, that so many difficulties should have been surmounted; and surmounted with a unanimity almost as unprecedented as it must have been unexpected. It is impossible for any man of candor to reflect on this circumstance, without partak-

ing of the astonishment. It is impossible for the man of pious reflection not to perceive in it, a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution. We had occasion in a former paper, to take notice of the repeated trials which have been unsuccessfully made in the United Netherlands, for reforming the baneful and notorious vices of their Constitution. The history of almost all the great councils and consultations, held among mankind for reconciling their discordant opinions, assuaging their mutual jealousies, and adjusting their respective interests, is a history of factions, contentions, and disappointments; and may be classed among the most dark and degrading pictures which display the infirmities and depravities of the human character. If, in a few scattered instances, a brighter aspect is presented, they serve only as exceptions to admonish us of the general truth; and by their lustre to darken the gloom of the adverse prospect to which they are contrasted. In revolving the causes from which these exceptions result, and applying them to the particular instance before us, we are necessarily led to two important conclusions. The first is, that the Convention must have enjoyed in a very singular degree, an exemption from the pestilential influence of party animosities; the diseases most incident to deliberative bodies, and most apt to contaminate their proceedings. The second conclusion is, that all the deputations composing the Convention, were either satisfactorily accommodated by the final act; or were induced to accede to it, by a deep conviction of the necessity of sacrificing private opinions and partial interests to the public good, and by a despair of seeing this necessity diminished by delays or by new experiments.

## 11

CHARLES PINCKNEY, SOUTH CAROLINA HOUSE  
OF REPRESENTATIVES  
16 Jan. 1788  
*Elliot 4:253-63*

Hon. CHARLES PINCKNEY (one of the delegates of the Federal Convention) rose in his place, and said that, although the principles and expediency of the measures proposed by the late Convention will come more properly into discussion before another body, yet, as their appointment originated with them, and the legislatures must be the instrument of submitting the plan to the opinion of the people, it became a duty in their delegates to state with conciseness the motives which induced it.

It must be recollected that, upon the conclusion of the definitive treaty, great inconveniences were experienced, as resulting from the inefficacy of the Confederation. The one first and most sensibly felt was the destruction of our commerce, occasioned by the restrictions of other nations, whose policy it was not in the power of the general government to counteract. The loss of credit, the inability in

our citizens to pay taxes, and languor of government, were, as they ever must be, the certain consequences of the decay of commerce. Frequent and unsuccessful attempts were made by Congress to obtain the necessary powers. The states, too, individually attempted, by navigation acts and other commercial provisions, to remedy the evil. These, instead of correcting, served but to increase it; their regulations interfered not only with each other, but, in almost every instance, with treaties existing under the authority of the Union. Hence arose the necessity of some general and permanent system, which should at once embrace all interests, and, by placing the states upon firm and united ground, enable them effectually to assert their commercial rights. Sensible that nothing but a concert of measures could effect this, Virginia proposed a meeting of commissioners at Annapolis, from the legislature of each state, who should be empowered to take into consideration the commerce of the Union; to consider how far a uniform system in their commercial regulations might be necessary to their common interest; and to report to the states such an act as, when unanimously ratified by them, would enable Congress effectually to provide for the same. In consequence of this, ten states appointed delegates. By accident, or otherwise, they did not attend, only five states being represented. The gentlemen present, not being a majority of the Union, did not conceive it advisable to proceed; but in an address to their constituents, which was also transmitted to the other legislatures, acquainted them with the circumstances of their meeting; that there appeared to them to be other and more material defects in the federal system than merely those of commercial powers. That these, upon examination, might be found greater than even the acts of their appointments implied, was at least so far probable, from the embarrassments which mark the present state of national affairs, foreign and domestic, as to merit, in their opinions, a deliberate and candid discussion in some mode which would unite the sentiments and councils of all the states. They therefore suggested the appointment of another convention, under more extensive powers, for the purpose of devising such further provisions as should appear to them necessary to render the federal government adequate to the exigencies of the Union.

Under this recommendation the late Convention assembled; for most of the appointments had been made before the recommendation of Congress was formed or known. He thought proper concisely to mention the manner of the Convention's assembling, merely to obviate an objection which all the opposers of the federal system had used, viz., that, at the time the Convention met, no opinion was entertained of their departing from the Confederation—that merely the grant of commercial powers, and the establishment of a federal revenue, were in agitation; whereas nothing can be more true, than that its promoters had for their object a firm national government. Those who had seriously contemplated the subject were fully convinced that a total change of system was necessary—that, however the repair of the Confederation might for a time avert the inconveniences of a dissolution, it was impossible a government of that sort could long unite this

growing and extensive country. They also thought that the public mind was fully prepared for the change, and that no time could be more proper for introducing it than the present—that the total want of government, the destruction of commerce, of public credit, private confidence, and national character, were surely sufficiently alarming to awaken their constituents to a true sense of their situation.

Under these momentous impressions the Convention met, when the first question that naturally presented itself to the view of almost every member, although it was never formally brought forward, was the formation of a new, or the amendment of the existing system. Whatever might have been the opinions of a few speculative men, who either did, or pretended to, confide more in the virtue of the people than prudence warranted, Mr. Pinckney said he would venture to assert that the states were unanimous in preferring a change. They wisely considered that, though the Confederation might possess the great outlines of a general government, yet that it was, in fact, nothing more than a federal union; or, strictly speaking, a league founded in paternal and persuasive principles, with nothing permanent and coercive in its construction, where the members might, or might not, comply with their federal engagements, as they thought proper—that no power existed of raising supplies but by the requisitions or quotas on the states—that this defect had been almost fatally evinced by the experience of the states for the last six or eight years, in which not one of them had completely complied; but a few had even paid up their specie proportions; others very partially; and some, he had every reason to believe, had not to this day contributed a shilling to the common treasury since the Union was formed. He should not go into a detail of the conduct of the states, or the unfortunate and embarrassing situation to which their inattention has reduced the Union; these have been so often and so strongly represented by Congress, that he was sure there could not be a member on the floor unacquainted with them. It was sufficient to remark that the Convention saw and felt the necessity of establishing a government upon different principles, which, instead of requiring the intervention of thirteen different legislatures between the demand and the compliance, should operate upon the people in the first instance.

He repeated, that the necessity of having a government which should at once operate upon the people, and not upon the states, was conceived to be indispensable by every delegation present; that, however they may have differed with respect to the quantum of power, no objection was made to the system itself. They considered it, however, highly necessary that, in the establishment of a constitution possessing extensive national authorities, a proper distribution of its powers should be attended to. Sensible of the danger of a single body, and that to such a council the states ought not to intrust important rights, they considered it their duty to divide the legislature into two branches, and, by a limited revisionary power, to mingle, in some degree, the executive in their proceedings—a provision that he was pleased to find meets with universal approbation. The degree of weight which each state was to have in the federal council became a question of much ag-

itation. The larger states contended that no government could long exist whose principles were founded in injustice; that one of the most serious and unanswerable objections to the present system was the injustice of its tendency in allowing each state an equal vote, notwithstanding their striking disparity. The small ones replied, and perhaps with reason, that, as the states were the pillars upon which the general government must ever rest, their state governments must remain; that, however they may vary in point of territory or population, as political associations they were equal; that upon these terms they formally confederated, and that no inducement whatsoever should tempt them to unite upon others; that, if they did, it would amount to nothing less than throwing the whole government of the Union into the hands of three or four of the largest states.

After much anxious discussion,—for, had the Convention separated without determining upon a plan, it would have been on this point,—a compromise was effected, by which it was determined that the first branch be so chosen as to represent in due proportion to the people of the Union; that the Senate should be the representatives of the states, where each should have an equal weight. Though he was at first opposed to this compromise, yet he was far from thinking it an injudicious one. The different branches of the legislature being intended as checks upon each other, it appeared to him they would more effectually restrain their mutual intemperances under this mode of representation than they would have done if both houses had been so formed upon proportionable principles; for, let us theorize as much as we will, it will be impossible so far to divest the majority of the federal representatives of their state views and policy, as to induce them always to act upon truly national principles. Men do not easily wean themselves of those preferences and attachments which country and connections invariably create; and it must frequently have happened, had the larger states acquired that decided majority which a proportionable representation would have given them in both houses, that state views and policy would have influenced their deliberations. The ease with which they would, upon all occasions, have secured a majority in the legislature, might, in times less virtuous than the present, have operated as temptations to designing and ambitious men to sacrifice the public good to private views. This cannot be the case at present; the different mode of representation for the Senate will, as has already been observed, most effectually prevent it. The purpose of establishing different houses of legislation was to introduce the influence of different interests and principles; and he thought that we should derive, from this mode of separating the legislature into two branches, those benefits which a proper complication of principles is capable of producing, and which must, in his judgment, be greater than any evils that may arise from their temporary dissensions.

The judicial he conceived to be at once the most important and intricate part of the system. That a supreme federal jurisdiction was indispensable, cannot be denied. It is equally true that, in order to insure the administration of justice, it was necessary to give it all the powers, original as

well as appellate, the Constitution has enumerated; without it we could not expect a due observance of treaties—that the state judiciary would confine themselves within their proper sphere, or that general sense of justice pervade the Union which this part of the Constitution is intended to introduce and protect—that much, however, would depend upon the wisdom of the legislatures who are to organize it—that, from the extensiveness of its powers, it may be easily seen that, under a wise management, this department might be made the keystone of the arch, the means of connecting and binding the whole together, of preserving uniformity in all the judicial proceedings of the Union—that, in republics, much more (in time of peace) would always depend upon the energy and integrity of the judicial than on any other part of the government—that, to insure these, extensive authorities were necessary; particularly so were they in a tribunal constituted as this is, whose duty it would be not only to decide all national questions which should arise within the Union, but to control and keep the state judicials within their proper limits whenever they shall attempt to interfere with its power.

And the executive, he said, though not constructed upon those firm and permanent principles which he confessed would have been pleasing to him, is still as much so as the present temper and genius of the people will admit. Though many objections had been made to this part of the system, he was always at a loss to account for them. That there can be nothing dangerous in its powers, even if he was disposed to take undue advantages, must be easily discerned from reviewing them. He is commander-in-chief of the land and naval forces of the Union, but he can neither raise nor support forces by his own authority. He has a revisionary power in the making of laws; but if two thirds of both houses afterwards agree notwithstanding his negative, the law passes. He cannot appoint to an office without the Senate concurs; nor can he enter into treaties, or, in short, take a single step in his government, without their advice. He is, also, to remain in office but four years. He might ask, then, From whence are the dangers of the executive to proceed? It may be said, From a combination of the executive and the Senate, they might form a baneful aristocracy.

He had been opposed to connecting the executive and the Senate in the discharge of those duties, because their union, in his opinion, destroyed that responsibility which the Constitution should, in this respect, have been careful to establish; but he had no apprehensions of an aristocracy. For his part, he confessed that he ever treated all fears of aristocracies or despotisms, in the federal head, as the most childish chimeras that could be conceived. In a Union extensive as this is, composed of so many state governments, and inhabited by a people characterized, as our citizens are, by an impatience under any act which even looks like an infringement of their rights, an invasion of them by the federal head appeared to him the most remote of all our public dangers. So far from supposing a change of this sort at all probable, he confessed his apprehensions were of a different kind: he rather feared that it was impossible, while the state systems continue—and con-

tinue they must—to construct any government upon republican principles sufficiently energetic to extend its influence through all its parts. Near the federal seat, its influence may have complete effect; but he much doubted its efficacy in the more remote districts. The state governments will too naturally slide into an opposition against the general one, and be easily induced to consider themselves as rivals. They will, after a time, resist the collection of a revenue; and if the general government is obliged to concede, in the smallest degree, on this point, they will of course neglect their duties, and despise its authority: a great degree of weight and energy is necessary to enforce it; nor is any thing to be apprehended from them. All power being immediately derived from the people, and the state governments being the basis of the general one, it will easily be in their power to interfere, and to prevent its injuring or invading their rights. Though at first he considered some declaration on the subject of trial by jury in civil causes, and the freedom of the press, necessary, and still thinks it would have been as well to have had it inserted, yet he fully acquiesced in the reasoning which was used to show that the insertion of them was not essential. The distinction which has been taken between the nature of a federal and state government appeared to be conclusive—that in the former, no powers could be executed, or assumed, but such as were expressly delegated; that in the latter, the indefinite power was given to the government, except on points that were by express compact reserved to the people.

On the subject of juries, in civil cases, the Convention were anxious to make some declaration; but when they reflected that all courts of admiralty and appeals, being governed in their propriety by the civil law and the laws of nations, never had, or ought to have, juries, they found it impossible to make any precise declaration upon the subject; they therefore left it as it was, trusting that the good sense of their constituents would never induce them to suppose that it could be the interest or intention of the general government to abuse one of the most invaluable privileges a free country can boast; in the loss of which, themselves, their fortunes and connections, must be so materially involved, and to the deprivation of which, except in the cases alluded to, the people of this country would never submit. When we reflect that the exigencies of the government require that a general government upon other principles than the present should be established,—when we contemplate the difference between a federal union and a government operating upon the people, and not upon the states,—we must at once see the necessity of giving to it the power of direct taxation. Without this, it must be impossible for them to raise such supplies as are necessary to discharge the debts, or support the expenses, of the Union—to provide against the common dangers, or afford that protection to its members which they have a right to expect from the federal head. But here he begged leave to observe that, so far from apprehending danger from the exercise of this power, few or no inconveniences are to be expected. He had not a doubt that, except in time of war, or pressing necessity, a sufficient sum would always be raised, by impost, to defray

the general expenses. As to the power of raising troops, it was unnecessary to remark upon it further than merely to say, that this is a power the government at present possesses and exercises; a power so essential, that he should very much doubt the good sense or information of the man that should conceive it improper. It is guarded by a declaration that no grants for this purpose shall be longer than two years at a time. For his own part, notwithstanding all that had been said upon this popular topic, he could not conceive that either the dignity of a government could be maintained, its safety insured, or its laws administered, without a body of regular forces to aid the magistrate in the execution of his duty. All government is a kind of restraint. We may be told, a free government imposes no restraint upon the private wills of individuals which does not conduce in a greater degree to the public happiness; but all government is restraint, and founded in force. We are the first nation who have ever held a contrary opinion, or even attempted to maintain one without it. The experiment has been made, and he trusted there would hereafter be few men weak enough to suppose that some regular force ought not to be kept up, or that the militia ever can be depended upon as the support or protection of the Union.

Upon the whole, he could not but join those in opinion who have asserted that this is the best government that has ever yet been offered to the world, and that, instead of being alarmed at its consequences, we should be astonishingly pleased that one so perfect could have been formed from such discordant and unpromising materials. In a system founded upon republican principles, where the powers of government are properly distributed, and each confined to a separate body of magistracy, a greater degree of force and energy will always be found necessary than even in a monarchy. This arises from the national spirit of union being stronger in monarchies than in republics: it is said to be naturally strong in monarchies, because, in the absence both of manners and principles, the compelling power of the sovereign collects and draws every thing to a point; and thereby, in all common situations, effectually supplies their place. But in free countries it is naturally weak, unless supported by public spirit; for as, in most cases, a full spirit of national union will require that the separate and partial views of private interest be on every occasion sacrificed to the general welfare, so, when this principle prevails not, (and it will only prevail in moments of enthusiasm,) the national union must ever be destroyed by selfish views and private interest. He said that, with respect to the Union, this can only be remedied by a strong government, which, while it collects its powers to a point, will prevent that spirit of disunion from which the most serious consequences are to be apprehended. He begged leave, for a moment, to examine what effect this spirit of disunion must have upon us, as we may be affected by a foreign enemy. It weakens the consistency of all public measures, so that no extensive scheme of thought can be carried into action, if its accomplishment demand any long continuance of time. It weakens not only the consistency, but the vigor and expedition, of all public measures; so that, while a divided people are contending about the

means of security or defence, a united enemy may surprise and invade them. These are the apparent consequences of disunion. Mr. Pinckney confessed, however, that, after all that had been said upon the subject, our Constitution was in some measure but an experiment; nor was it possible yet to form a just conclusion as to its practicability.

It had been an opinion long established, that a republican form of government suited only the affairs of a small state; which opinion is founded in the consideration, that unless the people in every district of the empire be admitted to a share in the national representation, the government is not to them as a republic; that in a democratic constitution, the mechanism is too complicated, the motions too slow, for the operations of a great empire, whose defence and government require execution and despatch in proportion to the magnitude, extent, and variety of its concerns. There was, no doubt, weight in these reasons; but much of the objection, he thought, would be done away by the continuance of a federal republic, which, distributing the country into districts, or states, of a commodious extent, and leaving to each state its internal legislation, reserves unto a superintending government the adjustment of their general claims, the complete direction of the common force and treasure of the empire. To what limits such a republic might extend, or how far it is capable of uniting the liberty of a small commonwealth with the safety of a peaceful empire; or whether, among coördinate powers, dissensions and jealousies would not arise, which, for want of a common superior, might proceed to fatal extremities,—are questions upon which he did not recollect the example of any nation to authorize us to decide, because the experiment has never been yet fairly made. We are now about to make it upon an extensive scale, and under circumstances so promising, that he considered it the fairest experiment that had been ever made in favor of human nature. He concluded with expressing a thorough conviction that the firm establishment of the present system is better calculated to answer the great ends of public happiness than any that has yet been devised.

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## 12

BRUTUS, NO. 12

7 Feb. 1788

*Storing 2.9.150–51*

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To discover the spirit of the constitution, it is of the first importance to attend to the principal ends and designs it has in view. These are expressed in the preamble, in the following words, viz. “We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution,” &c. If the end of the government is to be learned from these words, which are

clearly designed to declare it, it is obvious it has in view every object which is embraced by any government. The preservation of internal peace—the due administration of justice—and to provide for the defence of the community, seems to include all the objects of government; but if they do not, they are certainly comprehended in the words, “to provide for the general welfare.” If it be further considered, that this constitution, if it is ratified, will not be a compact entered into by states, in their corporate capacities, but an agreement of the people of the United States, as one great body politic, no doubt can remain, but that the great end of the constitution, if it is to be collected from the preamble, in which its end is declared, is to constitute a government which is to extend to every case for which any government is instituted, whether external or internal. The courts, therefore, will establish this as a principle in expounding the constitution, and will give every part of it such an explanation, as will give latitude to every department under it, to take cognizance of every matter, not only that affects the general and national concerns of the union, but also of such as relate to the administration of private justice, and to regulating the internal and local affairs of the different parts.

Such a rule of exposition is not only consistent with the general spirit of the preamble, but it will stand confirmed by considering more minutely the different clauses of it.

## 13

ALEXANDER HAMILTON, FEDERALIST, NO. 84,  
578–79  
28 May 1788

Here, in strictness, the people surrender nothing, and as they retain every thing, they have no need of particular reservations. “WE THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do *ordain* and *establish* this constitution for the United States of America.” Here is a better recognition of popular rights than volumes of those aphorisms which make the principal figure in several of our state bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government.

## 14

PATRICK HENRY, VIRGINIA RATIFYING  
CONVENTION  
4 June 1788  
*Elliot 3:22–23*

And here I would make this inquiry of those worthy characters who composed a part of the late federal Conven-

tion. I am sure they were fully impressed with the necessity of forming a great consolidated government, instead of a confederation. That this is a consolidated government is demonstrably clear; and the danger of such a government is, to my mind, very striking. I have the highest veneration for those gentlemen; but, sir, give me leave to demand, What right had they to say, *We, the people?* My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask, Who authorized them to speak the language of, *We, the people*, instead of, *We, the states?* States are the characteristics and the soul of a confederation. If the states be not the agents of this compact, it must be one great, consolidated, national government, of the people of all the states. I have the highest respect for those gentlemen who formed the Convention, and, were some of them not here, I would express some testimonial of esteem for them. America had, on a former occasion, put the utmost confidence in them—a confidence which was well placed; and I am sure, sir, I would give up any thing to them; I would cheerfully confide in them as my representatives. But, sir, on this great occasion, I would demand the cause of their conduct. Even from that illustrious man who saved us by his valor, I would have a reason for his conduct: that liberty which he has given us by his valor, tells me to ask this reason; and sure I am, were he here, he would give us that reason. But there are other gentlemen here, who can give us this information. The people gave them no power to use their name. That they exceeded their power is perfectly clear. It is not mere curiosity that actuates me: I wish to hear the real, actual, existing danger, which should lead us to take those steps, so dangerous in my conception. Disorders have arisen in other parts of America; but here, sir, no dangers, no insurrection or tumult have happened; every thing has been calm and tranquil. But, notwithstanding this, we are wandering on the great ocean of human affairs. I see no landmark to guide us. We are running we know not whither. Difference of opinion has gone to a degree of inflammatory resentment in different parts of the country, which has been occasioned by this perilous innovation. The federal Convention ought to have amended the old system; for this purpose they were solely delegated; the object of their mission extended to no other consideration. You must therefore, forgive the solicitation of one unworthy member to know what danger could have arisen under the present Confederation, and what are the causes of this proposal to change our government.

## 15

DEBATE IN NORTH CAROLINA RATIFYING  
CONVENTION  
24 July 1788  
*Elliot 4:15–26*

Mr. CALDWELL. Mr. Chairman, if they mean, *We, the people*,—the people at large,—I conceive the expression is im-



proper. Were not they who framed this Constitution the representatives of the legislatures of the different states? In my opinion, they had no power, from the people at large, to use their name, or to act for them. They were not delegated for that purpose.

Mr. MACLAINE. The reverend gentleman has told us, that the expression, *We, the people*, is wrong, because the gentlemen who framed it were not the representatives of the people. I readily grant that they were delegated by states. But they did not think that they were the people, but intended it for the people, at a future day. The sanction of the state legislatures was in some degree necessary. It was to be submitted by the legislatures to the people; so that, when it is adopted, it is the act of the people. When it is the act of the people, their name is certainly proper. This is very obvious and plain to any capacity.

Mr. DAVIE. Mr. Chairman, the observation of the reverend gentleman is grounded, I suppose, on a supposition that the Federal Convention exceeded their powers. This objection has been industriously circulated; but I believe, on a candid examination, the prejudice on which this error is founded will be done away. As I had the honor, sir, to be a member of the Convention, it may be expected I would answer an objection personal in its nature, and which contains rather a reflection on our conduct, than an objection to the merits of the Constitution. After repeated and decisive proofs of the total inefficiency of our general government, the states deputed the members of the Convention to revise and strengthen it. And permit me to call to your consideration that, whatever form of confederate government they might devise, or whatever powers they might propose to give this new government, no part of it was binding until the whole Constitution had received the solemn assent of the people. What was the object of our mission? "To decide upon the most effectual means of removing the defects of our federal union." This is a general, discretionary authority to propose any alteration they thought proper or necessary. Were not the state legislatures afterwards to review our proceedings? Is it not immediately through their recommendation that the plan of the Convention is submitted to the people? And this plan must still remain a dead letter, or receive its operation from the fiat of this Convention. Although the Federal Convention might recommend the concession of the most extensive powers, yet they could not put one of them into execution. What have the Convention done that can merit this species of censure? They have only recommended a plan of government containing some additional powers to those enjoyed under the present feeble system; amendments not only necessary, but which were the express object of the deputation. When we investigate this system candidly and accurately, and compare all its parts with one another, we shall find it absolutely necessary to confirm these powers, in order to secure the tranquillity of the states and the liberty of the people. Perhaps it would be necessary, to form a true judgment of this important question, to state some events, and develop some of those defects, which gave birth to the late Convention, and which have produced this revolution in our federal government. With the indulgence of the committee, I will attempt this

detail with as much precision as I am capable of. The general objects of the union are, 1st, to protect us against foreign invasion; 2d, to defend us against internal commotions and insurrections; 3d, to promote the commerce, agriculture, and manufacturers, of America. These objects are requisite to make us a safe and happy people, and they cannot be attained without a firm and efficient system of union.

As to the first, we cannot obtain any effectual protection from the present Confederation. It is indeed universally acknowledged, that its inadequacy in this case is one of its greatest defects. Examine its ability to repel invasion. In the late glorious war, its weakness was unequivocally experienced. It is well known that Congress had a *discretionary right* to raise men and money; but they had no power to do either. In order to preclude the necessity of examining the whole progress of its imbecility, permit me to call to your recollection one single instance. When the last great stroke was made which humbled the pride of Britain, and put us in possession of peace and independence, so low were the finances and credit of the United States, that our army could not move from Philadelphia, until the minister of his most Christian majesty was prevailed upon to draw bills to defray the expense of the expedition. These were not obtained on the credit or interest of Congress, but by the personal influence of the commander-in-chief.

Had this great project miscarried, what fatal events might have ensued! It is a very moderate presumption, that what has once happened may happen again. The next important consideration, which is involved in the external powers of the Union, are *treaties*. Without a power in the federal government to compel the performance of our engagements with foreign nations, we shall be perpetually involved in destructive wars. The Confederation is extremely defective in this point also. I shall only mention the British treaty as a satisfactory proof of this melancholy fact. It is well known that, although this treaty was ratified in 1784, it required the sanction of a law of North Carolina in 1787; and that our enemies, presuming on the weakness of our federal government, have refused to deliver up several important posts within the territories of the United States, and still hold them, to our shame and disgrace. It is unnecessary to reason on facts, the perilous consequences of which must in a moment strike every mind capable of reflection.

The next head under which the general government may be considered, is the regulation of commerce. The United States should be empowered to compel foreign nations into commercial regulations that were either founded on the principles of justice or reciprocal advantages. Has the present Confederation effected any of these things? Is not our commerce equally unprotected abroad by arms and negotiation? Nations have refused to enter into treaties with us. What was the language of the British court on a proposition of this kind? Such as would insult the pride of any man of feeling and independence.—"You can make engagements, but you cannot compel your citizens to comply with them. We derive greater profits from the present situation of your commerce than we could expect under a

treaty; and you have no kind of power that can compel us to surrender any advantage to you." This was the language of our enemies; and while our government remains as feeble as it has been, no nation will form any connection with us that will involve the relinquishment of the least advantage. What has been the consequence? A general decay of trade, the rise of imported merchandise, the fall of produce, and an uncommon decrease of the value of lands. Foreigners have been reaping the benefits and emoluments which our citizens ought to enjoy. An unjustifiable perversion of justice has pervaded almost all the states, and every thing presented to our view a spectacle of public poverty and private wretchedness!

While this is a true representation of our situation, can our general government recur to the ordinary expedient of *loans*? During the late war, large sums were advanced to us by foreign states and individuals. Congress have not been enabled to pay even the interest of these debts, with honor and punctuality. The requisitions made on the states have been every where unproductive, and some of them have not paid a stiver. These debts are a part of the price of our liberty and independence—debts which ought to be regarded with gratitude and discharged with honor. Yet many of the individuals who lent us money in the hour of our distress, are now reduced to indigence in consequence of our delinquency. So low and hopeless are the finances of the United States, that, the year before last Congress were obliged to borrow money even to pay the interest of the principal which we had borrowed before. This wretched resource of turning interest into principal, is the most humiliating and disgraceful measure that a nation could take, and approximates with rapidity to absolute ruin. Yet it is the inevitable and certain consequence of such a system as the existing Confederation.

There are several other instances of imbecility in that system. It cannot secure to us the enjoyment of our own territories, or even the navigation of our own rivers. The want of power to establish a uniform rule for naturalization through the United States is also no small defect, as it must unavoidably be productive of disagreeable controversies with foreign nations. The general government ought in this, as in every other instance, to possess the means of preserving the peace and tranquillity of the Union. A striking proof of the necessity of this power recently happened in Rhode Island: A man who had run off with a vessel and cargo, the property of some merchants in Holland, took sanctuary in that place: application was made for him as a citizen of the United Netherlands by the minister, but, as he had taken the oath of allegiance, the state refused to deliver him up, and protected him in his villainy. Had it not been for the peculiar situation of the states at that time, fatal consequences might have resulted from such a conduct, and the contemptible state of Rhode Island might have involved the whole Union in a war.

The encroachments of some states on the rights of others, and of all on those of the Confederacy, are incontestable proofs of the weakness and imperfection of that system. Maryland lately passed a law granting exclusive privileges to her own vessels, contrary to the Articles of the Confederation. Congress had neither power nor influence

to alter it; all they could do was to send a contrary recommendation. It is provided, by the 6th Article of the Confederation, that no compact shall be made between two or more states without the consent of Congress; yet this has been recently violated by Virginia and Maryland, and also by Pennsylvania and New Jersey. North Carolina and Massachusetts have had a considerable body of forces on foot, and those in this state raised for two years, notwithstanding the express provision in the Confederation that no force should be kept up by any state in time of peace.

As to internal tranquillity,—without dwelling on the unhappy commotions in our own back counties, —I will only add that, if the rebellion in Massachusetts had been planned and executed with any kind of ability, that state must have been ruined; for Congress were not in a situation to render them any assistance.

Another object of the federal union is, to promote the agriculture and manufactures of the states—objects in which we are so nearly concerned. Commerce, sir, is the nurse of both. The merchant furnishes the planter with such articles as he cannot manufacture himself, and finds him a market for his produce. Agriculture cannot flourish if commerce languishes; they are mutually dependent on each other. Our commerce, as I have before observed, is unprotected abroad, and without regulation at home, and in this and many of the states ruined by partial and iniquitous laws—laws which, instead of having a tendency to protect property and encourage industry, led to the depreciation of the one, and destroyed every incitement to the other—laws which basely warranted and legalized the payment of just debts by *paper*, which represents nothing, or property of very trivial value.

These are some of the leading causes which brought forward this new Constitution. It was evidently necessary to infuse a greater portion of strength into the national government. But Congress were but a single body, with whom it was dangerous to lodge additional powers. Hence arose the necessity of a different organization. In order to form some balance, the departments of government were separated, and as a necessary check, the legislative body was composed of *two branches*. Steadiness and wisdom are better insured when there is a second branch, to balance and check the first. The stability of the laws will be greater when the popular branch, which might be influenced by local views, or the violence of party, is checked by another, whose longer continuance in office will render them more experienced, more temperate, and more competent to decide rightly.

The Confederation derived its sole support from the state legislatures. This rendered it weak and ineffectual. It was therefore necessary that the foundations of this government should be laid on the broad basis of the people. Yet the state governments are the pillars upon which this government is extended over such an immense territory, and are essential to its existence. The House of Representatives are immediately elected by the people. The senators represent the sovereignty of the states; they are directly chosen by the state legislatures, and no legislative act can be done without their concurrence. The election of the ex-

ecutive is in some measure under the control of the legislatures of the states, the electors being appointed under their direction.

The difference, in point of magnitude and importance, in the members of the confederacy, was an additional reason for the division of the legislature into two branches, and for establishing an equality of suffrage in the Senate. The protection of the small states against the ambition and influence of the larger members, could only be effected by arming them with an equal power in one branch of the legislature. On a contemplation of this matter, we shall find that the jealousies of the states could not be reconciled any other way. The lesser states would never have concurred unless this check had been given them, as a security for their political existence, against the power and encroachments of the great states. It may be also proper to observe, that the executive is separated in its functions from the legislature, as well as the nature of the case would admit, and the judiciary from both.

Another radical vice in the old system, which was necessary to be corrected, and which will be understood without a long deduction of reasoning, was, that it legislated on states, instead of individuals; and that its powers could not be executed but by fire or by the sword—by military force, and not by the intervention of the civil magistrate. Every one who is acquainted with the relative situation of the states, and the genius of our citizens, must acknowledge that, if the government was to be carried into effect by military force, the most dreadful consequences would ensue. It would render the citizens of America the most implacable enemies to one another. If it could be carried into effect against the small states, yet it could not be put in force against the larger and more powerful states. It was therefore absolutely necessary that the influence of the magistrate should be introduced, and that the laws should be carried home to individuals themselves.

In the formation of this system, many difficulties presented themselves to the Convention.

Every member saw that the existing system would ever be ineffectual, unless its laws operated on individuals, as military coercion was neither eligible nor practicable. Their own experience was fortified by their knowledge of the inherent weakness of all confederate governments. They knew that all governments merely federal had been short-lived, or had existed from principles extraneous from their constitutions, or from external causes which had no dependence on the nature of their governments. These considerations determined the Convention to depart from that solecism in politics—the principle of legislation for states in their political capacities.

The great extent of country appeared to some a formidable difficulty; but a confederate government appears, at least in theory, capable of embracing the various interests of the most extensive territory. Founded on the state governments solely, as I have said before, it would be tottering and inefficient. It became, therefore, necessary to bottom it on the people themselves, by giving them an immediate interest and agency in the government. There was, however, some real difficulty in conciliating a number of jarring interests, arising from the incidental but unalterable

difference in the states in point of territory, situation, climate, and rivalry in commerce. Some of the states are very extensive, others very limited: some are manufacturing states, others merely agricultural: some of these are exporting states, while the carrying and navigation business are in the possession of others. It was not easy to reconcile such a multiplicity of discordant and clashing interests. Mutual concessions were necessary to come to any concurrence. A plan that would promote the exclusive interests of a few states would be injurious to others. Had each state obstinately insisted on the security of its particular local advantages, we should never have come to a conclusion. Each, therefore, amicably and wisely relinquished its particular views. The Federal Convention have told you, that the Constitution which they formed “was the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of their political situation rendered indispensable.” I hope the same laudable spirit will govern this Convention in their decision on this important question.

The business of the Convention was to amend the Confederation by giving it additional powers. The present form of Congress being a single body, it was thought unsafe to augment its powers, without altering its organization. The act of the Convention is but a mere proposal, similar to the production of a private pen. I think it a government which, if adopted, will cherish and protect the happiness and liberty of America; but I hold my mind open to conviction. I am ready to recede from my opinion if it be proved to be ill-founded. I trust that every man here is equally ready to change an opinion he may have improperly formed. The weakness and inefficiency of the old Confederation produced the necessity of calling the Federal Convention. Their plan is now before you; and I hope, on a deliberate consideration, every man will see the necessity of such a system. It has been the subject of much jealousy and censure out of doors. I hope gentlemen will now come forward with their objections, and that they will be thrown out and answered with candor and moderation.

Mr. CALDWELL wished to know why the gentlemen who were delegated by the states, styled themselves *We, the people*. He said that he only wished for information.

Mr. IREDELL answered, that it would be easy to satisfy the gentleman; that the style, *We, the people*, was not to be applied to the members themselves, but was to be the style of the Constitution, when it should be ratified in their respective states.

Mr. JOSEPH TAYLOR. Mr. Chairman, the very wording of this Constitution seems to carry with it an assumed power. *We, the people*, is surely an assumed power. Have they said, *We, the delegates of the people*? It seems to me that, when they met in Convention, they assumed more power than was given them. Did the people give them the power of using their name? This power was in the people. They did not give it up to the members of the Convention. If, therefore, they had not this power, they assumed it. It is the interest of every man, who is a friend to liberty, to oppose the assumption of power as soon as possible. I see no reason why they assumed this power. Matters may be carried still farther. This is a consolidation of all the states.

Had it said, *We, the states*, there would have been a federal intention in it. But, sir, it is clear that a consolidation is intended. Will any gentleman say that a consolidated government will answer this country? It is too large. The man who has a large estate cannot manage it with convenience. I conceive that, in the present case, a consolidated government can by no means suit the genius of the people. The gentleman from Halifax (Mr. Davie) mentioned reasons for such a government. They have their weight, no doubt; but at a more convenient time we can show their futility. We see plainly that men who come from New England are different from us. They are ignorant of our situation; they do not know the state of our country. They cannot with safety legislate for us. I am astonished that the servants of the legislature of North Carolina should go to Philadelphia, and, instead of speaking of the *state* of North Carolina, should speak of the *people*. I wish to stop power as soon as possible; for they may carry their assumption of power to a more dangerous length. I wish to know where they found the power of saying *We, the people*, and of consolidating the states.

Mr. MACLAINE. Mr. Chairman, I confess myself astonished to hear objections to the preamble. They say that the delegates to the Federal Convention assumed powers which were not granted them; that they ought not to have used the words *We, the people*. That they were not the delegates of the people, is universally acknowledged. The Constitution is only a mere proposal. Had it been binding on us, there might be a reason for objecting. After they had finished the plan, they proposed that it should be recommended to the people by the several state legislatures. If the people approve of it, it becomes their act. Is not this merely a dispute about words, without any meaning what ever? Suppose any gentleman of this Convention had drawn up this government, and we thought it a good one; we might respect his intelligence and integrity, but it would not be binding upon us. We might adopt it if we thought it a proper system, and then it would be our act. Suppose it had been made by our enemies, or had dropped from the clouds; we might adopt it if we found it proper for our adoption. By whatever means we found it, it would be our act as soon as we adopted it. It is no more than a blank till it be adopted by the people. When that is done here, is it not the people of the state of North Carolina that do it, joined with the people of the other states who have adopted it? The expression is, then, right. But the gentleman has gone farther, and says that the people of New England are different from us. This goes against the Union altogether. They are not to legislate for us; we are to be represented as well as they. Such a futile objection strikes at all union. We know that without union we should not have been debating now. I hope to hear no more objections of this trifling nature, but that we shall enter into the spirit of the subject at once.

Mr. CALDWELL observed, that he only wished to know why they had assumed the name of the people.

Mr. JAMES GALLOWAY. Mr. Chairman, I trust we shall not take up more time on this point. I shall just make a few remarks on what has been said by the gentleman from Halifax. He has gone through our distresses, and those of

the other states. As to the weakness of the Confederation, we all know it. A sense of this induced the different states to send delegates to Philadelphia. They had given them certain powers; we have seen them, they are now upon the table. The result of their deliberations is now upon the table also. As they have gone out of the line which the states pointed out to them, we, the people, are to take it up and consider it. The gentlemen who framed it have exceeded their powers, and very far. They will be able, perhaps, to give reasons for so doing. If they can show us any reasons, we will, no doubt, take notice of them. But, on the other hand, if our civil and religious liberties are not secured, and proper checks provided, we have the power in our own hands to do with it as we think proper. I hope gentlemen will permit us to proceed.

## 16

A NATIVE OF VIRGINIA, OBSERVATIONS UPON THE  
PROPOSED PLAN OF FEDERAL GOVERNMENT  
1788

*Monroe Writings 1:356*

The introduction, like a preamble to a law, is the Key of the Constitution. Whenever federal power is exercised, contrary to the spirit breathed by this introduction, it will be unconstitutionally exercised, and ought to be resisted by the people.

## 17

HOUSE OF REPRESENTATIVES, AMENDMENTS  
TO THE CONSTITUTION  
14 Aug. 1789

*Annals 1:717-19*

Mr. SMITH wished to transpose the words of the first amendment, as they did not satisfy his mind in the manner they stood.

Mr. GERRY said, they were not well expressed; we have it here "government being intended for the benefit of the people;" this holds up an idea that all the Governments of the earth are intended for the benefit of the people. Now, I am so far from being of this opinion, that I do not believe that one out of fifty is intended for any such purpose. I believe the establishment of most Governments is to gratify the ambition of an individual, who, by fraud, force, or accident, had made himself master of the people. If we contemplate the history of nations, ancient or modern, we shall find they originated either in fraud or force, or both. If this is demonstrable, how can we pretend to say that Governments are intended for the benefit of those who are most oppressed by them. This maxim does not appear